RECEIVED
Sep 06 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.

---

# APPELLANTS' PETITION FOR FULL COURT REVIEW OF DECISION

---

Pursuant to Rules 241(d)(2) and 241(d)(7), Appellants hereby petition the full appellate court for review of the decision attached as Exhibit A, Order Denying Petition for Writ of Supersedeas. In the Order Denying Petition for Writ of Supersedeas at Exhibit A, the basis for the denial is that the trial court properly exercised its discretion in setting the bond amount. However, as noted in the Petition for Writ of Supersedeas, the trial court did not discuss the appropriate factors/analysis regarding the bond amount in his orders, including the undue burden on the judgment debtor. Further, as noted, the trial court orders were contrary to the only evidence before him on the undue burden on the judgment debtor factor, and the trial court's only discussed factor was protection of the judgment creditor. Thus, Appellants hereby request full court review of the Exhibit A Order. Appellants incorporate by reference the Petition for Writ of Supersedeas and their Reply to the Return and Amended Return as if set forth herein verbatim. For convenience, the Petition and the Reply are attached together at Exhibit B.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *s/ C. Mitchell Brown*

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
Nicholas A. Charles
SC Bar No. 101693
E-Mail: nick.charles@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

Columbia, South Carolina
September 6, 2022

# EXHIBIT A

*(Order Denying Petition for Writ of Supersedeas)*

# The South Carolina Court of Appeals

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.

Appellate Case No. 2022-000288

ORDER

After careful consideration, Appellants' petition for writ of supersedeas is denied. "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." S.C. Code Ann. § 18-9-130. In this case, the circuit court granted a stay of execution on the condition of a $6.25 million bond. Because this court finds the circuit court properly exercised its discretion in determining the amount of bond, Appellant's request for this court to reverse and modify the circuit court's orders is denied.

FOR THE COURT

Columbia, South Carolina

cc:
C. Mitchell Brown, Esquire
Nicholas Andrew Charles, Esquire
Edward L Graham, Esquire
David Bradley Jordan, Esquire
Ashby W. Davis, Esquire

FILED
Sep 01 2022

# EXHIBIT B

*(Petition for Writ of Supersedeas (without exhibits) and*
*Reply to the Return and Amended Return (without exhibits))*

RECEIVED
Jun 20 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.

---

# PETITION FOR WRIT OF SUPERSEDEAS

---

Appellants Dr. Gregory A. Miller ("Dr. Miller") and Rock Hill Gynecological & Obstetrical Associates, P.A. (the "Practice") (together, "Appellants") seek a writ of supersedeas pursuant to Rule 241 of the South Carolina Appellate Court Rules and a reversal and modification of Orders of the circuit court requiring a $6.25 million bond to be posted in order to stay execution on a judgment entered against a doctor and his (now dissolved) practice. The writ should be granted. Respectfully, the circuit judge did not engage in the appropriate analysis in considering the motion to stay and the appeal bond amount, and gave no weight to the *only* evidence presented to him on the undue financial burden created by the bond amount ordered. A court's failure to exercise its discretion is itself an abuse of discretion. *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (*quoting Samples v. Mitchell*, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Ct. App. 1997)). A writ of supersedeas should issue and the appeal bond required for this matter should be reduced to $2 million.

Appellants have appealed several erroneous orders arising out of pretrial proceedings, trial, and post-trial rulings in this case. If Appellants prevail on appeal, a new trial will be required. While the appeal is pending, Respondent indicated an intent to execute on the judgment. Appellants moved to stay execution, with no requirement for a bond, or, in the alternative, a maximum bond of $2 million (consisting of $1 million as to the individual, Dr. Miller, and $1 million as to the Practice (now a dissolved entity)). Appellants' request conformed with the current maximum statutory bond limits.[1]

The circuit court held a hearing and denied Appellants' request in a Form 4 Order, instead ordering that a stay of execution would require Appellants to purchase a $6.25 million bond. The circuit court did not expressly rule on Appellants' arguments. Appellants moved to reconsider this Order and simultaneously moved that the bond amount be reduced based on evidence (including two affidavits) submitted regarding the insurance available and the financial circumstances of Dr. Miller. These motions were denied by Form 4 Order two business days later, with no explanation of the reasoning for the denial and no reference to the affidavit evidence. Thus, Appellants on June 6, 2022, lastly moved to reconsider the decision not to reduce the bond amount based on the affidavit evidence presented. This motion was denied by Order dated June 14, 2022. In this Order, the Court held that section 18-9-130 was "inapplicable" and that the $6.25 million bond is appropriate "[c]onsidering the lengthy history of this case and the potential length of time this case

[1] These maximum limits are not *mandatory* in this case, based on the accrual date of the claims in this action. However, the General Assembly's acknowledgment of the public policy in favor of appeal bond maximums—as set forth in S.C. Code Ann. § 18-9-130 (2011)—could certainly be a basis for a bond amount. *See e.g., Gentry v. Yonce*, 337 S.C. 1, 532 S.E.2d 137 (1999) (Court looking, in deciding case, to General Assembly passage of statute consistent with the Court's discretionary ruling); *see also Se. Booksellers Ass'n v. McMaster*, 233 F.R.D. 456, 458 (D.S.C. 2006) (factor to consider is "where the public interest lies" in setting bond amount).

may spend on appeal." The circuit court did not expressly address Appellants' arguments or the affidavits presented.

Appellants now seek a writ of supersedeas review of the circuit court's orders. As required by Rule 241, this petition is accompanied by a signed verification, certified copies of the orders at issue, and a copy of the Notice of Appeal with its proof of service. *See* Rule 241(c)(3), SCACR; Certified Copies of Orders, attached as Exhibit A; Notice of Appeal with Proof of Service, attached as Exhibit B.

## Factual Background and Procedural History

This is a medical malpractice action originally filed in 2009. Respondent sued Dr. Miller and the Practice based on injuries suffered by the minor plaintiff allegedly as a result of a delivery complication known as shoulder dystocia which occurred on April 5, 2007. The parties tried the case in January 2022, and the jury returned a verdict in favor of Respondent on her claim for medical negligence and awarded $1.5 million in economic damages and $1 million in noneconomic damages.

### I. Pretrial Proceedings

Portions of the history of this case are recited to help this Court understand the issues and the time line involved. Respondent filed her original complaint on November 25, 2009, and an amended complaint in November 2012.

The circuit court granted partial summary judgment in favor of Appellants in 2013. Respondent appealed the ruling on January 15, 2014, which automatically stayed the case in the circuit court while the appeal remained pending. The Supreme Court remitted the case to the circuit court in October 2017, and trial court proceedings resumed. In 2018, Respondent—

recognizing that Appellants would assert the issue of statutory emergency[2] as a defense—moved for partial summary judgment "to preclude the *expected* statutory defense under S.C. Code of Laws Section 15-32-230, representing a liability shield for negligently inflicted harm in the context of certain alleged obstetrical emergencies." *See* Respondent's Motion for Partial Summary Judgment or a Stay, attached as Exhibit C (emphasis added). In the alternative, Respondent sought a stay of this action until the appellate courts resolved two appeals in which section 15-32-230 was at issue. *See id.* The circuit court granted Respondent's request to stay the case. This case ultimately proceeded to trial in January 2022, some time after this Court issued its final opinion in *Flowers v. Giep*, Op. No. 5864 (2021), regarding the construction of the statutory emergency defense.

---

[2] The issue of statutory emergency is codified at section 15-32-230 of the South Carolina Code, which provides:

> (A) In an action involving a medical malpractice claim arising out of care rendered in a genuine emergency situation involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, no physician may be held liable unless it is proven that the physician was grossly negligent.
>
> (B) In an action involving a medical malpractice claim arising out of obstetrical care rendered by a physician on an emergency basis when there is no previous doctor/patient relationship between the physician or a member of his practice with a patient or the patient has not received prenatal care, such physician is not liable unless it is proven such physician is grossly negligent.
>
> (C) The limitation on physician liability established by subsections (A) and (B) shall only apply if the patient is not medically stable and:
>
> > (1) in immediate threat of death; or
> >
> > (2) in immediate threat of serious bodily injury.
>
> Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient's discharge from the emergency department or obstetrical or surgical suite.

## II. Trial

During trial, both parties presented evidence addressing the statutory emergency issue. Expert testimony for both parties included questions and answers regarding whether the circumstances surrounding delivery of the minor plaintiff constituted a genuine obstetrical emergency, whether the patient was medically stable, and whether there was an immediate threat of death or serious bodily injury. Accordingly, Appellants moved pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure to amend their answer to conform to the evidence and assert the statutory emergency doctrine as a defense and for appropriate jury charges as to that defense regarding Respondent's claims. The trial judge (not the same judge who had previously stayed the case on request to stay from Respondent) denied the requests.

