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**Jan 27 2023**

S.C. SUPREME COURT

**EXHIBIT A**

**June 10, 2022 Order**

STATE OF SOUTH CAROLINA ) ) COUNTY OF YORK ) ) Angela Patton, as Next Friend of ) Alexia L., a minor, ) ) <div style="text-align: right;">Plaintiff, )</div> ) <div style="text-align: center;">v. )</div> ) Dr. Gregory A. Miller, and Rock ) Hill Gynecological & Obstetrical ) Associates P.A., ) ) <hr style="width: 80%; margin-left: 0;"/> <div style="text-align: right;">Defendants. )</div>	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT  Civil Action number 2009-CP-46-05195  <b>Order Denying Defendants’ Motion to                  Reconsider Denial of Motion to Reduce                  Amount of Appeal Bond</b>
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THIS MATTER came before the Court by way of Defendants’ Motion to Reconsider Denial of Motion to Reduce Amount of Appeal Bond, filed June 6, 2022. The Hon. William A. McKinnon, Circuit Court Judge, entered judgment against Defendants in the amount of \$4,682,789.57 on March 3, 2022. This Court subsequently granted Defendants’ Motion to Stay Execution on Appeal by Order dated May 19, 2022, and required Defendants to post a *supersedeas* bond in the amount of \$6.25 million. Defendants filed a Motion asking this court to reduce the amount of the *supersedeas* bond, which was denied by Order dated June 1, 2022.

Defendants now ask this Court to again reconsider the amount of the *supersedeas* bond. In light of the facts and law as state below, Defendants’ Motion is DENIED.

It is within this Court's discretion whether to grant a motion to stay execution on a judgment, and if so, to fix the amount of the *supersedeas* bond required as a condition of any stay order. Rule 62(d), SCRCP; Rule 241(c)(2), SCACR. Although S.C. Code Ann. § 18-9-130 sets a cap of \$1 million on *supersedeas* bonds when the judgment debtor is an individual or a smaller business, the statutory cap is inapplicable to the case at hand. The legislative history is clear that the \$1 million cap applies only to those actions that accrue on or after January 1, 2012.

Plaintiff filed her Summons and Complaint on November 25, 2009, at which time there was no limit on the amount of a *supersedeas* bond which could be required as a condition to a stay order.

Post-judgment interest is to be compounded at a rate of 7.25% *per annum*. See S.C. Code Ann. § 34-31-20; Order of the Supreme Court 2022-01-06-01. At this rate, the judgment balance will be \$6,195,749.43 as of March 3, 2026, and \$6,644,941.26 as of March 3, 2027. Considering the lengthy history of this case and the potential length of time this case may spend on appeal, the Court finds it is appropriate to required Defendants to post a *supersedeas* bond in the amount of \$6.25 million.

IT IS SO ORDERED.

[electronic signature page to follow]



York Common Pleas

**Case Caption:** Angela Patton VS Gregory A Miller , defendant, et al

**Case Number:** 2009CP4605195

**Type:** Order/Stay of Execution of Judgment

IT IS SO ORDERED

s/D. Craig Brown (2160)



\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

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**A filing has been submitted to the court RE:** 2020CP2700533

**Official File Stamp:** 06-02-2022 03:08:28 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Jasper  
**Case Caption:** Center Point Cabinets, Llc VS James R. Coleman , defendant, et al  
**Event(s):** Order/Order Cover Sheet \$25.00  
**Document(s) Submitted:** Proposed Order/Continuance  
**Filed by or on behalf of:** Andrew James Toney

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

Andrew James Toney for James R. Coleman, Teresa L. Coleman  
Roberts Vaux for Innovative Electrical Concepts, Llc  
Stephen Schaeffer Meyer for Innovative Electrical Concepts, Llc  
Mathew M. McCoy for Center Point Cabinets, Llc  
Carmen Harper Thomas for Gateway Mortgage Group, Llc, Mortgage Electronic Registration Systems, Inc.  
Jody Alan Bedenbaugh for Gateway Mortgage Group, Llc, Mortgage Electronic Registration Systems, Inc.

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Mahe Coastal Homes, Llc for Gateway Mortgage Group, Llc  
Ferguson Enterprises, Llc for Ferguson Enterprises, Llc  
Alpha Omega Construction Group, Inc. for Alpha Omega Construction Group, Inc.  
Mahe Coastal Homes, Llc  
Gateway Mortgage Group, Llc for Mahe Coastal Homes, Llc  
Coastal States Bank for Coastal States Bank  
Alpha Omega Construction Group, Inc. for Alpha Omega Construction Group, Inc.  
Ferguson Enterprises, Llc for Ferguson Enterprises, Llc  
Mahe Coastal Homes, Llc  
Coastal States Bank for Coastal States Bank

# **EXHIBIT B**

**June 20, 2022 Order**

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL CIRCUIT

David Hamilton  
2022 JUN 20 AM 8:58  
by Wendy Jefferson, Admin. Asst.  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Civil Action number 2009-CP-46-05195

Angela Patton, as Next Friend of )  
Alexia L., a minor, )

Plaintiff, )

v. )

Dr. Gregory A. Miller, and Rock )  
Hill Gynecological & Obstetrical )  
Associates P.A., )

Defendants. )

**Order Denying Defendants' Motion to Reconsider Denial of Motion to Reduce Amount of Appeal Bond**

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It is within this Court's discretion whether to grant a motion to stay execution on a judgment, and if so, to fix the amount of the *supersedeas* bond required as a condition of any stay order. Rule 62(d), SCRCF; Rule 241(c)(2), SCACR. Although S.C. Code Ann. § 18-9-130 sets a cap of \$1 million on *supersedeas* bonds when the judgment debtor is an individual or a smaller business, the statutory cap is inapplicable to the case at hand. The legislative history is clear that the \$1 million cap applies only to those actions that accrue on or after January 1, 2012.

