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Court of Appeals of Georgia.

LEWIS et al.

v.

WELLSTAR HEALTH SYSTEM, INC.

A26A0119
|
June 9, 2026

**Synopsis**

**Background:** Deceased patient's surviving children and estate administrator brought action against health system corporation, asserting claims for negligence, wrongful death, and failure to institute and/or implement policies, training, and supervision, based on allegations that medical personnel at system-affiliated hospitals deviated from standard of care in treating patient, resulting in his pain, suffering, and death. The Superior Court, Cobb County, D. Victor Reynolds, J., denied plaintiffs' motion for partial summary judgment as to apportionment and subsequently granted summary judgment in favor of corporation. Plaintiffs appealed.

**Holdings:** The Court of Appeals, Fuller, Senior Judge, held that:

[1] corporation was not "hospital" within meaning of statute restricting hospital tort liability for acts of health care professionals absent actual agency or employment;

[2] corporation was not vicariously liable under doctrine of respondeat superior for physicians' alleged deviation from standard of care in treating patient; and

[3] court was not required to allow plaintiffs to substitute corporate subsidiary as defendant.

Affirmed.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

West Headnotes (16)

[1] **Health** Hospitals or Clinics

Health system corporation was not "hospital" within meaning of statute restricting hospital tort liability for acts of health care professionals absent actual agency or employment, for purposes of claims brought by deceased patient's surviving children and estate administrator seeking to hold corporation vicariously liable for physicians' allegedly negligent treatment and care of patient at system-affiliated hospital; rather, corporation was parent company of stand-alone non-profit corporation which, in turn, owned hospital at issue.

More cases on this issue

[2] **Labor and Employment** Joint and several liability

Under the principle of "respondeat superior," employers are generally jointly and severally liable along with the tortfeasor employee for the torts of employees committed within the scope of employment. Ga. Code Ann. § 51-2-2.

[3] **Principal and Agent** Rights and liabilities of principal

An agent's negligence can be imputed to a principal under the doctrine of respondeat superior only if the agent qualifies as a servant of the principal, as opposed to, for example, an independent contractor. Ga. Code Ann. § 51-2-2.

[4] **Health** Persons Liable

For an entity to be vicariously liable for a doctor's actions under the doctrine of respondeat superior, it must be shown that the doctor was the entity's "employee," which requires establishing that the entity, under the contract either oral or written, assumes the right to control the time, manner, and method of executing the work, as distinguished from the right merely to require certain definite results in conformity to the contract.

  

[5] **Labor and Employment** Nature, Creation, and Existence of Employment Relation

The right to control the time of executing work, for purposes of determining whether a person is an employee, means the right to control the person's actual hours of work.

[6] **Labor and Employment** Nature, Creation, and Existence of Employment Relation

The right to control the manner and method of work, for purposes of determining whether a person is an employee, is retained where a principal or employer has assumed the right to tell the person how to perform all details of the job, including the tools he should use and the procedures he should follow.

[7] **Principal and Agent** Agency Distinguished from Other Relations

A contract can give rise to a right of control over an agent that can serve as an independent basis for concluding that an agent was a principal's servant, even when the principal did not in fact assume control over the agent.

[8] **Labor and Employment** Nature, Creation, and Existence of Employment Relation

The test for determining whether a person is an employee is not whether the employer did in fact control and direct the employee in the work, but it is whether the employer had that right under the employment contract.

[9] **Labor and Employment** Nature, Creation, and Existence of Employment Relation

Whether a contract gives rise to a master-servant relationship depends on whether it grants a principal a right of control that is sufficient to create such a relationship under the applicable legal standards, not merely on whether the contract says there is or is not such a relationship.

[10] **Labor and Employment** Questions of law and fact as to employment status

Whether a master-servant relationship exists is generally a factual question for the jury to decide based on all the relevant evidence.

[11] **Summary Judgment** Direct or circumstantial evidence

On summary judgment, a finding of fact that may be inferred but is not demanded by circumstantial evidence has no probative value against positive and uncontradicted evidence that no such fact exists.

[12] **Principal and Agent** Character of evidence necessary

Exhibiting mere possibility of control situation falls short of specific facts required to establish existence of actual agency relationship.

