

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Sep 23 2022

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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

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 Which HCA Healthcare, Inc. and Trident Medical Center, LLC, are the Respondents.

**SURREPLY REGARDING RESPONDENTS' MOTION TO HOLD APPEAL IN
ABEYANCE**

Appellants offer this Surreply to alert the Court that Respondents' Reply to Appellants' Return to the Motion to Hold Appeal in Abeyance ("Abeyance Reply") is untimely and should be disregarded.¹

By way of a brief timeline, the following dates are relevant to Respondents' Abeyance Reply, which was filed on September 21, 2022:

¹ Appellants recognize that Surreplies are not allowed or disallowed by the South Carolina Appellate Court Rules, therefore, Appellants respectfully request that the Court consider this Surreply. Appellants are aware of no other way to raise this issue to the Court.

- July 12, 2022: Respondents filed their Motion to Hold Appeal in Abeyance.
- July 22, 2022:
 - Appellants filed their Return to Hold Appeal in Abeyance (“Abeyance Return”).
 - Appellants also filed their Petition for Supersedeas.
 - The Court issued a letter stating that the “time limits for perfecting the appeal will be held in abeyance pending the Court’s decision [on the supersedeas].”
- August 15, 2022: The Court issued an Order denying Appellants’ Petition for Supersedeas.
- August 16, 2022: Appellants filed their Petition for Full Appellate Court Review of Order Denying Supersedeas (“Petition for Full Review”).
- August 22, 2022: The Court issued a letter stating that the “case will be held in abeyance pending the Court’s decision on Appellant’s [Petition for Full Review],” and noting that the motion to hold the appeal in abeyance remains pending.
- September 13, 2022: The Court issued an Order denying Appellants’ Petition for Full Review.
- September 21, 2022: Respondents filed the Abeyance Reply.

Under South Carolina Appellate Court Rule 240(f), Respondents’ Abeyance Reply was due five (5) days from the date of service of Appellants’ Abeyance Return. However, under SCACR 263(a), when the time period prescribed is less than seven (7) days, intermediate Saturdays and Sundays are excluded from the computation. Therefore, understanding that Appellants served the Abeyance Return on July 22, 2022, Respondents’ Abeyance Reply was due July 29, 2022. Because Respondents did not file their Abeyance Reply until September 21, 2022 (almost two months later), it was untimely.

Respondents may have mistakenly interpreted the Court’s July 22, 2022 letter stating that the time period for “perfecting the appeal” would be held in abeyance until the Court ruled on the Petition for Supersedeas to mean that the time period for submitting the Abeyance Reply would also be held in abeyance. However, that is not what the letter says. Respondents’ Abeyance Reply

was not necessary or related to perfecting the appeal, and therefore was not impacted by the Court's July 22, 2022 letter. Thus, Respondents' Abeyance Reply was due July 29, 2022.

However, even if it were true that Respondents' time period for responding to Appellants' Abeyance Return was held in abeyance until the Court issued the September 13, 2022 Order denying Appellants' Petition for Full Review, Respondents still missed the deadline. Their Abeyance Reply would have been due five days from September 13, 2022, excluding Saturdays and Sundays. That would make the due date September 20, 2022, which Respondents also missed.

Accordingly, Appellants respectfully request that the Court disregard Respondents' Abeyance Reply as untimely and to grant such other and further relief to Appellants as the Court may deem just and proper under the circumstances.

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s/James K. Gilliam

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PROOF OF SERVICE

I, Amy C. Elkins, an employee of Burr & Forman LLP, hereby certify that a true and correct copy of the Surreply Regarding Respondents’ Motion to Hold Appeal in Abeyance was served upon counsel for the Respondents in the above-captioned matter via email at the email addresses shown below, this 23rd day of September, 2022, as follows:

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