Appellants and Respondent agreed at trial that only Dr. Miller's liability would be submitted to the jury on the verdict form, and that issues of *respondeat superior* and course and scope need not become jury questions. Thus, only the issue of Dr. Miller's liability on Respondent's sole remaining claim for medical negligence was submitted to the jury. The jury returned a verdict against Dr. Miller and awarded $1.5 million in economic damages and $1 million in noneconomic damages.

## III. Post-Trial Proceedings

After the verdict, Appellants moved for a new trial absolute on several grounds:

(1) The circuit court erred in denying Appellants' Rule 15(b) motion to conform to the evidence and Appellants' request that the jury be charged on statutory emergency;

(2) The circuit court erred in denying Appellants' motion to exclude Respondent's expert witness who was not timely disclosed;

(3) The circuit court erred in allowing Respondent's expert witness to physically examine the minor plaintiff in the presence of the jury;

(4) The circuit court judge presiding over the trial erred in declining to recuse himself;

(5) The circuit court erred by permitting Respondent to refer to the standard of care as "safety rules" throughout trial;

(6) The cumulative effect of the errors entitled Appellants to a new trial; and

(7) Appellants requested a new trial based on the thirteenth juror doctrine.

*See* Mot. for New Trial and Related Briefing Filed by Appellants, attached as Exhibit D. Appellants also requested that the circuit court apply the $350,000 noneconomic damages cap pursuant to South Carolina Code section 15-32-220 on the ground that the verdict was against only one healthcare provider, Dr. Miller, and reduce the noneconomic damages award. *See id.*

The circuit court denied the new trial motion, ruled the cap on noneconomic damages must be doubled because it found the judgment should be entered against two healthcare providers (Dr. Miller and the Practice), applied a $50,000 setoff, added interest from the date of an earlier offer of judgment, and entered judgment in the amount of $4,682,689.57. *See* Ex. B (Post-Trial Order and Judgment, attached to Notice of Appeal). Appellants appealed (1) the March 3, 2022 Post-Trial Order and Judgment; (2) the jury verdict, related judgment, and evidentiary and other rulings at trial, including the issues related to the statutory emergency defense described above; and (3) the circuit court's denial of Respondents' motion for recusal. *See* Notice of Appeal, attached as Ex. B.

After the appeal, Respondent indicated she intended to execute on the judgment. Accordingly, Appellants moved for a stay of execution on the judgment. *See* Mot. to Stay Execution and Supp. Memo in Support of Mot. to Stay Execution, and Supplemental filing, attached as Exhibit E. Appellants argued the circuit court should exercise its discretion to grant a stay without requiring any bond or, as alternatives, require that Dr. Miller alone post a $1 million bond or that Dr. Miller and the Practice each post a $1 million bond. *See id.* Appellants further

argued that the circuit court should, as a matter of discretion, consider and apply the current statutory bond limits provided in South Carolina Code section 18-9-130,[3] although those limits are not mandatory in this case because this case accrued some time before the effective date of the current statute. *See id.* Appellants reserved the right to file other requests and make other motions if the circuit court determined it would not grant a stay on the conditions proposed by Appellants. *See id.* In response, Respondent asserted that she had no objection to the stay so long as a sufficient bond was required to protect her interests, which she asserted could be protected only by a $6.25 million bond. *See* Response to Mot. for a Stay of Execution, attached as Exhibit F. Respondent reached her $6.25 million calculation by assuming the appeal will last five years and guessing at the rate post-judgment interest will continue to accrue during the pendency of the appeal. *See id.*

The circuit court held a hearing on May 18, 2022, on Appellants' motion. Appellants, relying on *Southeast Booksellers Association v. McMaster*, 233 F.R.D. 456, 458 (D.S.C. 2006), and the current statutory bond limits provided in section 18-9-130, explained that they were seeking an order setting the required appeal bond at $2 million or less without having to place Dr. Miller's personal financial circumstances in the public record, but they would present such if the

---

[3] Section 18-9-130 provides:

> (A)(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:
>
> > (a) twenty-five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or
> >
> > (b) one million dollars, whichever is less, for all other entities or individuals.

circuit court determined it would not limit the required bond to $2 million or less. Appellants argued at the hearing that the appeal had merit, that the case was similar to that of *Flowers v. Giep*, Op. No. 5864 (2021), in that the statutory emergency defense was raised in a motion to conform to the evidence at trial in that case as well, and that there was no way Respondent could have been "surprised" by this motion to amend to conform to the evidence, given that Respondent had moved to stay the very trial in the case by reason of the *expected* assertion of the statutory emergency defense.

In a Form 4 order entered on May 19, 2022, the circuit court indicated it would grant the motion to stay execution on the judgment, but on the condition that Appellants "must purchase a bond in the amount of $6.25 million . . . to protect the judgment entered and interest accrued during the pendency of the appeal." *See* May 19, 2022 Form 4 Order, Ex. A. The circuit court provided no other rationale for its decision and did not address expressly the arguments raised by Appellants. Appellants moved to reconsider the court's ruling pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on the ground that the circuit court's rationale for its ruling was not set forth in its order.[4] *See* Mot. to Reconsider and Mot. to Reduce Amt. of Appeal Bond filed May 27, 2022, attached as Exhibit G. Appellants simultaneously moved to reduce the amount of the appeal bond. *See id.* In support of the latter motion, Appellants presented an affidavit and insurance policy materials establishing the combined policy limits applicable to this action for Dr. Miller and the Practice is $2 million. *See id.* (Aff. of Samuel McEwen and policy materials). Appellants also presented an affidavit from Dr. Miller explaining that he has approximately

[4] *See Doe v. Roe*, 369 S.C. 351, 376, 631 S.E.2d 317, 330 (Ct. App. 2006) ("An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment."); *Smith v. NCCI, Inc.*, 369 S.C. 236, 247–48, 631 S.E.2d 268, 274 (Ct. App. 2006) (same).

$100,000 in total assets, excluding retirement accounts and his home (which is owned by his wife), and approximately $1.5 million in total liabilities. *See id.* (Aff. of Dr. Miller). As a result, he cannot purchase an appeal bond of any material amount, and a court order requiring him to do so would create an undue financial hardship for Dr. Miller and his family. *See id.* Similarly, the Practice has dissolved and lacks assets to satisfy the judgment or post an appeal bond.

The circuit court denied the motion to reconsider and motion to reduce the amount of the appeal bond in a Form 4 order on June 1, 2022, but provided no rationale for the ruling. *See* Form 4 Order entered June 1, 2022, Ex. A. Appellants thus moved to reconsider the denial of their motion to reduce the amount of the appeal bond on the ground that they were required to do so to preserve their arguments for appellate review due to the lack of rationale set forth in the June 1 order. *See* Mot. to Reconsider Denial of Mot. to Reduce Amt. of Appeal Bond filed June 6, 2022, attached as Exhibit H. The circuit court denied the motion to reconsider in a written order entered on June 10, 2022. *See* June 10, 2022 Order, Ex. A. The circuit court found it had discretion to set the bond amount because the current statutory cap in section 18-9-130 "is inapplicable to the case at hand" and found a $6.25 million bond is appropriate "[c]onsidering the lengthy history of this case and the potential length of time this case may spend on appeal." *Id.* The circuit court again did not expressly address the evidence submitted or the factors in *Southeast Booksellers Association*.

## LEGAL STANDARD

Rule 241 of the South Carolina Appellate Court Rules permits a party to move "for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal."

A supersedeas should be used to "stay proceedings in the [circuit] court, to preserve the status quo pending the determination of the appeal . . . , and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting 4A C.J.S. *Appeal & Error* § 662 at 494–95 (1957)) (alteration in original). This Court should exercise its power to "supersede an order of a circuit judge . . . when it is made to appear to be necessary to prevent irreparable injury or a miscarriage of justice." *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 304, 69 S.E. 604, 606 (1910).

## GROUNDS FOR SUPERSEDEAS

The circuit court abused its discretion in failing to set the required appeal bond amount at $2 million or less. The court's ultimate ruling, according to its June 10 order, is based on its findings that: 1) the current version of section 18-9-130 is "inapplicable," and 2) the "lengthy history of this case," and "the potential length of time this case may spend on appeal." June 10, 2022 Order, Ex. A. Respectfully, the circuit court failed to engage in the required analysis or consider the evidence presented and therefore abused its discretion. A writ of supersedeas should thus be granted.