[13] **Health** Persons Liable

Health system corporation was not vicariously liable, under doctrine of respondeat superior, on negligence, wrongful death, and other claims by deceased patient's surviving children and estate administrator based on physicians' alleged deviation from standard of care in treating patient at system-affiliated hospital, in absence of evidence that corporation, rather than its subsidiary, employed treating physicians.

More cases on this issue

[14] **Appeal and Error** Summary judgment

In action by deceased patient's surviving children and estate administrator seeking to hold health system corporation both directly liable for its own acts and vicariously liable for actions of several medical providers in treating patient at system-affiliated hospitals, plaintiffs waived any challenges to trial court's grant of summary judgment to corporation on direct liability

  

claims, and on vicarious liability claims as raised against all but two specified providers, by addressing only vicarious liability for acts of those specified providers in their appellate challenge.

**[15] Judgment** Parties

In action by deceased patient's surviving children and estate administrator seeking to hold health system corporation vicariously liable for actions of medical providers in treating patient at system-affiliated hospitals, statute requiring that civil actions be prosecuted by real party in interest and permitting correction of misnamed plaintiffs did not apply to require trial court to allow plaintiffs to substitute corporate subsidiary as defendant rather than enter judgment against them following grant of summary judgment in corporation's favor. Ga. Code Ann. § 9-11-17(a).

More cases on this issue

**[16] Appeal and Error** Reply briefs

Reliance by deceased patient's surviving children and estate administrator on relation back statute, in arguing that trial court erred by entering judgment against them "with prejudice," in action seeking to hold health system corporation vicariously liable for actions of medical providers in treating patient at system-affiliated hospitals, rather than allowing plaintiffs to substitute corporate subsidiary as defendant, was not properly before Court of Appeals, where plaintiffs raised argument for first time on appeal in their reply brief. Ga. Code Ann. § 9-11-15(c).

**Attorneys and Law Firms**

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Sharonda Helen Boyce, Daniel James Huff, Atlanta, Randolph Page Powell Jr., Devon Gayle Zawko, Alexander Collins Vey, for Appellee.

**Opinion**

Fuller, Senior Judge.

***1** The plaintiffs in this action for wrongful death and related claims[1] appeal from the grant of summary judgment to defendant Wellstar Health System, Inc. ("WHS") and the denial of their motion for partial summary judgment as to apportionment. They contend that disputed factual issues as to WHS's employment of two doctors who treated their decedent preclude summary judgment in favor of WHS, that the trial court erred when it ruled that any damages owed by WHS may be apportioned to nonparties and denied partial summary judgment to them on that basis, and, alternatively, that the court erred by entering judgment against them with prejudice, because, they assert, the proper remedy is to allow them to substitute another defendant. For the reasons that follow, we affirm.

"We review de novo a grant or denial of summary judgment, viewing the evidence and all reasonable conclusions and inferences drawn from it in the light most favorable to the nonmovant." *Henry v. Griffin Chrysler Dodge Jeep Ram*, 362 Ga. App. 459, 460, 868 S.E.2d 827 (2022). So viewed, the record shows that, in September 2020, decedent James Lewis's surviving children filed suit in Fulton County Superior Court against more than a dozen defendants, including Emory Healthcare, Inc. and various providers at an Emory Hospital, WHS, Windy Hill Hospital,[2] Kennestone Hospital, Inc., Nazim Syed, M.D., and Nagimesi Wanasika, M.D., seeking damages for Lewis's wrongful death. Lewis's estate administrator later was added as a plaintiff to that action. The plaintiffs alleged, in relevant part, that Lewis experienced numerous complications after undergoing an elective laminectomy at an Emory hospital in November 2017. In December 2017, he was transferred to Windy Hill Hospital (a WHS-affiliated facility), where, according to the plaintiffs, he was treated by Drs. Syed and Wanasika (among others) and developed several problems due to multiple deviations from the standard of care. As a result, in April 2018, Lewis was transferred to Kennestone Hospital (also a WHS-affiliated facility), where, the plaintiffs alleged, additional deviations from the standard of care resulted in his pain, suffering, and death. The plaintiffs entered into a confidential settlement with the Emory-related defendants, after which they dismissed the entire Fulton County action in April 2022.

