

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Angela Patton, as Next Friend of Alexia)
Lumpkin, a minor,)
)
)
Plaintiff,)
)
vs.)
)
Gregory A. Miller M.D. and Rock Hill)
Gynecological & Obstetrical Associates P.A.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-46-05195

**DEFENDANTS' MOTION TO
RECONSIDER AND MOTION TO
REDUCE AMOUNT OF APPEAL BOND**

RECEIVED

Nov 10 2022

S.C. SUPREME COURT

Defendants Gregory A. Miller, M.D. (“Dr. Miller”), and Rock Hill Gynecological & Obstetrical Associates, P.A. (“the practice”) respectfully move for reconsideration of the Court’s May 19, 2022 Form 4 order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Defendants also seek a reduction in the amount of appeal bond required to stay execution on the judgment. Defendants incorporate and reassert all their prior arguments related to the issues raised herein, whether made in written filings or during oral arguments. Defendants’ motions are further based on the following grounds:

1. The Court did not provide reasoning or rationale for its decision to grant Defendants’ motion to stay execution, but required Defendants to “purchase a bond in the amount of \$6.25 million dollars to protect the judgment entered and interest accrued during the pendency of the appeal.” Accordingly, for error preservation purposes, Defendants believe they should file this motion and seek an explanation of the Court’s rationale to preserve issues for appellate review. *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.” (emphasis added)); *Smith v. NCCI, Inc.*, 369 S.C. 236, 247–48, 631 S.E.2d 268, 274 (Ct. App. 2006) (same).

2. Defendants previously requested that the Court issue a stay of execution without requiring the posting of an appeal bond. Because the Court required a \$6.25 million bond, it appears the Court rejected Defendants’ request. Defendants also requested, in the alternative, that the Court require an appeal bond of only \$1,000,000 to be posted by Dr. Miller, because the verdict in this case is against only Dr. Miller, but it appears the Court also rejected that request. Finally, Defendants also requested as another alternative that the Court, in exercising its discretion and in the public interest, follow the current version of S.C. Code Ann. § 18-9-130 and limit the required bond amount to \$2,000,000 total for Dr. Miller and the (now dissolved) practice, while acknowledging that this matter accrued prior to the effective date of that statute. It appears the Court also rejected this argument. However, the Court did not set forth any rationale for these decisions. Defendants therefore request that the Court reconsider these arguments and rule in Defendants’ favor by setting the bond requirement at \$2,000,000 or, failing that, provide a rationale for its disagreement with Defendants’ arguments.

3. Plaintiff agreed to a stay of execution but only if a bond was posted in the amount of “not less than \$6.25 million.” Plaintiff’s sole argument was this bond amount was needed to protect its judgment amount. This argument, if controlled by the statute, would of course be totally meritless due to the statutory bond maximums. The General Assembly has determined that requiring bonds such as those asked for by Plaintiff imposes unfairness on appellants and unfairly affects the right of appeal. The Court in its discretion could and should apply the same public interest/public policy point in setting the bond amount. Regardless, if the Court declines to do this, it should nevertheless reduce the bond amount to \$2,000,000 for the reasons below.

4. In conjunction with their original motion, Defendants explained they “reserve the right to file other requests and make other motions regarding execution should the Court determine it will not stay execution in accordance with the motion filed on March 11, 2022 [seeking a stay based on either no bond, a \$1,000,000 bond as to Dr. Miller only, or a \$2,000,000 total bond as to Dr. Miller and the practice] and [their] supplemental memorandum.” *See* Supplemental Memorandum filed March 15, 2022, at 2. Plaintiff did not oppose this reservation. In accordance with that reservation, Defendants request that the Court reduce the required bond amount to \$2,000,000 for the below additional reasons.

5. To post a bond, the insurance carrier must set aside assets equal to the amount of the bond. The totality of the carrier’s assets available to serve as collateral for a bond in this matter is \$2,000,000. Accordingly, the carrier cannot and is not obligated to pay for a bond in excess of \$2,000,000. See Affidavit of Sam McEwen and Mag Mutual policy materials, attached as Exhibit 1. As Defendants stated at the May 18, 2022 hearing, they hoped to avoid presenting details of Dr. Miller’s personal financial situation unless it became necessary to do so. The Court’s order requiring a \$6.25 million bond now renders it necessary to present Dr. Miller’s financial information pursuant to Defendants’ reservation in conjunction with their original motion. Dr. Miller cannot afford to post a bond of any significant amount because he lacks the assets to post as collateral. See Affidavit of Dr. Gregory Miller, attached as Exhibit 2. Thus, a \$2,000,000 bond purchased by the insurance carrier is all that Defendants can afford to post. To require Dr. Miller to post any additional bond beyond that which the insurance carrier here has agreed to post pursuant to its coverage would impose an undue financial burden on Dr. Miller. *See Se. Booksellers Ass’n v. McMaster*, 233 F.R.D. 456, 458 (D.S.C. 2006). By coincidence, that amount—\$1,000,000 in coverage for Dr. Miller and \$1,000,000 in coverage for the dissolved

practice—aligns with the statutory maximums provided by section 18-9-130. The Court should therefore reduce the required bond amount to \$2,000,000 for all of the reasons set forth herein and stay execution pending appeal.

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May 27, 2022