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Aug 26 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-CP-10-05289
Appellate Case No. 2022-000352

Medical University of South Carolina and University Medical
Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC;
Terry A. Day; Betsy Kay Davis; Joshua D. Hornig;
Eric J. Lentsch; David M. Neskey; and Anand K. Sharma..... Defendants.

Of whom HCA Healthcare, Inc. and Trident Medical Center, LLC;
are the..... Respondents.

**RETURN TO APPELLANTS’ PETITION FOR FULL APPELLATE COURT REVIEW
OF ORDER DENYING SUPERSEDEAS**

Respondent Trident Medical Center, LLC (“Trident”), respectfully submits the following
Return to the Appellants’ Petition for Full Appellate Court Review of Order Denying
Supersedeas.¹

¹ Appellants have never met their burden of establishing that any South Carolina court has personal jurisdiction over HCA Healthcare, Inc. and given that, the Court cannot issue an order awarding Appellants any of their requested relief against HCA Healthcare, Inc. Due to the ongoing jurisdictional issues related to HCA Healthcare, Inc., Respondents filed a Motion to Hold Appeal in Abeyance requesting the entire appeal be held in abeyance until the circuit court rules on HCA Healthcare, Inc.’s Motion to Dismiss for Lack of Jurisdiction which was filed on December 7, 2021.
PPAB 7932659v1

INTRODUCTION

Appellants Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina (collectively, “Appellants”) Petition for Full Appellate Court Review of Order Denying Supersedeas (the “Petition”). In their Petition Appellants raise two arguments: (1) the Court’s prior order, dated August 11, 2022, denying the Petition for Supersedeas is procedurally incorrect because it does not comply with Rule 220(b), SCACR, due to a purported failure to state details supporting the Court’s denial of that petition; and (2) the Court’s prior order, dated August 11, 2022, is substantively incorrect because Appellants claim that without the relief they request they will lose “the fruits” of their appeal. Appellants request the Court grant them a hearing en banc.

Appellants’ Petition should be denied because:

1. The Court’s Order denying Appellants’ Petition for Supersedeas is procedurally sufficient and correct;
2. The Court’s Order denying Appellants’ Petition is substantively correct and Appellants offer nothing new or of substance to support reversing this Court’s Order denying the Petition for Supersedeas; and
3. Appellants present no argument that would justify en banc consideration.

ARGUMENTS

I. The Court’s Order denying Appellants’ Petition for Supersedeas is procedurally sufficient and correct.

The Court’s order denying Appellants’ Petition for Supersedeas is brief, direct and correct.

The Order states:

After careful consideration, Appellants’ petition for supersedeas is denied. Appellants’ request for a hearing on their petition is denied.

In issuing an order on a motion or petition, the Court is not obligated under any rule or statute to provide anything more than the direct, clear, unambiguous decision on the motion or petition. The August 11, 2022 Order denying Appellants' Petition for Supersedeas did exactly that.

Appellants argue that the Court's Order violates Rule 220(b) and the directives set forth in *In re Memorandum Decisions by Ct. of Appeals*, 322 S.C. 53, 471 S.E.2d 456 (1993). Appellants' argument is wrong and based upon the assertion of an incorrect application of Rule 220(b), SCACR, and an unjustified interpretation of *In re Memorandum Decisions by Ct. of Appeals*. Rule 220(b) states:

In every decision rendered by an appellate court, every point distinctly stated in the case **which is necessary to the decision of the appeal** and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case.

Of course, Rule 220, SCACR, is explicitly titled "Opinions," and as plainly stated in Rule 220(b), it applies to "the decision of the appeal." The Order dated August 11, 2022, is not the "decision of the appeal." The appeal was filed March 21, 2022, and remains pending. The August 11, 2022 Order, was issued in response to a petition and is not an opinion expressing the Court's decision of the appeal. Rule 220(b), SCACR, does not address any requirement regarding the form or content of an order denying a petition or motion filed with the Court.