  

Later that day, the plaintiffs filed the current renewal action pursuant to OCGA § 9-2-61(a) in Cobb County Superior Court, naming only WHS as a defendant. They again alleged that WHS medical personnel deviated from the standard of care in their treatment of Lewis during his stays at Windy Hill Hospital and Kennestone Hospital, resulting in his pain, suffering, and death. The plaintiffs further alleged that WHS is both directly liable for its own acts and vicariously liable for the actions of both hospitals' medical providers. They asserted causes of action for negligence and wrongful death (Count 1) and failure to institute and/or implement policies, training, and supervision (Count 2). In an affidavit attached to their complaint, the plaintiffs' expert identified several individual providers who, he attested, violated the standard of care during Lewis's treatment, including Drs. Syed and Wanasika.

***2** In May 2022, WHS filed a motion to dismiss for failure to state a claim, arguing that it is an improper party because it "is not the proper corporate entity for" Windy Hill Hospital or Kennestone Hospital and did not employ any of the providers responsible for Lewis's care and treatment in this case. The trial court did not rule on the motion, and the case proceeded to discovery, after which WHS moved for summary judgment. In its summary judgment motion, WHS again argued that it "is not the proper corporate entity for [Windy Hill and Kennestone Hospitals] and did not employ the nurses, staff, or physicians alleged to have been negligent in the care and treatment of [Lewis] at those two facilities." It further argued that no record evidence shows that it is liable for the plaintiffs' direct or institutional claims.

In their opposition to summary judgment, the plaintiffs asserted that WHS "entered into direct employment contracts" with the relevant care providers, "including at least" Drs. Syed and Wanasika, who, the plaintiffs alleged, were in charge of Lewis's "weight and fluid management" at Windy Hill Hospital. The plaintiffs also moved for partial summary judgment, seeking a ruling that, under the then-applicable version of Georgia's apportionment statute, OCGA § 51-12-33 (2005),[3] any damages owed by WHS may not be reduced due to nonparty fault.

In its order denying partial summary judgment to the plaintiffs, the trial court ruled that WHS could seek to apportion damages to one or more nonparties, were it found to be liable. In a separate order granting summary judgment to WHS, however, the court concluded that WHS is not a proper party to this case because it did not employ Drs. Syed and Wanasika when they treated Lewis. This appeal followed.

> Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. The burden on the moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the movant meets this burden, the nonmovant cannot rest on his pleadings, but rather must point to specific evidence giving rise to a triable issue.

*Henry*, 362 Ga. App. at 460–61, 868 S.E.2d 827 (citation modified). See OCGA § 9-11-56(c), (e).

1. The plaintiffs first contend that disputed factual issues remain as to whether WHS employed Drs. Syed and Wanasika and therefore may be vicariously liable for their negligent treatment and care of Lewis.[4] We disagree.

In its order granting summary judgment to WHS, the trial court concluded that, pursuant to OCGA § 51-2-5.1, a "clear contract exists" here establishing that Drs. Syed and Wanasika were employees of nonparty WellStar Medical Group, LLC ("WMG") — and not WHS, which is a separate entity — when they treated Lewis. The court further ruled that the plaintiffs could not add WMG as a defendant under the "relation back" statute, OCGA § 9-11-15(c), because their decision to name only WHS was strategic, rather than mistaken.

**[1]** (a) *Application of OCGA § 51-2-5.1*. The plaintiffs challenge the trial court's ruling that this case is subject to OCGA § 51-2-5.1, which governs the tort liability of a "hospital" for "the acts or omissions of a health care professional." OCGA § 51-2-5.1(b). The statute defines "hospital" as "a facility that has a valid permit or provisional permit issued by the Department of Community Health" under Georgia's Health Code. OCGA § 51-2-5.1(a)(2). As the plaintiffs correctly argue, WHS is not a hospital; rather, it is "the parent company of Kennestone Hospital, Inc.," which is "a stand-alone Georgia non-profit corporation," and which, in turn, "owns and controls Kennestone Hospital Inc. d/b/a Windy Hill Hospital."[5] Consequently, OCGA § 51-2-5.1 has no application here, and we therefore must determine whether the record evidence otherwise may establish vicarious liability. See *Schriver v. N. Fulton Emergency Physicians*, 377 Ga. App. 297, 298(1), 922 S.E.2d 464 (2025) ("By its

plain language, OCGA § 51-2-5.1 *only* applies in the hospital-health care professional context.").