Because South Carolina lacks much established case law governing a circuit court's exercise of discretion in setting the amount of an appeal bond, South Carolina courts should look to analogous federal case law. "In determining whether to issue a stay pending appeal on the basis of less than a full bond, a district court should act to 'preserve the status quo while protecting the non-appealing party's rights pending appeal.'" *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 193 (E.D. Va. 1999); *Morris v. Bland*, No. 5:12-CV-3177-RMG, 2015 WL 12911349, at *1 (D.S.C. Mar. 23, 2015). To determine the "status quo," the Court must

consider the judgment debtors' current financial situation. The object is to preserve the judgment creditor's current position, not to guarantee that she receives full payment of the judgment if she prevails on appeal. *Alexander*, 190 F.R.D. at 193 ("In other words, any security or bond offered by defendants in this case should simply reflect and preserve defendants' ***current ability to satisfy the judgment***." (emphasis added)). A full bond is not required when "the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden." *Alexander*, 190 F.R.D. at 193; *Morris*, 2015 WL 12911349, at *2. In such a scenario, the Court "must find some way 'to make the judgment creditor as well off during the appeal as it would be if it could execute at once, ***but no better off***.'" *Alexander*, 190 F.R.D. at 193 (emphasis added) (quoting *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 786 F.2d 794, 800 (7th Cir. 1986) (Easterbrook, J., concurring)); *see also Morris*, 2015 WL 12911349, at *2 ("Under these circumstances, the Court finds a stay is warranted even absent a bond. Defendants are arguably insolvent and unable to post a bond. Plaintiff's ability to collect her judgment will not materially change while the appeal is pending.").

Courts in the Fourth Circuit have held an appeal bond should generally not be required at all "in either of two polar circumstances:" (1) "when the judgment debtor can currently easily meet the judgment and demonstrates that it will maintain the same level of solvency during appeal," or (2) "when 'the judgment debtor's present financial condition is such that the posting of a full bond would impose undue financial burden.'" *Se. Booksellers Ass'n*, 233 F.R.D. at 458 (quoting *Alexander*, 190 F.R.D. at 193). The circuit court here failed to consider (or if it did, there is no way of knowing it did) the evidence that an appeal bond greater than the $2 million covered by the insurer imposes an undue financial burden on Dr. Miller.

The *Southeast Booksellers Association* court also recognized the "*Hilton* factors" in analyzing whether to grant a stay without a full supersedeas bond. *See Se. Booksellers Ass'n*, 233 F.R.D. at 458–59 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The *Hilton* factors include consideration of the following factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies." *Id.* The circuit court failed to consider these factors, but as Appellants asserted at the May 18 hearing, these factors weigh in favor of granting a stay of execution and requiring only a $2 million bond.

First, Appellants are likely to succeed on the merits of their appeal. In the interest of brevity, Appellants will not argue the full merits here, but Appellants incorporate the arguments raised in the briefing they submitted in support of their new trial motion. *See* Mot. for New Trial and Related Briefing Filed by Appellants, Ex. D. Most importantly, the trial court committed reversible error by denying Appellants' Rule 15(b), SCRCP motion to conform to the evidence which would have properly allowed the issue of statutory emergency—codified at S.C. Code Ann. § 15-32-230(A)—to be a defense, as it was tried by express or implied consent, and further by denying Appellants' request at the charge conference to charge the jury with appropriate corresponding instructions pursuant to the statutory emergency defense. It is well-settled in South Carolina that Rule 15(b) permits a party to move to amend its pleading to add an unpled affirmative defense to conform to the evidence presented at trial as defendants did here. Rule 15(b), SCRCP; *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 615, 703 S.E.2d 221, 224–25 (2010). And when unpled issues are tried by the express or implied consent of the parties, "they shall be treated in all respects as if they had been raised in the pleadings." *Staubes v. City of Folly Beach*, 339

S.C. 406, 413, 529 S.E.2d 543, 546 (2000) (quoting Rule 15(b)). South Carolina's appellate courts have opined that a trial court abuses its discretion when it denies a Rule 15(b) motion when the opposing party had express knowledge that the case would be tried on the issue on which amendment was later sought and evidence on that issue was admitted at trial. *See Pool v. Pool*, 329 S.C. 424, 329, 494 S.E.2d 820, 824 (1998); *see also Tanner v. Florence Cty. Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999) (reversing the denial of a motion to amend a complaint based on a lack of prejudice because the non-moving party "had notice that Petitioner wanted to supplement the complaint"); *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 287, 607 S.E.2d 711, 717 (2005) (reversing the denial of a motion to amend an answer to add a tort claims act defense as an abuse of discretion since the amendment sought "was not a surprise").

Here, Respondent knew years before trial that Appellants intended to invoke section 15-32-230 as a defense and Respondent made filings characterizing the defense as "***expected***;" even moving to obtain a stay of the case pending a resolution of appeals in which the statute was at issue. Moreover, as explained above, both parties presented evidence at trial addressing the statutory emergency defense issues. The circuit court thus erred in denying Appellants' Rule 15(b) motion and in failing to charge the jury on the statutory emergency issue. Accordingly, Appellants are likely to succeed on the merits of their appeal, and the first *Hilton* factor is satisfied. *See Se. Booksellers Ass'n*, 233 F.R.D. at 458–59.

Second, requiring a $6.25 million bond (or failing to grant a stay in the absence of such a bond) will impose an undue financial burden on Appellants and deprive them of a meaningful opportunity to benefit from their meritorious appeal. Third, Respondent will not be substantially injured by a stay conditioned on the purchase of a $2 million bond. The purpose of the bond is to ensure that Respondent's ability to collect the judgment after appeal is the same as if she collected

the judgment now. *See Alexander*, 190 F.R.D. at 193; *Morris*, 2015 WL 12911349, at *1. Appellants lack the assets to satisfy the judgment now beyond the $2 million covered by insurance, as demonstrated in the affidavits filed with Appellants' motion to reduce the amount of the appeal bond. *See* Ex. G. This was the only evidence submitted to the circuit court. The circuit court's decision to require a $6.25 million appeal bond places Respondent in a better position than she would be in if she executed on the judgment now.

Third, as set forth in footnote 1, *supra*, the South Carolina General Assembly has recognized that the public's interest in the ability to use the appellate system in a money judgment scenario should not be impaired unfairly by a required posting of massive appeal bonds. While not *controlling* in this case due to when the claims here accrued, Section 18-9-130 is not "inapplicable" as the circuit court found. Rather, it is directly applicable as a "factor" to be considered per *Southeast Booksellers Association*, *supra*, and the authorities on which that case relies. It is apparent the circuit court did not consider the statute or its reflection of the public interest, as it should have. For more than ten years, section 18-9-130(A)(2) has limited the maximum appeal bond for an individual or a business such as the Practice to $1 million. A statute is the General Assembly's expression of public policy. *See Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 420, 782 S.E.2d 757, 761 (Ct. App. 2016); *Perpetual Fed. Sav. & Loan Ass'n v. Willingham*, 296 S.C. 24, 28 n.2, 370 S.E.2d 286, 288 n.2 (Ct. App. 1988). The policy in South Carolina is to cap the amount of a supersedeas bond at $1 million in circumstances like this case with like-situated appellants. Although application of the current version of section 18-9-130 may not be mandatory, a prudent exercise of discretion and consideration of the public interest would include application of the decade-old public policy codified by the General Assembly. The appropriate bond amount in this case, based on the judgment debtors' financial situation, happens

to align with the policy codified by the General Assembly. Accordingly, the circuit court abused its discretion by requiring a bond greater than $2 million. The circuit court's only affirmatively stated ground is that the judgment plus predicted interest accrual during the appeal justifies a $6.25 million bond. That is not, respectfully, an appropriate consideration of the bond amount and stay analysis.

Thus, the circuit court did not, expressly at least, consider any of the *Southeast Booksellers Association* factors although both parties relied upon *Southeast Booksellers Association* in their filings. A proper application of the *Southeast Booksellers Association* factors analysis results in a maximum $2 million bond requirement, because that is the amount Appellants could pay to satisfy the judgment now. *See Alexander*, 190 F.R.D. at 193 (noting "any security or bond offered by defendants in this case should simply reflect and preserve defendants' current ability to satisfy the judgment" and finding, "[a]t present, the record reflects that both defendants are arguably insolvent, and that their combined assets could not satisfy half the judgment, even putting aside their current liabilities. Yet, defendants did set aside $16,175.50 for payment to plaintiffs in this case, which is all defendants appear able to pay in satisfaction of the current judgment. Thus, to put plaintiffs in the same position as they are now at the conclusion of appeal, defendants must secure that amount for plaintiffs' benefit"); *Morris*, 2015 WL 12911349, at *2 ("[T]he Court finds a stay is warranted even absent a bond. Defendants are arguably insolvent and unable to post a bond. Plaintiff's ability to collect her judgment will not materially change while the appeal is pending.").

