

Jan 17 2023

S.C. SUPREME COURT

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 FOR A STAY
OF EXECUTION ON THE JUDGMENT**

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Pursuant to Rule 62 of the South Carolina Rules of Civil Procedure and section 18-9-130 of the South Carolina Code, defendants Gregory A. Miller M.D. and Rock Hill Gynecological & Obstetrical Associates P.A. (together, “Defendants”) move for an order staying execution on or enforcement of the judgment during the pendency of Defendants’ appeal.

PROCEDURAL HISTORY

This medical malpractice case was tried in January 2022. The jury found in Plaintiff’s favor and awarded Plaintiff \$2,500,000 in damages. Defendants moved for a new trial on several grounds, and Plaintiff moved for costs and prejudgment interest from the date of her offer of judgment through entry of judgment on the verdict. On March 3, 2022, the Court denied Defendants’ post-trial motions, granted Plaintiff’s motion, and entered judgment for the Plaintiff in the amount of \$4,682,789.57. Defendants appealed on March 11, 2022.

ARGUMENT

Defendants request that the Court issue a stay of execution on the judgment until the appeal is resolved. Section 18-9-130 provides that 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(A). The presiding judge may “require[] bond or other surety to guarantee the payment of the judgment pending the appeal.” *Id.* Rule 62(d) of the South Carolina Rules of Civil Procedure provides for a stay of execution after appeal if the appealing party “giv[es] a supersedeas bond”:

Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Pursuant to section 18-9-130(A), the maximum supersedeas bond for an individual or a business entity that employs fifty persons or fewer or which has revenue of less than \$5 million is \$1,000,000. S.C. Code Ann. § 18-9-130(A)(1)(b).

Dr. Miller is an individual. Further, there was no verdict against anyone but Dr. Miller. There was an agreement of counsel at trial, for the sake of simplicity for the jury, that the P.A. would be responsible for paying a verdict rendered against Dr. Miller based on *respondeat superior* principles. The Court, over objection, has issued a judgment against both Dr. Miller and the P.A., and held that because of that judgment, the non-economic damages statutory cap does not apply to reduce the verdict here.

Notwithstanding the above, the Defendants request that the court issue a stay of execution until the appeal is resolved, and order that no bond is required. If the Court requires a bond, Defendants are willing to post the statutory maximum \$1,000,000 supersedeas bond, based on the verdict against Dr. Miller alone. If the Court decides that both Dr. Miller and the P.A. must separately post appeal bonds, which the Defendants argue is unwarranted and was not intended to

be the result of any agreement of counsel at trial, then the P.A. (which is now a dissolved entity having no revenues or employees) would also only be subject to procuring a bond of \$1,000,000. Thus, the Court should issue a stay of execution and of further enforcement of the judgment. Defendants' position is that no bond should be required, but if one is required, that only a \$1,000,000 bond be required under the circumstances here. Failing that, the Court should at minimum require only that both Dr. Miller and the P.A. post \$1,000,000 appeal bonds each to stop execution on the judgment.

CONCLUSION

Defendants respectfully request that the Court grant this motion and stay efforts to execute on the judgment pending a resolution of Defendants' appeal. Defendants' counsel consulted with Plaintiff's counsel prior to filing this motion, and Plaintiff's counsel stated he intends to execute on the judgment on Defendants and would not agree to a stay by consent. Should the Defendants prevail in their appeal, they intend to seek to tax all premium costs required to be paid for appeal bonds against Plaintiff.

(signature page attached)

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March 11, 2022