***3** **[2]** **[3]** (b) *Vicarious liability/respondeat superior generally.* The plaintiffs also challenge the trial court's ruling under traditional vicarious liability principles. "Under the principle of respondeat superior, employers are generally jointly and severally liable along with the tortfeasor employee for the torts of employees committed within the scope of employment." *Chorey, Taylor & Feil, P.C. v. Clark*, 273 Ga. 143, 144, 539 S.E.2d 139 (2000) (quotation marks omitted). See OCGA § 51-2-2. "But an agent's negligence can be imputed to a principal" under this doctrine "only if the agent qualifies as a servant of the principal, as opposed to, for example, an independent contractor." *Statham v. Quang*, 321 Ga. 533, 539(2)(b)(i)(A), 915 S.E.2d 864 (2025) (quotation marks omitted).

**[4]** **[5]** **[6]** Thus, for an entity to be liable for a doctor's actions, it must be shown that the doctor was the entity's employee, which requires establishing that "the employer, under the contract either oral or written, assumes the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results in conformity to the contract." *Allrid v. Emory Univ.*, 249 Ga. 35, 39–40(2), 285 S.E.2d 521 (1982) (quotation marks omitted). Accord *Statham*, 321 Ga. at 539–40(2)(b)(i)(A), 915 S.E.2d 864. "The right to control the time means ... the right to control the person's actual hours of work." *Schriver*, 377 Ga. App. at 298(1), 922 S.E.2d 464 (quotation marks omitted). And the right to control the manner and method of work is retained where a principal or employer "has assumed the right to tell the person how to perform all details of the job, including the tools he should use and the procedures he should follow." *Williamson v. Coastal Physician Servs. of the Se.*, 251 Ga. App. 667, 668, 554 S.E.2d 739 (2001). Accord *Cajun Contractors v. Peachtree Prop. Sub, LLC*, 360 Ga. App. 390, 394(1)(a), 861 S.E.2d 222 (2021).

**[7]** **[8]** **[9]** "[A] contract can give rise to a right of control over an agent that can serve as an independent basis for concluding that an agent was a principal's servant, even when the principal did not in fact assume control over the agent." *Statham*, 321 Ga. at 543(2)(b)(ii), 915 S.E.2d 864. Thus, "[t]he test is not whether the employer *did in fact control* and direct the employee in the work, but it is whether the employer had that right under the employment contract." *Cajun Contractors*, 360 Ga. App. at 396(1)(a), 861 S.E.2d 222 (quotation marks omitted). Accord *Golosh v. Cherokee Cab Co.*, 226 Ga. 636, 638–39, 176 S.E.2d 925 (1970). Consequently, whether a contract gives rise to a master-servant relationship depends on whether it "grants a principal a right of control that is sufficient to create such a relationship" under the applicable legal standards, "not merely on whether the contract says there is or is not such a relationship." *Statham*, 321 Ga. at 543(2)(b)(ii), 915 S.E.2d 864.

**[10]** **[11]** **[12]** "[W]hether a master-servant relationship exists is generally a factual question for the jury to decide based on all the relevant evidence." *Statham*, 321 Ga. at 539(2)(b)(i)(A), 915 S.E.2d 864. Nevertheless, on summary judgment, a finding of fact that "may be inferred but is not demanded by circumstantial evidence has no probative value against positive and uncontradicted evidence that no such fact exists. Exhibiting the mere possibility of a control situation falls short of the specific facts required." *Dix v. Shadeed*, 261 Ga. App. 145, 147(1), 581 S.E.2d 747 (2003) (quotation marks omitted).

**[13]** In support of its summary judgment motion, WHS presented the affidavit of Jason Stevens, its senior vice president and deputy general counsel, who attested that, during the relevant time period, WHS did not: employ any of the medical personnel alleged to have negligently treated Lewis, including Drs. Syed and Wanasika; "enforce policies, procedures, or protocols" at its Kennestone or Windy Hill Hospitals; "control the time, manner, method, and means of the care or services rendered by" either hospital's providers or staff; or "compensate, train, or supervise providers or staff" at either hospital. Stevens further attested that, during that time, Drs. Syed and Wanasika were instead employed by WMG — a WHS subsidiary — which exercised the requisite control of the care they provided and compensated them for those services. With this evidence, WHS "successfully pierced the allegations in the complaint of liability under the doctrine of respondeat superior," as a result of which the plaintiffs were required to identify record evidence "setting forth a specific fact or facts showing a genuine issue for trial." *Slater v. Canal Wood Corp.*, 178 Ga. App. 877, 879(1), 345 S.E.2d 71 (1986).

