

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jul 15 2022

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge
William B. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000288

Angela Patton, as Next Friend of Alexia L., a minor, Respondent,

v.

Dr. Gregory A. Miller and Rock Hill Gynecological &
Obstetrical Associates, P.A., Appellants.

RETURN TO RESPONDENT'S MOTION FOR LEAVE TO FILE AN AMENDED RETURN
TO APPELLANTS' PETITION FOR WRIT OF SUPERSEDEAS

This Court should deny Respondent's Motion for Leave to File an Amended Return to Appellants' Petition for Writ of Supersedeas. The bases for denial are 1) futility; and 2) failure to provide proper justification.

Futility: Respondent failed to timely file her original return to the petition for supersedeas. Although the return was due June 30, Respondent filed the return on July 1 and did not serve the return until July 1 at 4:03 p.m. No reason was provided for this late filing. No motion was made for an extension of the due date. Accordingly, Respondent should be deemed to have consented to the issuance of the writ of supersedeas. *See* Rule 240(e), SCACR ("Failure of a party to *timely* file a return may be deemed a consent by that party to the relief sought in the motion or petition." (emphasis added)). There is nothing properly/timely filed to amend. An amendment should be denied if it is futile.

Failure to Provide Proper Justification: After originally failing to file a Return in a timely fashion and providing no justification or reason for that, Respondent now seeks leave to file an amended return which substantially differs from her original untimely return. Her proposed amended return adds fourteen pages of substantive arguments that were not included in her original return. Respondent fails to show good cause to allow such an amendment. She states that “[d]ue to time constraints involving other professional responsibilities, Respondent had not been able to present in her original Return all points and arguments made in the Amended Return” and that she “seeks leave to do so in her Amended Return and to correct certain inadvertent errors.” Such a justification, if deemed acceptable, would suffice for any substitution of a prior filing with this Court with a new and different filing many days after the original due date. The problems inherent in endorsing this are obvious; brief deadlines and the like would be chaotic if “amended” filings substantially different were permitted to be filed many days after the due date for the reasons such as those provided here. Hence, the Court should deny Respondent’s motion.

Finally, Respondent cannot correct her failures to show good cause regarding the untimeliness of her original return or the amended return by raising additional purported justifications in a reply to this filing. Parties must state the grounds for their motion in the original motion. *See* Rule 240(c), SCACR (“All motions or petitions filed in an appellate court shall be in writing, ***shall state the grounds thereof***, and shall comply with the requirements of Rule 267.” (emphasis added)).

Conclusion

The Court should deny Respondent’s motion. If the Court does so on futility grounds, and deems Respondent to have consented to the Petition for Writ of Supersedeas pursuant to Rule

240(e), SCACR, then the Petition for Writ of Supersedeas should simply be granted. Appellants will then comply with the appeal bond requirements therein discussed.

If the Court denies the Respondent's motion on failure to justify/lack of good cause grounds, but decides to accept the untimely original Return of the Respondent, then Petitioner would respectfully request at least five days to file a reply in support of the supersedeas petition. If the Court grants the Respondent's motion and allows the Amended Return, then Petitioner would respectfully request at least five days to file a reply in support of the supersedeas petition. If no Return is allowed and the Petition is granted, then no reply is needed. If either return is allowed then Petitioner needs to know which is allowed so it can prepare the appropriate reply.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Appellants Gregory A. Miller, M.D. and Rock Hill Gynecological & Obstetrical Associates P.A.

Columbia, South Carolina

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PROOF OF SERVICE

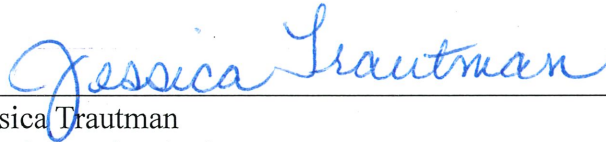
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, Attorneys for Gregory A. Miller, M.D. and Rock Hill Gynecological & Obstetrical Associates P.A., do hereby certify that on June 20, 2022, I served all counsel in this action with a copy of the pleading(s) hereinbelow by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Pleading(s): **Return to Respondent's Motion for Leave to File an Amended
Return to Appellants' Petition for Writ of Supersedeas**

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Jessica Trautman
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July 15, 2022

Jessica Trautman

From: Jessica Trautman
Sent: Friday, July 15, 2022 4:51 PM
To: egraham@grahamlawfirm.net; bradjordan@comporium.net; adavis@davisnyder.com
Cc: 'Nick Charles'; Mitch Brown
Subject: Angela Patton, et al. v. Gregory A. Miller M.D., et al--Civil Action No. 2022-000288
Attachments: Miller - Return to Appellants' Motion for Leave to Amend Return to Petition for Supersedeas.pdf

Counsel,

Attached for service upon you in the above matter is a Return to Appellants' Motion for Leave to Amend Return to Petition. Service is made via email pursuant to the Supreme Court Order 2021-08-25-02.

Thank you,



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