The factors courts must consider all weigh in favor of requiring no more than a $2 million appeal bond to stay execution on the judgment here. The circuit court's decision to require a $6.25 million bond is an abuse of discretion, and the circuit court did not engage in the proper factors-

based analysis, nor did the circuit court apparently consider the only evidence placed before the circuit court on the undue financial burden factor. The Court should grant a writ of supersedeas, reverse the circuit court's abuse of discretion, and modify the bond amount to reflect that a stay is granted by the posting of a $2 million bond.

## **CONCLUSION**

For the foregoing reasons, Appellants respectfully request that this Court grant a writ of supersedeas and reduce the amount of the required appeal bond to $2 million total.


NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *s/ C. Mitchell Brown*
C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
Nicholas A. Charles
SC Bar No. 101693
E-Mail: nick.charles@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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


Columbia, South Carolina

June 20, 2022

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.

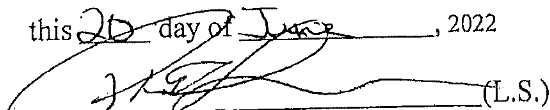
VERIFICATION

I, Dr. Gregory A. Miller, verify that, to the best of my knowledge and belief, the facts set forth in the foregoing Petition for Writ of Supersedeas are accurate.

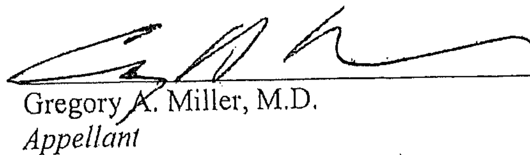
Executed on June 20, 2022.

SWORN to and subscribed before me

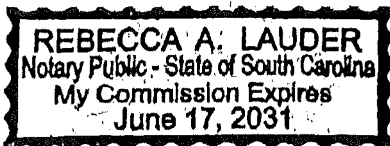
this 20 day of June, 2022



_______________(L.S.)
Notary Public for ___________
My Commission Expires: _________



Gregory A. Miller, M.D.
*Appellant*



REBECCA A. LAUDER
Notary Public - State of South Carolina
My Commission Expires
June 17, 2031

RECEIVED
Jun 20 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.

# 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.

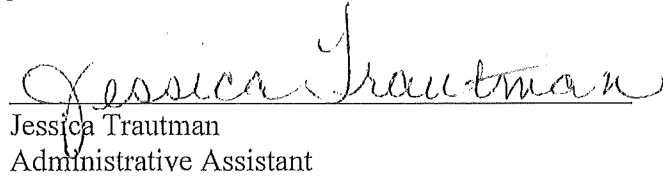
Pleading(s): **Petition for Writ of Supersedeas**

Served:

Edward L. Graham
Graham Law Firm, P.A.
122 Donald Drive
Pendleton, SC 29670
egraham@grahamlawfirm.net

D. Bradley Jordan, Esquire
Jordan Law Firm, P.C.
546 East Main Street
Rock Hill, SC 29730
bradjordan@comporium.net

Ashby W. Davis, Esquire
Davis & Snyder, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
adavis@davissnyder.com



Jessica Trautman
Administrative Assistant

June 20, 2022

## Jessica Trautman

| | |
|---|---|
| **From:** | Jessica Trautman |
| **Sent:** | Monday, June 20, 2022 2:05 PM |
| **To:** | egraham@grahamlawfirm.net; bradjordan@comporium.net; adavis@davissnyder.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 - Petition for Writ of Supersedeas.pdf |

Counsel,

Attached for service upon you in the above matter is a Petition for Writ of Supersedeas. Service is made via email pursuant to the Supreme Court Order 2021-08-25-02.

Thank you,

JESSICA TRAUTMAN SENIOR ADMINISTRATIVE ASSISTANT
jessica.trautman@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.5535 F 803.256.7500
NELSONMULLINS.COM

RECEIVED
Aug 31 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.

REPLY IN SUPPORT OF PETITION FOR WRIT OF SUPERSEDEAS

This Court should grant a writ of supersedeas and reverse the circuit court's orders requiring Appellants Dr. Gregory A. Miller ("Dr. Miller") and Rock Hill Gynecological & Obstetrical Associates, P.A. (the "Practice") (together, "Appellants") to post a $6.25 million bond stay execution on the judgment in this case, for the reasons stated in Appellants' petition. The circuit court failed to conduct the correct analysis in determining the appropriate amount of an appeal bond. It considered only the amount of the judgment and estimated interest, but failed to consider Appellants' means to pay for the bond, including Dr. Miller's assets and insurance policy limits. The circuit court's failure to consider the proper analysis is an abuse of discretion, and the Court should grant a writ of supersedeas.

Respondent's return is based on an incorrect legal foundation. Respondent asserts throughout her return—with no supporting authority—that she is entitled to an appeal bond of a sufficient amount "***to protect*** [***her***] ***interests completely***." *See, e.g.*, (Am. Return at 12) (emphasis

added). However, she is not so entitled. Instead, the law requires courts to consider a variety of factors in determining whether to grant a stay,[1] and then in determining how much the bond should be in conjunction therewith. Respondent's arguments are contrary to the law and should be rejected.

A proper application of the law regarding appeal bonds compels a finding that the circuit court abused its discretion in failing to set the appeal bond at a maximum of $2 million. This Court should therefore grant a writ of supersedeas, reverse the circuit court's orders, and reduce the amount of the required appeal bond to $2 million total.

## <u>Argument</u>

### I. The circuit court abused its discretion by failing to conduct the analysis required to determine the appropriate amount of an appeal bond.

Appellants explained the proper framework for analyzing whether to require an appeal bond and the amount of any bond required in their petition. *See* (Petition at 10–16). Courts must analyze these issues with an eye toward maintaining the status quo while avoiding the imposition of an undue financial burden on the judgment debtor, and courts should also consider several factors in their analysis concerning those issues. The circuit court's orders include no consideration of these points. *See Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 193 (E.D. Va. 1999) (requiring courts to "preserve the status quo while protecting the non-appealing party's rights pending appeal" and providing a full bond is not required when the posting of a full bond would impose an undue financial burden on the judgment debtor); *Morris v. Bland*, No. 5:12-CV-3177-RMG, 2015 WL 12911349, at *1–2 (D.S.C. Mar. 23, 2015) (same);

---

[1] Respondent does not contest that a stay should issue – but she argues the amount of bond required therefore.

*Se. Booksellers Ass'n v. McMaster*, 233 F.R.D. 456, 458–59 (D.S.C. 2006) (recognizing and applying the "*Hilton* factors" deriving from *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Respondent attempts to supply an analysis for the circuit court's ruling, arguing (1) the current version of South Carolina Code section 18-9-130, which imposes appeal bond caps, is "irrelevant" to this case; (2) insurance policy limits are irrelevant to the proper amount of an appeal bond; (3) Dr. Miller's affidavit should be disregarded; and (4) Appellants raised new arguments for the first time in a Rule 59(e) motion. *See* (Am. Return at 4–12). All of these arguments are invalid.

Appellants explained in their petition how a proper exercise of discretion should include consideration of South Carolina public policy codified in the current version of section 18-9-130. *See* (Petition at 2 n.1, 14–15); *see also Se. Booksellers Ass'n*, 233 F.R.D. at 458–59 (considering "where the public interest lies"). Respondent's only policy counter-argument is that the General Assembly "proscribed retroactive application of the statute." (Am. Return at 5). Respondent is incorrect. The General Assembly stated only that application of the statutory bond limits is mandatory in cases accruing on or after the effective date of the statute. *See* 2011 S.C. Laws Act 52 (H.B. 3375) ("This act takes effect January 1, 2012, and applies to all actions that accrue on or after the effective date."). Nothing in the statute or legislative history prohibits courts from considering the limits in cases as a public policy factor for matters accruing prior to the effective date. *See* (Am. Return at 4–5). A proper exercise of discretion in this case includes consideration of the ***current*** codified public policy.

There are reasons underlying the enactment of appeal bond caps. A judgment debtor's rights of appeal are infringed upon by a large appeal bond requirement, and some judgment debtors

have financial constraints with respect to appeal bonds. Those reasons should have been considered here, not disregarded as "irrelevant."