***4** In their opposition to WHS's summary judgment motion, the plaintiffs relied on several documents, which, they argue, show that Drs. Syed and Wanasika were WHS employees when they treated Lewis. We address each in turn.

  

(i) *Physician Services Agreements*. Drs. Syed and Wanasika each executed a largely identical "Physician Services Agreement" ("PSA") with WHS and WMG; each agreement appears to have been in effect when they treated Lewis between December 2017 and mid-2018. Pursuant to the PSAs, WMG (and not WHS) "employ[ed each doctor] to render medical services as a Hospitalist." Nevertheless, the plaintiffs contend that evidence of WHS's "right to exercise control over" the doctors may be found in several additional PSA provisions that require the doctors to:

- provide services at any WHS subsidiary-owned hospital;
- participate in WHS and WMG managed-care arrangements, "medical management initiatives," and administrative, clinical, and strategic planning, research, and education activities;
- comply with quality assurance, risk management, peer review, grievance, and utilization control procedures implemented by WMG and its "Affiliates," which the PSAs define as "entities controlling, controlled by, or in common control with [WHS] or any entity in which [it] has a direct interest;
- comply with WMG and WHS charity and indigent-patient guidelines and both entities' and each hospital's "policies, rules and regulations";
- be subject to WMG evaluations and assessments in accordance with WMG and WHS "review policies"; and
- engage his or her best efforts to use healthcare services available from WHS or its affiliates when consistent with patients' best medical interests.

The plaintiffs also highlight PSA provisions to the effect that:

- compensation must be "consistent with the principles under which [WMG and WHS] must conduct [their] financial affairs";
- either WMG or WHS would maintain malpractice and other insurance and file tax forms for each doctor;
- each doctor could be fired for, inter alia, engaging in conduct adverse to the "interest, reputation or business" of WMG, WHS, or any of their officers or board members;
- the doctors are subject to restrictive covenants and confidentiality provisions covering WMG, WHS, and its subsidiary-owned hospitals;
- both WMG and WHS may seek injunctive relief for breach of the PSAs; and
- both WMG and WHS agree to indemnify the doctors against certain claims and retain the right to settle such claims.

None of the above provisions, however, show that anyone other than WMG — which the PSAs expressly identify as the doctors' employers — retained the right to control the performance of all details of their jobs. Specifically, the cited PSA provisions do not show that WHS controlled how the doctors exercised their professional judgment in treating patients (including Lewis) and/or dictated which tools they should use and procedures they should follow. See *Cajun Contractors*, 360 Ga. App. at 394(1)(a), 861 S.E.2d 222; *Williamson*, 251 Ga. App. at 668, 554 S.E.2d 739. While the cited PSA provisions arguably implicate WHS *preferences* as to certain aspects of the doctors' provision of medical care, the plaintiffs identify no specific policy provisions *requiring* the doctors to provide such care in accordance with those policies in all instances. See *Allrid*, 249 Ga. at 40(2), 285 S.E.2d 521 ("[W]here a hospital reserves no right to control specific medical techniques employed by the doctors, but merely exercises a limited surveillance in order to monitor the quality of medical care provided, these controls are not inconsistent with an employer-independent contractor relationship." (citation modified)). Accord *Schriver*, 377 Ga. App. at 301–02(1), 922 S.E.2d 464 (finding no employer-employee relationship where the defendant "had no control over the time, manner, and method of how the doctor performed her work" in light of evidence that the defendant "did not have the right to control the doctor's exercise of her professional judgment" or "any right to direct or control how a particular patient was treated"); *Williamson*, 251 Ga. App. at 669–70, 554 S.E.2d 739 (rejecting a claim that developing and requiring compliance with emergency room policies showed control over a doctor's emergency room work, and finding no employer-employee relationship where a "staffing contract" in which the defendant "agreed to provide physicians for [a] hospital emergency room" did not give the defendant "the right to assume control over the time, manner, or method of the physicians' work," and there was no evidence that the defendant controlled the treating physician's emergency room diagnosis and treatment of the decedent). See also generally

*Wilson v. Guy*, 356 Ga. App. 509, 513–15(1), 848 S.E.2d 138 (2020) (finding no employer-employee relationship where there was no evidence that, when one worker was injured, the defendant either "assumed the right to tell [the workers] exactly how to go about their tasks in every detail, which tools to use, or what procedures to follow in carrying out their work" or "controlled the specific hours during which [the workers] worked or the order in which the requested tasks would be performed"). The PSAs thus do not show that WHS employed Drs. Syed and Wanasika.

