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**Jul 28 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the 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 OUT OF TIME

While undersigned counsel routinely consents to requests for extensions of time, for the reasons set forth below, this Court should deny Respondent's Motion for Leave to File Out of Time and grant the Petition for Writ of Supersedeas under the circumstances here.

Appellants filed a petition for supersedeas on June 20, 2022. This Court sent a letter requesting that a return be filed. Respondent failed to file a timely return and failed to properly serve the return she untimely filed.

Approximately a week after the original, untimely, and improperly served return, Respondent filed a motion to amend her return and a proposed amended return. The proposed amended return added fourteen pages of substantive arguments related to the merits of Appellants' appeal. Appellants filed a return to the motion to amend, pointing out the several reasons why the amended return to the supersedeas request should be disallowed, including futility, since the original return Respondent sought to amend was improper/untimely in the first place.

Respondent has now moved, three weeks after her original return was due, for leave to file her original return late. In this new motion, Respondent asks the Court to allow her late filing of the original return and exhibits *and* to allow her filing of the amended return and exhibits. *See* (Mot. to File Out of Time at 4). The basis for this motion is Respondent’s counsel’s statement that the late filing (without proper proof of service) “*hardly represents a waiver of Respondent’s objection to*” the supersedeas petition. (Mot. to File Out of Time at 4). This is simply wrong. The late and improper filing *is expressly a reason* justifying the grant of the supersedeas petition. *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.”). The Supreme Court has made clear to the bar that the appellate court rules are not “mere technicalities.” *See Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“By return, appellant’s counsel asserts that he has substantially complied with the Rules and that instances of non-compliance were inadvertent technical errors and minor discrepancies. Counsel moves to amend his brief. . . . Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”).

A short background is important here. Despite being reminded that the costs of an appeal bond are taxable costs under the appellate court rules if this Court reverses and remands for a new trial, Respondent insisted she planned on moving forward with efforts to execute on the judgment despite the notice of appeal. Next, Respondent took the position that while she could consent to a stay based on the posting of an appeal bond, the bond amount had to be millions in excess of even the judgment amount.

Appellants filed a motion asking the trial court to limit the bond amount to the maximum capped bond amount under current law, and noted a preference to avoid the need for filings regarding Dr. Miller's personal finances with the court, if such was unnecessary. *See* (Supp. Memo. in Supp. of Mot. to Stay Execution, Ex. E to Pet. for Supersedeas). The circuit court held a hearing and decided it would not limit the bond amount to the current statutory maximum. Appellants moved to reconsider this ruling, and also made a new motion to set the bond amount at \$2 million (which, by coincidence, is also the current statutory maximum), submitting affidavit evidence regarding Dr. Miller's financial situation and other affidavit evidence regarding the applicable coverage limits (totaling \$2 million). The circuit court denied the motion to reconsider and denied the new motion to set the bond amount at \$2 million based on the affidavits five days later. *See* (June 1, 2022 Form 4 Order, Ex. A to Pet. for Supersedeas). Appellants filed a final motion to reconsider regarding the denial of the new motion to set the bond amount at \$2 million. The circuit court denied that motion as well, although no contrary evidence was before the circuit court, nor did (Appellants argue) the circuit court consider a proper bond factor-based analysis. Appellants thereafter filed this supersedeas request, seeking that this Court set the appeal bond at \$2 million. The proper result of all of these motions is that, at Respondent's insistence, Appellants are willing to and should be allowed to post a \$2 million appeal bond, and the supersedeas should issue.<sup>1</sup>

This Court has the unquestionable discretion to simply deem the supersedeas request granted by consent at this juncture based on Rule 240(e), SCACR. Accordingly, the motion for leave to file the late original return and the late amended return should be denied, neither return should be considered, and the petition for writ of supersedeas should be granted. Appellants will

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<sup>1</sup> The analysis justifying a \$2 million appeal bond is more fully set forth in Appellants' petition.

post the appeal bond. The Court can then consider the merits of the appeal based on the full briefing and record.

If the Court determines to accept one or both of the late returns, the Court should consider only one of the returns and should not consider two different returns filed in response to the supersedeas petition. Finally, if the Court accepts a return, Appellants respectfully request that they be notified which return will be considered and that they be allowed at least five days to file a reply to whichever return the Court decides to allow and consider.

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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 Out of Time**

Served:                    Edward L. Graham  
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Jessica Trautman  
Administrative Assistant

July 28, 2022

## Jessica Trautman

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**From:** Jessica Trautman  
**Sent:** Thursday, July 28, 2022 4:47 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 Respondent's Motion for Leave to File Out of Time.pdf

Counsel,

Attached for service upon you in the above matter is a Return to Respondent's Motion for Leave to File Out of Time. Service is made via email pursuant to the Supreme Court Order 2021-08-25-02.

Thank you,



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