Respondent also argues Appellants' insurance policy limits should not be considered because the policy limits are less than the amount of the judgment, and she prefers a $6.25 million bond. (Am. Return at 5–6). She cites no authority supporting her argument. Regardless, the proper analysis requires consideration of ***Appellants'*** current ability to satisfy the judgment amount, not the *insurance carrier's* ability to purchase a larger bond. *See Alexander*, 190 F.R.D. at 193 ("In other words, any security or bond offered by defendants in this case should simply reflect and preserve defendants' current ability to satisfy the judgment."). The only evidence is that the total insurance coverage in this action is $2 million. *See* (Aff. of Samuel McEwen ¶ 4, Ex. G to Petition for Writ of Supersedeas) ("The total coverage limit under this policy for purposes of this action is $2,000,000."). Respondent offers no basis for her implication that Appellants' ***current*** ability to satisfy the judgment somehow includes accessing more than $2 million from the insurance carrier. *See* (Am. Return at 8–9). Consequently, only the $2 million policy limits should be considered in evaluating their ability to purchase a bond without suffering an undue financial burden.[2]

Further, although Respondent urges this Court to disregard Dr. Miller's affidavit, she provides no legal or factual basis to do so. *See* (Am. Return at 10–12). Dr. Miller stated in the affidavit that his "assets total approximately $100,000." (Aff. of Dr. Miller ¶ 2, Ex. G to Petition for Writ of Supersedeas). Respondent claims Dr. Miller "withheld" information about the value

[2] Moreover, although Respondent appears to argue the merits of a hypothetical future bad-faith claim, *see* (Am. Return at 8–9), the issues before this Court are whether the circuit court abused its discretion in requiring a $6.25 million bond without addressing the proper considerations and whether a proper application of those factors requires that the bond amount be reduced to $2 million or less. The merits of any hypothetical bad-faith claim are not at issue here.

of personal property such as jewelry, firearms, or sporting goods, but Respondent provides no basis for her assertion. *See* (Am. Return at 10). Dr. Miller stated, under oath, the approximate amount of his ***total*** assets. (Aff. of Dr. Miller ¶ 2, Ex. G to Petition for Writ of Supersedeas). Respondent cites no law supporting her claim that such a sworn statement as to the total value of assets is somehow unreliable unless it includes a line-item accounting of Dr. Miller's assets. *See* (Am. Return at 10–11). To the contrary, under South Carolina law, Dr. Miller is competent to offer testimony as to the value of his assets. *See Cooper v. Cooper*, 289 S.C. 377, 379, 346 S.E.2d 326, 327 (Ct. App. 1986) ("In South Carolina, a property owner is ordinarily competent to offer testimony as to value of his property."). Respondent urges this Court to assume Dr. Miller's sworn statements are either not truthful or are inaccurate, but she provides no basis for this Court to question Dr. Miller's credibility.[3] Respondent's subjective dissatisfaction with the affidavit is not a ground to ignore the affidavit altogether or to find the affidavit insufficient. (Am. Return at 10–11). This Court should reject Respondent's arguments, and it should rely on the only evidence presented to the circuit court—Dr. Miller's sworn affidavit as to his total assets and liabilities.

---

[3] Moreover, although Respondent takes issue with the exclusion of retirement accounts from Dr. Miller's asset total, retirement accounts are exempt from attachment, levy, or sale by statute. *See* S.C. Code Ann. § 15-31-40(A) ("(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: . . . (13) The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, 'Internal Revenue Code' has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15-41-35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise. (14) The debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.").

Finally, Respondent argues this Court should not consider the affidavits of Samuel McEwen and Dr. Miller because "newly asserted grounds cannot be considered at the Rule 59(e) stage." (Am. Return at 6–7). Respondents either misperceive or misconstrue the procedural posture here, and this argument is also without merit.

Appellants did not raise new grounds in a Rule 59(e) motion. Appellants first filed a motion to stay execution on the judgment, and asked the circuit court to set the bond amount at $2 million based solely on the current statutory caps amounts (and thus, public policy concerns), rather than on any evidence. *See* (Ex. E to Petition for Supersedeas). Dr. Miller hoped not to have to make affidavit filings regarding his assets. The circuit court granted the stay, but rejected the request to order no bond or to set the bond amount at $2 million based on the current statutory caps, instead ordering a $6.25 million appeal bond. A motion to reconsider was filed as to that order, and was denied.

Concurrently with their motion to reconsider the first order of the circuit court, Appellants filed a ***second motion*** asking the circuit court to reduce and set the bond amount at $2 million **based on evidence** of the Appellants' assets and ability to pay for such a bond. *See* (Ex. G to Petition for Supersedeas). Importantly, nothing precludes a party from making more than one request or motion to stay execution and post a bond. The first motion was not supported by evidence. The second motion was a request to reduce the bond amount set by the court, and was based on evidence. The circuit court denied this motion days later, before any opposition was filed. A motion to reconsider was filed as to that order, and it too was denied.

Appellants noted the factors that must be considered in both motions, but the circuit court denied both motions without analyzing the factors. Appellants sought reconsideration of both rulings, noting that the circuit court did not provide a rationale for either ruling. *See* (*Id.*); *see also*

(Ex. H to Petition for Supersedeas). The circuit court then issued a written order explaining that is ruling was based on its finding that the current statutory caps are inapplicable and its consideration of the judgment amount and estimated accrual of interest. (Order Denying Defendants' Motion to Reconsider Denial of Motion to Reduce Amount of Appeal Bond, Ex. A to Petition for Supersedeas).

Appellants cited the affidavits of McEwen and Dr. Miller as part of their motion to reduce the amount of the appeal bond, not as part of their Rule 59(e) motion. *See* (Motion to Reconsider and Motion to Reduce Amount of Appeal Bond, Ex. G to Petition for Writ of Supersedeas). Accordingly, the affidavits and related arguments were properly before the circuit court and are properly before this Court.

The circuit court's ruling requiring a $6.25 million bond does not "reasonably accommodate[] the conflicting interests of all parties." *See* (Am. Return at 6). It serves only Respondent's interests, with no consideration of Appellants' interests or their ability to pay the judgment or obtain a bond. A proper analysis must consider both parties' interests. But the circuit court's order—at Respondent's urging—protects only Respondent's interests and ignores the undue financial burden Appellants will suffer. The circuit court therefore abused its discretion, and this Court should grant a writ of supersedeas.

## II. The *Hilton* factors weigh in favor of granting a stay and requiring only a $2 million bond.

In *Southeast Booksellers Association*, the federal district court recognized the "*Hilton* factors" as important in analyzing whether to grant a stay conditioned upon the acquisition of a supersedeas bond for less than the full amount of the judgment. *See Se. Booksellers Ass'n*, 233

F.R.D. at 458–59 (citing *Hilton*, 481 U.S. at 776).[4] Thus, courts consider the following factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies." *Id.* Each factor is satisfied in this case.

**A. Appellants are likely to succeed on the merits of their appeal.**

As Appellants argued in their petition, the trial court committed reversible error by denying Appellants' Rule 15(b) motion to conform to the evidence, which would have properly allowed the issue of statutory emergency—codified at S.C. Code Ann. § 15-32-230(A)—to be a defense, as it was tried by express or implied consent, and further by denying Appellants' request at the charge conference to charge the jury with appropriate corresponding instructions pursuant to the statutory emergency defense. *See* (Petition at 12). As to the *Hilton* factors, Respondent argues primarily that Appellants are not likely to succeed on the merits of this issue. *See* (Am. Return at 12–24). Respondent is incorrect. A proper application of the factors requires the bond amount to be set at $2 million.

**i. Respondent is judicially estopped from arguing Appellants waived the statutory emergency defense.**

Respondent first argues the defense of statutory emergency is an affirmative defense which must be pled, and Appellants waived the defense by not pleading it in their answer. (*Id.* at 13–15). However, Respondent is judicially estopped from taking this position.

---

[4] Respondent suggests the *Hilton* factors are "inapposite because [*Hilton*] does not relate to the proper amount of an appeal bond." (Am. Return at 12). Respondent is incorrect. Appellants do not rely on *Hilton* itself, but rather on cases in which courts relied on and applied the *Hilton* factors in determining whether to issue a stay while requiring an appeal bond for less than the full judgment amount. *See Se. Booksellers Ass'n*, 233 F.R.D. at 458–59; *Morris*, 2015 WL 12911349, at *2.

On October 8, 2018, Respondent filed a Motion for Partial Summary Judgment, or in the Alternative, an Order Granting a Stay or Trial Until Pending Appeals in Other Cases Resolve Material Issues Likely to Arise in this Case (hereinafter referred to as Respondent's "Motion to Stay"). *See* (Motion to Stay, Ex. C to Petition for Supersedeas). In the motion, Respondent first asked the circuit court to grant summary judgment "to preclude the ***expected statutory defense*** under S.C. Code of Laws Section 15-32-230, representing a liability shield for negligently inflicted harm in the context of certain alleged obstetrical emergencies." (*Id.* at 1) (emphasis added). Respondent argued she was entitled to summary judgment on the following grounds:

> This statute fails to define its key words and phrases, including, *inter alia*, "genuine emergency," "immediate threat," and "medically stable." Plaintiff asserts that the statute, properly construed, is immaterial to the facts and circumstances of this case. ***That is because the plaintiff was a patient of the defendants during her prenatal care; and this case involved,*** **inter alia,** ***no "genuine emergency" outside of Defendant Dr. Miller's specialty practice.*** This motion is based upon such authorities and materials as will be presented to the court at or before the hearing of this motion.