***5** (ii) *Appointment letter.* The plaintiffs further rely on a June 2017 letter in which WHS's president and CEO informed Dr. Syed that WHS's board of trustees had approved his appointment to Windy Hill Hospital's medical staff. But that letter sheds no light on WHS's control over either doctor, and it does not contradict the PSA provisions to the effect that WMG employed them.

(iii) *Nutrition care manual*. The plaintiffs also contend that control may be shown via WHS policies requiring the "nutrition care" delivered to all WHS patients to "adhere to standards" contained within a "Diet Manual." But requiring adherence to certain standards in a limited area of care is a far cry from controlling the performance of all details of the doctors' jobs. See *Slater*, 178 Ga. App. at 880(1), 345 S.E.2d 71 (requiring adherence to certain occupational standards "provide[s] no indicia of a master/servant relationship"). See also generally *Cajun Contractors*, 360 Ga. App. at 394(1)(a), 861 S.E.2d 222; *Williamson*, 251 Ga. App. at 668–70, 554 S.E.2d 739 (developing and requiring compliance with policies does not show control over a doctor's work). And on appeal, the plaintiffs do not identify any such standards that limited the doctors' discretion in providing care in any meaningful way.

(iv) *Insurance and taxes*. The plaintiffs also highlight that WHS maintained umbrella insurance policies covering both doctors and identified them as employees on a 2017 federal tax form. But the insurance policies have no bearing on employment or WHS's control over the doctors' day-to-day jobs, and the plaintiffs identify no entry on the tax form clearly identifying Drs. Syed and Wanasika as WHS employees, pretermitting whether that would have any material significance as to control in this case.

(v) *Employment acknowledgments*. Finally, the plaintiffs rely on WHS "Employment Acknowledgement" forms signed by both doctors. Notably, the first sentence of each form provides that "employment with WELLSTAR *and its subsidiaries* is conditional upon successfully meeting" various requirements. (Emphasis added.) That sentence plainly is insufficient to establish that WHS, rather than WMG (one of its subsidiaries), employed the doctors. While the forms also state that "retention as an employee ... is at the discretion of the health system," they further explicitly acknowledge that "no contractual agreement exists unless specified in a separate written and signed agreement," thereby indicating that the doctors' employment relationships are governed by other agreements (i.e., the PSAs), not the acknowledgment forms. And given the positive evidence in Stevens's affidavit that WMG employed the doctors — which the PSAs corroborate — the acknowledgment forms at most constitute circumstantial evidence to the contrary, which is insufficient to defeat summary judgment. See *Dix*, 261 Ga. App. at 147(1), 581 S.E.2d 747 ("[A] finding of fact which may be inferred but is not demanded by circumstantial evidence has no probative value against positive and uncontradicted evidence that no such fact exists." (quotation marks omitted)); *Slater*, 178 Ga. App. at 881(1), 345 S.E.2d 71 (concluding that circumstances that, "on the surface," appeared to be inconsistent with the absence of a principal-agent relationship, were insufficient to defeat summary judgment in light of "uncontradicted explanations" to the contrary).

(vi) *Conclusion (vicarious liability).* Because none of the evidence on which the plaintiffs rely directly contradicts WHS's evidence that WMG—and not WHS—employed Drs. Syed and Wanasika, the trial court did not err when it granted summary judgment to WHS as to the plaintiffs' vicarious liability claims.[6] See *Dix*, 261 Ga. App. at 147(1), 581 S.E.2d 747; *Slater*, 178 Ga. App. at 879, 881–82(1), 345 S.E.2d 71.

***6** **[14]** (c) *Direct liability/vicarious liability for other doctors.* In their complaint, the plaintiffs sought to hold WHS both directly liable for its own acts and vicariously liable for the actions of several medical providers, including — but not limited to — Drs. Syed and Wanasika. WHS thereafter sought summary judgment "on all claims against it." The trial court's grant of summary judgment to WHS is not limited in any way.

