

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No.: 2011-CP-46-00683

Samantha Jamison, as Personal Representative of the
Estate of Jayden Joenelle Jamison-Barber, deceased.....Respondent,

v.

Ansley L. Hilton, MD, individually and as agent,
servant or employee of Rock Hill Gynecological
and Obstetrical Associates, PA; Christopher B.
Benson, MD, as agent, servant or employee of Rock
Hill Gynecological and Obstetrical Associates, PA;
and Rock Hill Gynecological and Obstetrical Associates,
PA, Defendants,

Of whom,

Rock Hill Gynecological and Obstetrical Associates, PA, is the.....Appellant.

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MAY 17 2013

SC Court of Appeals

PETITION TO LIFT APPELLATE STAY

The Appellant respectfully requests that this Court lift the stay on further proceedings in the circuit court for the limited purpose of allowing the trial judge to rule on a motion to reconsider that was pending when this appeal was commenced. The Appellant further requests

that this Court hold all timelines in the current appeal in abeyance until the trial judge has ruled on that motion. The Appellant sets forth the reasons for this request below.

STATEMENT OF THE CASE

This medical malpractice action went to trial before the Honorable Steven H. John on April 8, 2013. On April 12, 2013, the jury returned defense verdicts for the individual defendants, Dr. Ansley L. Hilton and Dr. Christopher B. Hinson. At the same time, however, the jury returned a verdict for the plaintiff against the Appellant Rock Hill Gynecological and Obstetrical Associates, PA (the employer of Drs. Hilton and Hinson).

Judge John declined to give the parties 10 days for post-trial motions, and he insisted that the parties make any such motions immediately after the verdicts were read. The attorneys for the Appellant made oral post-trial motions, which Judge John denied from the bench. Judge John subsequently issued a Form 4 Order to the same effect on April 15, 2013. Counsel for the Appellant received that Order on April 17, 2013. Eight days later, on April 25, 2013, the Appellant filed a pleading entitled "Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict, and Motion to Alter or Amend the Judgment." The Appellant based the motion largely on Rule 59(e), SCRCF, but also referenced other rules addressing post-trial relief. After receiving a copy of the motion, Judge John instructed the attorneys for the plaintiff (Respondent) to submit a response to the motion by May 6, 2013, which they did.

By May 10, 2013, Judge John had not ruled on the Appellant's written motion. Noting that the 30-day time period from the original denial of the oral post-trial motions was about to expire, and unsure whether the subsequent written motion stayed the time for appeal, the Appellant served a Notice of Appeal on May 10, 2013. The Notice of Appeal was mailed to this Court for filing on the same day.

On May 16, 2013, Judge John's law clerk sent an e-mail to the attorneys stating that the circuit court no longer had jurisdiction to consider the Appellant's written motion. However, the e-mail also indicated the judge was willing to rule on the motion if the parties could obtain relief from the stay of further proceedings in the circuit court. As a result of that e-mail, the Appellant now files this petition.

ARGUMENT

The Appellant made oral post-trial motions, which the judge denied from the bench at the end of the trial. The Appellant subsequently filed a written motion to reconsider pursuant to Rule 59(e), SCRCP. Under the South Carolina Supreme Court's reasoning in *Elam v. South Carolina DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004), the written Rule 59(e) motion was proper, and it tolled the time for commencing an appeal. The situation facing the Appellant was potentially different than that in *Elam*, however. The Appellant's motion relied primarily on Rule 59(e), but it also cited other rules. This created a concern that the motion might be seen as a "hybrid," asserting alternative bases for post-trial relief. A reading of *Elam* gives no indication that the motion in that case cited or relied upon rules other than Rule 59(e). Thus, it was not clear whether or not *Elam* would be controlling in this situation.

Faced with this uncertainty, the Appellant had no choice but to file its Notice of Appeal prior to the expiration of the original 30-day time period to ensure that its right to appeal was preserved. After commencement of the appeal, the trial judge recognized his lack of jurisdiction over the still-pending motion to reconsider, but said he would rule on the motion if the appellate stay of Rule 205, SCACR, were lifted for that purpose. Because the trial judge cannot lift the stay, the Appellant seeks that relief from this Court.

Allowing the trial judge to rule on the motion to reconsider would either end or clarify the issues on appeal, and it would not prejudice the Respondent. If the trial judge were to grant the relief requested in the Appellant's motion, this appeal would become unnecessary. In that event, the appeal could be dismissed with prejudice.¹ If the trial judge denied the motion, this Court would likely have the benefit of a more formal order setting forth the judge's findings, conclusions, and reasoning. This would give the Court a more complete record to review if the appeal had to continue. In either situation, there would be some benefit to the Court and the parties from a ruling on the motion to reconsider.

Conversely, allowing the trial judge to rule on the motion to reconsider would not cause any prejudice to the Respondent. As previously explained, Judge John has informed the parties he is ready and willing to rule on the motion if the appellate stay is lifted. Both sides have already submitted memoranda to the judge, and the motion is ripe for consideration. Even if Judge John decides to hold a hearing, there is no reason why it could not take place quickly. Thus, any delay caused by lifting the appellate stay for this limited purpose would be minimal.

Furthermore, this case involved a week-long trial, which means it will take a considerable amount of time for the court reporter to prepare the trial transcript. The time for filing and serving the first initial brief does not begin to run until the full transcript is delivered. The delivery of the transcript should take place after the judge decides the motion. As a result, the limited circuit court proceedings should be completed long before it is time for the briefing process to begin. Thus, holding the appeal in abeyance pending that ruling would be largely an

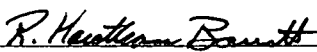
¹ Of course, a ruling that allowed the Appellant to end its appeal might also result in a new appeal by the Respondent. That possibility, however, has no bearing on whether or not this Court should permit the trial judge to rule on the motion to reconsider.

academic matter, and it would not prevent the natural progression of this appeal.² In short, granting this petition will not cause any undue delay, and the Appellant fails to see any other way it could possibly prejudice the Respondent.

CONCLUSION

For the reasons stated above, the Appellant requests that this Court grant the following relief: (1) lift the appellate stay for the limited purpose of allowing the trial judge to rule on the pending motion to reconsider, and (2) hold the current appeal in abeyance pending the trial judge's ruling.

Respectfully submitted,



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Attorneys for the Appellant

May 17, 2013

² The Appellant has already ordered the trial transcript, so the court reporter can begin working on it while the parties wait for Judge John's decision.

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May 17, 2013

VIA HAND DELIVERY

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Samantha Jamison, et al. v. Ansley L. Hilton, MD, et al.
Case No.: 2011-CP-46-00683
Our File No.: 10350.105

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and seven copies of the Appellant's Petition to Lift Appellate Stay, (2) the original and one copy of a Proof of Service, and (3) a check for the filing fee. Please file the originals and necessary copies and return the extra stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.



R. Hawthorne Barrett

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SC COURT of Appeals

RHB:
Enclosures

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Hon. Jenny Abbott Kitchings

May 17, 2013

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