(*Id.*) (emphasis added). Notably, Respondent argued only the merits of the statutory defense; she did not assert that she was entitled to summary judgment on any procedural basis.

In the same motion, Respondent alternatively sought a stay of trial in this case on the ground that two appeals addressing "various novel and complex legal and medical issues arising under" section 15-32-230 were pending before this Court, and "***[t]hose issues also arise in this case.***" (*Id.* at 2) (emphasis added). Respondent asserted that if this case went to trial while those appeals remained pending, "many novel and complex medical and legal issues arising under the statute will require evidentiary rulings as well as rulings concerning many proposed requests to charge. There will be much disagreement about the correct definition of the key words and phrases, and the applicability of various interpretations of the statutory defense to particular fact

patterns." (*Id.*). Respondent further asserted that "[i]f trial is stayed until after such appeals are concluded, this court will have guidance from the appellate courts about statutory definitions, applicability to certain fact patterns, and related matters." (*Id.*). Accordingly, Respondent took the position in the circuit court in October 2018—over three years before trial—that the defense of statutory emergency was at issue in this case and needed to be addressed on the merits. The circuit court denied Respondent's motion for partial summary judgment but ***granted the requested stay***. *See* (Form 4 Order Denying Summary Judgment, attached as Exhibit A; Form 4 Order Granting Motion for Stay, attached as Exhibit B).

Respondent is therefore judicially estopped from taking the position before this Court that Appellants waived the statutory emergency defense. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013) (*quoting Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004)). Under the doctrine, a party is precluded from misrepresenting the facts in order to gain an unfair advantage. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997). Once "a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Id.*

For the doctrine of judicial estoppel to apply, the following elements must be satisfied:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

*Id.* at 598, 748 S.E.2d at 788. These elements are satisfied here. Respondent takes two "totally inconsistent" positions: first, she took the position before the circuit court in her October 2018 Motion to Stay that the merits of the statutory emergency defense were at issue and would be tried, and second, she later took the position before the circuit court at trial and now before this Court that the statutory emergency defense had been waived and that she would have prepared her case differently had she known the defense would be at issue. Thus, the first, second, and fifth elements of judicial estoppel are satisfied. *See id.* Respondent succeeded in obtaining a stay of trial. Accordingly, the third element of judicial estoppel is satisfied. *See id.* Finally, Respondent's claim of surprise at trial that Appellants were raising the statutory emergency defense at trial is at odds with the position she took in October 2018 that the statutory emergency defense would be tried on the merits in this case. Accordingly, Respondent is judicially estopped from taking the position that Appellants waived the statutory emergency defense. *See id.* At minimum, the Court should reject the argument by Respondent that she was somehow surprised and prejudiced by the request to amend and add the defense about which the parties had talked about, made motions about, and argued about for months prior to trial.

**ii. The statutory emergency defense was at issue throughout this case and was tried by express or implied consent.**

Respondent's arguments that she was unfairly surprised by Appellants' request to amend after she rested her case at trial and that she was aware the statutory emergency defense was at issue at earlier stages of litigation but somehow unaware at other times are belied by the timeline of the litigation in this case.

Respondent points to April 2018 and argues she would not have settled with Piedmont (for $50,000) if she realized the statutory defense would be at issue. (Am. Return 19–23). She thus

points to this April 2018 settlement as evidence of prejudice to her by allowing an amendment to assert the statutory emergency defense. The history of this case shows otherwise. The trial court abused its discretion in denying Appellants' Rule 15(b) motion to amend to conform to the evidence and Appellants' request to charge the jury on the statutory emergency defense.

A defendant must prove three elements to establish the statutory emergency defense: "(1) the claim arises out of a genuine emergency situation, (2) the patient is not medically stable, and (3) the patient was under an immediate threat of death or serious bodily injury." *Byrd as Next Friend of Julia B. v. McLeod Physician Assocs. II*, 427 S.C. 407, 414, 831 S.E.2d 152, 155 (Ct. App. 2019). Deposition testimony prior to Respondent's settlement with codefendant Piedmont Medical Center in March 2018 addressed all three elements, as explained below. Respondent focuses primarily on the lack of evidence of gross negligence. (Am. Return at 16–17 & n.1). But once Appellants established evidence of each of the three elements, Respondent bore the burden to overcome the statutory defense by proving gross negligence. Appellants were not obligated to discuss gross negligence during depositions. Any failure to present evidence of gross negligence or inquire about gross negligence belongs to Respondent and cannot be a ground for finding ***Appellants*** failed to raise issues related to the statute. Respondent seems to suggest gross negligence cannot be at issue unless the words "gross negligence" are stated by a witness. (Am. Return 16–17). However, "gross negligence" is defined as "the failure to exercise slight care" or "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Plyler v. Burns*, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007). It "is a relative term, and means the absence of care that is necessary under the circumstances." *Id.* A witness's testimony might present a jury question as to gross negligence in any number of ways without the witness or the examining attorney ever using the

phrase "gross negligence." Thus, the elements Appellants must prove to assert the statutory defense were plainly at issue in depositions prior to Respondent's 2018 settlement with Piedmont, and Respondent's claim that she did not know the defense was at issue until May 2018 should be rejected.

A timeline of this litigation illustrates the flaws in Respondent's arguments:

2011 through 2014: Fact Witnesses Addressed the Elements of the Defense

The parties deposed several fact witnesses between 2011 and 2014. The testimony of multiple witnesses touched on the elements Appellants must prove to prevail on the statutory emergency defense. For example, the parties deposed Julie Bibb, a nurse on duty during the delivery, on February 15, 2013. Ms. Bibb testified that a shoulder dystocia is an emergency and that the baby faces an immediate threat of death:

> Q. In delivery a baby and assisting a doctor during a shoulder dystocia and resolving a shoulder dystocia, things are needing to be done expeditiously; would you agree with that?
>
> A. I agree.
>
> Q. That's because the baby needs to be delivered as soon as possible, correct?
>
> A. Yes, exactly.
>
> . . .
>
> Q. Because the dangers to that baby can be that that baby can die; isn't that true?
>
> A. That's true.

(Feb. 15, 2013 Depo. of Julie Bibb at 148, attached as Exhibit C).

The parties deposed Respondent's expert Dr. Gurewitsch on June 26, 2013. Dr. Gurewitsch's testimony addressed all three elements of the statutory emergency defense:

(1) Dr. Gurewitsch testified that a shoulder dystocia is an obstetrical emergency, thus addressing whether the "genuine emergency" element of the defense is established. *See* (June 26, 2013 Depo. of Dr. Gurewitsch at 50–51, attached as Exhibit D).

(2) Dr. Gurewitsch testified that a shoulder dystocia is an emergency because "by the time the head is delivered, the umbilical cord is under stretch, and part of the body is in the birth canal. So it's no longer floating around where there is more amniotic fluid for protection. So the cord – the umbilical cord and, therefore, the blood supply to the baby is more vulnerable and variably compressed. . . . So because you can't know that, because it's variably compressed, that's where this concept of you pretty much only have four minutes to get the baby out." (*Id.* at 51). Dr. Gurewitsch thus addressed whether the patient is medically stable during a shoulder dystocia.

(3) Dr. Gurewitsch also testified that, during a shoulder dystocia, "the risk for injury to the brachial plexus is immediate." (*Id.* at 53). She further agreed with counsel that "[i]f during the attempt to . . . resolve the shoulder dystocia and it's unable to be effected in the four- to five-minute period and the baby is still not delivered, that increases the risk of . . . permanent brain damage to the baby due to lack of oxygen." (*Id.* at 53–54). Accordingly, Dr. Gurewitsch addressed whether the patient was under an immediate threat of death or serious bodily injury.

Thus, the elements of the statutory emergency defense were sufficiently probed in discovery by counsel for all parties, and Respondent's counsel should have been aware no later than 2013 that the defense was at issue.