The plaintiffs' appellate challenges to the summary judgment rulings address only WHS's vicarious liability for the acts of Drs. Syed and Wanasika. Consequently, they have waived any challenges they may have to the grant of summary judgment as to WHS's direct liability or its vicarious liability for the acts of other individuals. See *Gresham v. Harris*, 349 Ga. App.

134, 138(1) n.10, 825 S.E.2d 516 (2019) (concluding that the appellant waived any claim that the trial court erred in making a certain finding "by failing to enumerate it as an error and provide any supporting argument" on appeal); *Karlsberg v. Hoover*, 142 Ga. App. 590, 594, 236 S.E.2d 520 (1977) ("[A]n appellant is required in its initial brief to file an argument which supports any enumerations of error it does not wish to waive."). We therefore affirm the trial court's summary judgment rulings in those respects, as well.

2. The plaintiffs also challenge the denial of their motion for partial summary judgment, arguing that the trial court erred when it denied their request to preclude WHS from seeking to apportion fault to nonparties. Our affirmance of the grant of summary judgment to WHS renders this claim moot. See *Hughes v. Ga. Dep't of Corr.*, 267 Ga. App. 440, 443(2), 600 S.E.2d 383 (2004) ("An issue is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." (quotation marks omitted)).

**[15]** 3. Finally, the plaintiffs contend that the trial court erred by entering judgment against them "with prejudice," because, they assert, the proper remedy is to allow them to substitute a WHS subsidiary (such as WMG or a hospital) as the defendant. But they again have not met their burden of showing error.

Regardless of whether the trial court's summary judgment order constitutes a judgment "with prejudice," the only legal authority the plaintiffs cite in support of this argument in their initial appellate brief — OCGA § 9-11-17(a) — applies to changing the plaintiff or plaintiffs, not to changing defendants. See OCGA § 9-11-17(a) ("No action shall be dismissed on the ground that it is not *prosecuted* in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest ...." (emphasis added)); *Memar v. Styblo*, 293 Ga. App. 528, 530, 667 S.E.2d 388 (2008) (explaining that, under OCGA § 9-11-17(a), "if the plaintiff is reasonably recognizable as a misnomer for a legal entity which is the real party plaintiff, the misnomer may be corrected by amendment" (quotation marks omitted)). Because the plaintiffs do not seek the substitution of plaintiffs, their argument in this regard fails.

**[16]** In their reply brief, the plaintiffs rely on the "relation back" statute, OCGA § 9-11-15(c). See generally *Oconee County v. Cannon*, 310 Ga. 728, 731–35(2), 854 S.E.2d 531 (2021). But this claim is not properly before us, as the plaintiffs raised it for the first time on appeal in their reply brief. See *Miller v. Polk*, 371 Ga. App. 746, 755(3), 903 S.E.2d 128 (2024) ("[T]his court will not consider arguments raised for the first time in a reply brief."). Accord *Bradley v. State*, 318 Ga. 142, 145(2) n.4, 897 S.E.2d 428 (2024).

***7** For the above reasons, we affirm the trial court's judgment.

*Judgment affirmed*.

Doyle, P. J., and Davis, J., concur.

**All Citations**

--- S.E.2d ----, 2026 WL 1660044

Footnotes

1 The named plaintiffs are Curtis Lewis, W. Glenn Lewis, and Debra Moulton, as decedent James Lewis's surviving children, and Glenn Lewis, as James Lewis's estate administrator.

2 The parties at times refer to both "Windy Hill LTAC" and "Windy Hill Hospital." Because both names appear to refer to a single facility, we refer to it as "Windy Hill Hospital" in this opinion.

3 OCGA § 51-12-33 was amended effective May 13, 2022, after both the initial and renewal complaints were filed in this action. See Ga. L. 2022, pp. 802–03, §§ 1, 4. By its terms, the amended version applies to all cases filed after its effective date. See id. at 802, § 2.

4 On appeal, the plaintiffs do not identify any other medical providers for whom WHS may be vicariously liable.

5 "Kennestone Hospital, Inc.," and "Kennestone Hospital Inc. d/b/a Windy Hill Hospital" thus are separate entities.

  

6 The plaintiffs' brief, conclusory citation to *Kissun v. Humana, Inc.*, 267 Ga. 419, 479 S.E.2d 751 (1997), plays no role in our analysis, as that decision turned on questions of alter ego, apparent or ostensible agency between corporations, and joint venture, none of which are at issue here. See generally id.

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