Appellants' reliance on the Supreme Court's Order, *In re Memorandum Decisions by Ct. of Appeals*, 322 S.C. 53, 471 S.E.2d 456 (1993), is similarly misplaced. That Order is "intended to clarify the authority of the South Carolina Court of Appeals to issue memorandum opinions." *In re Memorandum Decisions by Ct. of Appeals*, 322 S.C. at 53, 471 S.E.2d at 456 (emphasis added). The plain language of *In re Memorandum Decisions by Ct. of Appeals* makes it clear that the instructions set forth therein are related to the issuance of memorandum opinions pursuant to Rule 220(b)(1), SCACR—not orders ruling on motions addressed by the appellate court. *See also*

ORDER, Black’s Law Dictionary, (11th ed. 2019) (“An order is the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings.” (quoting 1 Henry Campbell Black, *A Treatise on the Law of Judgments* § 1, at 5 (2d ed. 1902))).

The distinction between an order and an opinion was recently exemplified by the South Carolina Supreme Court in *The Protestant Episcopal Church in the Diocese of S.C., et. al, v. The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of Am., et. al., No. 2020-000986, 2022 WL 3560664, at *1 (August 17, 2022)*. In that case, the South Carolina Supreme Court issued an order ruling on eight petitions for rehearing stating:

ORDER

The Court received eight separate petitions for rehearing. On June 7, we denied one petition in its entirety and denied three petitions in part. We requested briefing on two arguments: (1) revocation based on subsection 62-7-602(a) of the South Carolina Code (2022), and (2) no trust was created because the language purporting to constitute accession existed in the bylaws or constitutions before 1979. After careful consideration of these two arguments in the remaining petitions for rehearing, we grant the following petitions for rehearing We deny the following petition

The Supreme Court’s order in *The Protestant Episcopal Church in the Diocese of S.C.* contains no discussion of the facts or law supporting the Court’s rulings on the petitions for rehearing. After issuing its order granting the petitions for rehearing, the Supreme Court—in a separately captioned filing—issued a lengthy substitute opinion (Opinion No. 28095) detailing the facts and authorities supporting its decision of the merits of the appeal.

Like this Court’s August 11, 2022 Order, the Supreme Court’s order in *The Protestant Episcopal Church in the Diocese of S.C.* is brief and states simply that the Court reached its decision “after careful consideration.” The Supreme Court’s handling epitomizes that there is no

rule or statute that renders such orders procedurally improper. Appellants' reliance on authorities related to the issuance of opinions is misplaced. Accordingly, Appellants' contention that the Court's Order denying the Petition for Supersedeas is procedurally improper lacks merit and the Court should deny Appellants' Petition.

II. The Court's Order denying Appellants' Petition for Supersedes is substantively correct, and Appellants offer nothing to support the immediate reversal of this Court's order denying the request for supersedeas—one that aligns with three prior orders issued by the circuit court.

Appellants' Petition is tantamount to a petition for rehearing, *see* Rule 240(j), SCACR; however, in the Petition Appellants identify nothing that would require or justify reconsideration or rehearing of the Court's August 11, 2022 Order denying the Appellants' Petition for Supersedeas. Appellants merely offer a brief regurgitation of the same arguments that were denied by this Court and denied three (3) times by the circuit court. Nothing has changed, and nothing new or substantive is provided in the Appellants' arguments. Appellants provide no basis to change the outcome previously reached by this Court and the circuit court. To the extent the Court gives any consideration to the arguments about the merits of the Appellants' claims (for a fifth time), Trident incorporates the arguments set forth in Trident's Return to Appellants' Petition for Supersedeas, filed July 22, 2022, as the explanation and justification that Appellants' Petition should be denied on the merits yet again.

III. Appellants present no argument that would justify en banc consideration by the Court.

En banc consideration is not favored. Rule 219(a), SCACR. Ordinarily en banc review will not be granted except: (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions; or (2) when the proceeding involves a question of exceptional importance. *Id.* Appellants provide no basis to allow a conclusion that either of these conditions

exist and, in fact, this case does not satisfy either exception. Therefore, the Court should deny Appellants' Petition.

CONCLUSION

Based on the foregoing, the Court should DENY the Petition for Full Appellate Court Review of Order Denying Supersedeas.

s/James Lynn Werner

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PROOF OF SERVICE

The undersigned hereby certifies that on August 26, 2022, copies of the **RETURN TO APPELLANTS’ PETITION FOR FULL APPELLATE COURT REVIEW OF ORDER DENYING SUPERSEDEAS** and were served on all counsel of record via emails containing the above referenced document to counsels’ individual AIS email addresses:

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