April 2018: Plaintiff Settled with Codefendant Piedmont Medical Center

In April 2018, Respondent settled with codefendant Piedmont Medical Center for $50,000. *See* (April 3, 2018 Petition Seeking Approval of Partial Settlement, attached as Exhibit E; April 5, 2018 Order Approving Partial Settlement, attached as Exhibit F). Despite prior testimony from the above witnesses on the elements of Appellants' defense, Respondent's counsel now claims he did not know the statutory emergency defense would be at issue at the time of the settlement with Piedmont and would not have settled with Piedmont if he knew the defense was at issue. (Am. Return at 19–23). However, as set forth above, the elements ***Appellants*** must prove to prevail on the statutory defense were plainly at issue in the earlier depositions, and Respondent's counsel

therefore cannot plausibly assert that he lacked notice that the defense was involved at the time of the settlement with Piedmont.

May 2018: Respondent Deposed Appellants' Experts, Dr. Ernest and Dr. Chauhan

On May 24, 2018, and May 31, 2018, Respondent deposed Appellants' expert witnesses, Dr. Ernest and Dr. Chauhan, respectively. Respondent questioned the experts on issues related to the statutory emergency defense. Respondent admits as much in her amended return. (Am. Return at 22) (admitting Respondent's counsel knew the statutory emergency defense would be at issue by the May 24, 2018 deposition of Dr. Ernest); *see also* (May 24, 2018 Depo. of Dr. Ernest, at 122–32, attached as Exhibit G) (Respondent's counsel questioning Dr. Ernest regarding whether a "shoulder dystocia signifies that the patient is in immediate threat of death or serious bodily injury" and whether Dr. Ernest thought "there was both medical instability and immediate threat of death or serious bodily injury"); (May 31, 2018 Depo. of Dr. Chauhan, at 72–76, attached as Exhibit H) (Respondent's counsel questioning Dr. Chauhan regarding whether Dr. Chauhan had "any evidence to support that this child was medically unstable at any time after the decision was made to not go forward with the Cesarian delivery"); (*id.* at 83) (Respondent's counsel asking, "At the time shoulder dystocia is diagnosed, do you believe she is in any immediate threat of death or serious bodily injury?"). Thus, Respondent knew the defense was at issue and engaged in discovery related to the issue.

October 9, 2018: Respondent's Motion for Summary Judgment and Motion to Stay

As explained above in Part II.A.i, Respondent filed a motion on October 9, 2018, requesting that the circuit court grant summary judgment in favor of Respondent on the merits of "the expected statutory defense" under section 15-32-230 "because the plaintiff was a patient of the defendants during her prenatal care; and this case involves, *inter alia*, no 'genuine emergency'

outside of Defendant Dr. Miller's specialty practice." (Motion to Stay at 1, Ex. C. to Petition for Supersedeas). In the alternative, Respondent sought a stay of trial until two appeals "resolve[d] material issues likely to arise in this case" related to the statute because at the trial of this case (according to Respondent's motion), "many novel and complex medical and legal issues arising under the statute will require evidentiary rulings as well as rulings concerning many proposed requests to charge." (*Id.* at 2). Accordingly, Respondent not only knew ***and expected*** that Appellants would raise the statutory emergency defense, she represented to the circuit court that the merits of the defense would be at issue at trial.

October 31, 2018: Status Conference and Order Granting a Stay

On October 31, 2018, the circuit court held a status conference regarding Respondent's Motion to Stay. At the status conference, trial counsel for Appellants told the circuit court that he would be requesting a charge on the statute at trial. The same day, the circuit court denied Respondent's motion for summary judgment but granted Respondent's request for a stay. *See* (Form 4 Order Denying Summary Judgment, Ex. A; Form 4 Order Granting Motion for Stay, Ex. B).

September 2020: Scheduling Order Allowing Respondent to Produce New Witnesses

In September 2020, over a year before trial, the circuit court entered a scheduling order requiring Respondent to "make a good-faith effort to disclose all witnesses by September 18, 2020," but allowing Respondent to "add additional witnesses beyond September 18, 2020," provided that she produce the witnesses for deposition prior to November 6, 2020. (Sept. 2020 Scheduling Order, attached as Exhibit I). Accordingly, to the extent Respondent had somehow failed to marshal evidence to combat the statutory emergency defense, Respondent had express

permission from the court to obtain and present new witnesses over a year before the January 2022 trial.

Decisions in Pending Appeals Addressing the Statute

On October 6, 2021, this Court issued its opinion in the second of the two cases addressing section 15-32-230 that were pending at the time of Respondent's Motion to Stay. *See Flowers v. Giep*, 436 S.C. 281, 871 S.E.2d 604 (Ct. App. 2021). The Court had decided the other case on July 3, 2019. *See Byrd*, 427 S.C. 407, 831 S.E.2d 152.

January 2022: Trial

The testimony presented at trial confirmed that the emergency statute was front and center. Examination of experts for both Respondent and Appellants included questions and answers regarding whether the circumstances surrounding delivery of the minor plaintiff constituted a genuine obstetrical emergency, whether the patient was medically stable, and whether there was an immediate threat of death or serious bodily injury. Respondent's expert Dr. Duboe was questioned by Respondent's counsel extensively on the point of whether the minor plaintiff's shoulder dystocia presented a *real* obstetrical emergency because of the relatively short time it took the Dr. Miller to resolve it by his various maneuvers. Dr. Duboe, upon being questioned by Respondent's counsel, opined that while a shoulder dystocia is an obstetrical emergency, it does not constitute a *real* emergency before about two minutes into the dystocia, because, in his opinion, a fetus has adequate oxygen reserves for at least two to four minutes before the fetus is in danger of some anoxic brain injury. On cross-examination, Dr. Duboe agreed that shoulder dystocia does place the fetus at risk of death or serious bodily harm. Dr. Miller, qualified as an expert in OB/GYN, opined that as soon as a shoulder dystocia is determined, the fetus is in immediate threat of serious bodily harm or death and that such a condition creates instability for the fetus and

constitutes a genuine medical emergency, disputing Dr. Duboe's opinion that it is not a *real* emergency until minutes after the condition is determined. Respondent's only other standard of care expert, Dr. Gurewitsch, whose 2013 deposition in this case was published to the jury, agreed that shoulder dystocia, once determined, is an obstetrical emergency that places the fetus in immediate threat of death or serious bodily harm. Both of Appellants' standard of care experts opined that a shoulder dystocia is an immediate obstetrical emergency that creates an immediate threat of death or serious bodily harm to the fetus. Respondent acknowledges that his objections to questions that "use[d] one or more phrases contained within the 'genuine emergency' statute" were overruled by the trial court. (Am. Return at 17). Moreover, although Respondent notes that the trial court granted a directed verdict in favor of Appellants after the close of all the evidence on the issue of gross negligence, (*id.*), trial counsel for Appellants recalls that Respondent argued against that motion.

The issue of the statutory emergency defense was consequently of no surprise to Respondent at trial, and she cannot show prejudice. Amendments are to be freely allowed under such circumstances, including amendments to add previously unpled affirmative defenses. *See Lee v. Bunch*, 373 S.C. 654, 660–61, 647 S.E.2d 197, 200–01 (2007) (affirming the granting of a motion to conform to the evidence to allow a previously unpled affirmative defense, and finding the plaintiff was not prejudiced by the amendment); *Soil & Material Eng'rs, Inc. v. Folly Assoc.,* 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) (providing amendments to conform to the proof should be liberally allowed when no prejudice to the opposing party will result). Moreover, by declining to charge the jury on section 15-32-230, the trial court failed to charge the jury with the controlling law, which is an abuse of discretion. *See Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000) ("Where a request to charge is timely made

and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error."). Appellants were prejudiced by the failure to properly charge the jury because if Appellants' experts had been believed, the statutory requirements of 15-32-230 would have been met, and the jury would have awarded Appellants a defense verdict. *Ellison v. Simmons,* 238 S.C. 364, 372, 120 S.E.2d 209, 213 (1961) (providing an erroneous jury instruction is grounds for reversal if the appellant was prejudiced by the erroneous instruction). Because the trial court declined to charge the jury on the statute, this potential verdict result was wrongfully disallowed. The trial court therefore erred in denying Appellants' motion for a new trial.

**iii. Respondent suffered no prejudice.**

Respondent would have suffered no prejudice if the trial court granted Appellants' request to conform to the evidence. The parties tried the statutory emergency defense by express or implied consent and Respondent knew the defense was at issue for eight years prior to trial, and Appellants were therefore entitled to amend to conform to the evidence and to have the statutory emergency defense charged to the jury.

Respondent claims in her amended return that she was—or would have been—prejudiced in several ways. She first argues that she presented no evidence addressing the statutory emergency defense in her case-in-chief and therefore would have been deprived of the opportunity to do so if the trial court granted an amendment after Respondent rested. (Am. Return at 15–18). However, as explained above, the trial included a substantial amount of evidence related to the defense.[5]

[5] Respondent also could have sought to present rebuttal witnesses to address the defense. Moreover, to the extent she claims she somehow did not have such evidence at her disposal, she was entitled under Rule 15(b) to obtain a continuance. *See* Rule 15(b), SCRCP ("The court ***shall upon motion grant a continuance*** reasonably necessary to enable the objecting party to meet such evidence." (emphasis added)).

Respondent next argues she was somehow deprived of the opportunity to marshal evidence during discovery to combat the statutory emergency defense. This argument is meritless. The elements of the defense were raised in depositions beginning at least in 2013. Respondent questioned expert witnesses Dr. Ernest and Dr. Chauhan on the statutory emergency defense elements in May 2018, more than three years before trial, as she admits in her amended return. (Am. Return at 22). In September 2020, over a year before trial, the circuit court entered a scheduling order allowing Respondent to "add additional witnesses beyond September 18, 2020," provided that she produce the witnesses for deposition prior to November 6, 2020. (Sept. 2020 Scheduling Order, Ex. I). Thus, even if the Court accepts Respondent's assertion that she somehow was not aware the statute would be at issue before May 2018, Respondent was free to "marshal evidence" to combat the statutory emergency defense for another three and a half years. She cannot avoid application of the statute on the ground that she chose not to marshal better evidence.

The Court should reject Respondent's claim that she would not have settled with Piedmont had she known Appellants would raise the statutory emergency defense. *See* (Am. Return at 19–23). To start, there is no evidence regarding this statement. Counsel's argument does not constitute evidence. Further, the argument is incorrect in any event, because Respondent was on notice well before then that the defense was at issue, as explained above.

Respondent also cannot establish prejudice because she had express knowledge that the emergency defense was going to be tried, at the latest, in 2018—as revealed in her Motion to Stay—and thus had ***over three years*** to prepare to refute it. *See Pool v. Pool*, 329 S.C. 424, 329, 494 S.E.2d 820, 824 (1998); *see also Tanner v. Florence Cty. Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999) (reversing the denial of a motion to amend a complaint based on a lack of

prejudice because the non-moving party "had notice that Petitioner wanted to supplement the complaint"); *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 287, 607 S.E.2d 711, 717 (2005) (reversing the denial of a motion to amend an answer to add a tort claims act defense as an abuse of discretion since the amendment sought "was not a surprise"). The trial court's denial of the Rule 15(b) amendment to conform to the evidence thus warrants a new trial.

Further, Respondent's experts offered evidence—in disagreement with Appellants' experts—that there was no genuine emergency for a period of time during the delivery. Had that testimony been believed, it would have given Respondent an argument that the case should still be submitted to the jury (although section 15-32-230 would have been charged) despite any failure on her part to present evidence of gross negligence. In other words, the fact that Respondent offered no evidence of gross negligence would not have terminated Respondent's case by virtue of the application of section 15-32-230. But the trial court's decision not to charge the statute, when the statute was well known by all—and in fact had been used by Respondent as a reason to continue the trial several years earlier—was unfair and deprived Appellants of a valid statutory defense. Accordingly, Appellants are likely to succeed on the merits of their appeal.

### B. The remaining *Hilton* factors are satisfied.

Appellants explained in their petition how the remaining three *Hilton* factors are satisfied and warrant a reduction of the required appeal bond amount to $2 million. Respondent fails to refute Appellants' arguments.

Respondent contends she will be substantially injured if the Court grants Appellants' petition. (Am. Return at 24–25). However, she does not explain how she will be "substantially injure[d]" by a $2 million bond, other than her factually groundless suggestion that Appellants have assets that will be "dissipated or removed from her reach" and her legally groundless claim

that she is entitled to a bond sufficient to "protect [her] interests completely." (*Id.*). Respondent's contentions are without merit.

Finally, Respondent argues the public interest favors application of the pre-2012 version of South Carolina Code section 18-9-130. For the reasons explained in Appellants' petition for supersedeas, the public interest requires consideration of current public policy codified by the General Assembly. *See* (Petition at 14–15). The Court should therefore reject Respondent's arguments.

**Conclusion**

Appellants are likely to succeed on the merits of their appeal, and the *Hilton* factors are therefore satisfied. Accordingly, the circuit court—which failed to consider the required factors—abused its discretion in requiring more than a $2 million appeal bond. This Court should grant a writ of supersedeas, reverse the circuit court, and order a stay of execution contingent on the purchase of a $2 million appeal bond.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *s/ C. Mitchell Brown*

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
Nicholas A. Charles
SC Bar No. 101693
E-Mail: nick.charles@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

Columbia, South Carolina
August 31, 2022

RECEIVED
Aug 31 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.

PROOF OF SERVICE

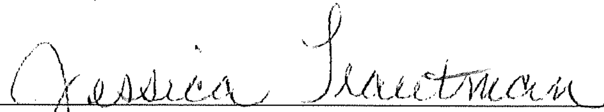
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, Attorneys for Gregory A. Miller, M.D. and Rock Hill Gynecological & Obstetrical Associates P.A., do hereby certify that I served all counsel in this action with a copy of the pleading(s) hereinbelow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

Pleading(s): **Reply In Support of Petition for Writ of Supersedeas**

Served: Edward L. Graham
Graham Law Firm, P.A.
122 Donald Drive
Pendleton, SC 29670
egraham@grahamlawfirm.net

D. Bradley Jordan, Esquire
Jordan Law Firm, P.C.
546 East Main Street
Rock Hill, SC 29730
bradjordan@comporium.net

Ashby W. Davis, Esquire
Davis & Snyder, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
adavis@davissnyder.com



Jessica Trautman
Administrative Assistant

August 31, 2022

## Jessica Trautman

| | |
|---|---|
| **From:** | Jessica Trautman |
| **Sent:** | Wednesday, August 31, 2022 2:35 PM |
| **To:** | 'egraham@grahamlawfirm.net'; 'bradjordan@comporium.net'; 'adavis@davissnyder.com' |
| **Cc:** | 'Nick Charles'; Mitch Brown |
| **Subject:** | Angela Patton, et al. v. Gregory A. Miller M.D., et al--Appellate Case No. 2022-000288 |
| **Attachments:** | Miller - Reply in Support of Petition for Writ of Supersedeas.pdf |

Counsel,

Attached for service upon you in the above matter is Appellants' Reply In Support of Petition for Writ of Supersedeas. Service is made via email pursuant to the Supreme Court Order 2021-08-25-02.

Thank you,

JESSICA TRAUTMAN SENIOR ADMINISTRATIVE ASSISTANT
jessica.trautman@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.5535 F 803.256.7500
NELSONMULLINS.COM

RECEIVED
Sep 06 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.

---

PROOF OF SERVICE

---

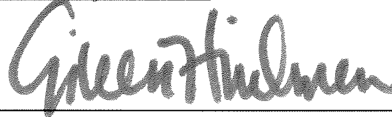
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, Attorneys for Gregory A. Miller, M.D. and Rock Hill Gynecological & Obstetrical Associates P.A., do hereby certify that I served all counsel in this action with a copy of the pleading(s) hereinbelow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

Pleading(s): **Appellants' Petition for Full Court Review of Decision**

Served: Edward L. Graham
Graham Law Firm, P.A.
122 Donald Drive
Pendleton, SC 29670
egraham@grahamlawfirm.net

D. Bradley Jordan, Esquire
Jordan Law Firm, P.C.
546 East Main Street
Rock Hill, SC 29730
bradjordan@comporium.net

Ashby W. Davis, Esquire
Davis & Snyder, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
adavis@davissnyder.com



Eileen Hindman
Administrative Assistant

September 6, 2022

## Eileen Hindman

| | |
|---|---|
| **From:** | Eileen Hindman |
| **Sent:** | Tuesday, September 6, 2022 3:50 PM |
| **To:** | egraham@grahamlawfirm.net; bradjordan@comporium.net; adavis@davissnyder.com |
| **Cc:** | Mitch Brown; Nick Charles |
| **Subject:** | Angela Patton v. Dr. Gregory A. Miller; Case No. 2022-000288 |
| **Attachments:** | 2022.09.06 Appellants' Petition for Full Court Review of Decision - with exhibits (Patton v. Miller) - 4854-9931-5505 1.pdf; Miller - Proof of Service - Petition for Full Court Review of Decision - 4889-5647-0577 1.pdf |

Good afternoon,

Attached please find the Appellants' Petition for Full Court Review of Decision in the above matter. Service is made via email pursuant to the Supreme Court Order 2022-05-06-03.

Thank you,

EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT
eileen.hindman@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9204 F 803.256.7500
NELSONMULLINS.COM