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York Common Pleas

**Case Caption:** Angela Patton VS Gregory A Miller , defendant, et al

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**Type:** Order/Stay of Execution of Judgment

IT IS SO ORDERED

s/D. Craig Brown (2160)

**EXHIBIT C**  
**Transcript Excerpts**



1 who is not an obstetrician was in a position where you had  
2 to deliver a baby, would you consider that a genuine  
3 emergency?

4 A In a situation where a cab driver is delivery a baby  
5 --

6 Q Shoulder dystocia, cab driver, shoulder dystocia?

7 A Sure. That would be an emergency because you have an  
8 untrained person in that type of situation trying to  
9 deliver the baby.

10 Q Do you make a distinction between a genuine emergency  
11 of someone who does not receive obstetric training to  
12 manage a shoulder dystocia and an obstetrician who is  
13 trained to manage a shoulder dystocia?

14 A Again, I think I do make that distinction  
15 recognition. Shoulder dystocia is considered an emergency  
16 but it becomes certainly much more obstetrically emergent  
17 after five minutes go by. It is very much a complication  
18 of labor and delivery and it certainly has occurred to all  
19 of us who have been out there long enough and delivered  
20 enough babies. But it is different than the general  
21 emergency. For someone in good hands, you know, it is  
22 going to be someone who is well trained, it could be  
23 successful in tracting the problem if you have been  
24 trained to do so. And trained to do so without trauma to  
25 the baby and that is what we are trained to do.

1 isn't that true?

2 A No. It is not an issue of training. This is  
3 strictly an issue for safety for that baby. The minute  
4 you diagnose shoulder dystocia every single literature  
5 source will say that is an emergent from that point  
6 forward. It is an emergency whether you are a cop on a  
7 beat; it is an emergency whether you are a taxi car  
8 driver; it doesn't matter. You have got a baby's life on  
9 your hand. And bad things happen really quickly. Okay.  
10 You and this is where Dr. Duboe and I disagree. I  
11 disagree completely with six to eight minutes. That is a  
12 farce in my world. You have got four to five minutes.  
13 This is a baby's life, whose life is on the line. So you  
14 try to do things really, you try to have a routine  
15 protocol. You are not going to wait five or six minutes  
16 before you get serious about a shoulder dystocia. That is  
17 one of the true classic obstetrical emergencies in our  
18 literature.

19 Q And something that you are trained for?

20 A Yes.

21 Q And, Doctor, you mentioned safety and you always want  
22 to do the safest thing for the patient, for Angela and  
23 Alexia, right?

24 A Yes.

25 Q Using excessive traction would never be the safest

1 occiput posterior. So if you turn the baby about 90  
2 degrees, Alexia was down in this -- pointing in that  
3 direction so that the nose was pointing up here to what we  
4 call ROA.

5 Q Thank you. You can sit down. We'll get you back up  
6 in a minute. Thank you. Dr. Miller, do you have an  
7 opinion whether or not a shoulder dystocia is an  
8 obstetrical emergency?

9 MR. GRAHAM: Your Honor, may we approach again?

10 (WHEREUPON, a bench conference was held in the  
11 presence of the jury, but outside the hearing of the  
12 jury.)

13 BY MR. DAVIS:

14 Q Let me ask the question again, Dr. Miller. As a  
15 board certified obstetrician gynecologist delivered over  
16 9,000 babies, do you have an opinion within a reasonable  
17 degree of medical certainty whether or not a shoulder  
18 dystocia constitutes an immediate obstetrical emergency?

19 A Yes, I do.

20 MR. GRAHAM: Objection.

21 Q Why? Or what's the basis of your --

22 THE COURT: Hold on one second. For the reasons you  
23 just stated at the bench?

24 MR. GRAHAM: Yes, sir.

25 THE COURT: Okay. Your objection is preserved for

1 the record. Go ahead.

2 BY MR. DAVIS:

3 Q Explain in your opinion why that's considered by you  
4 to be an immediate and genuine obstetrical emergency?

5 A It's considered to be immediate and genuine  
6 obstetrical emergency by everyone.

7 Q Why?

8 A Because a baby's life's on the line.

9 Q Why?

10 A You have just a few minutes to resolve this issue. I  
11 know we've heard a six-to-eight-minute interval in  
12 previous testimony, but it's four to five minutes. And  
13 it's four to five minutes before -- we're trained and  
14 taught that it's four to five minutes before that baby can  
15 quite possibly experience -- it's a fancy term for hypoxic  
16 ischemic encephalopathy, but it means brain damage. Plain  
17 and simple, it's brain damage. If that doesn't meet the  
18 standard of an emergency, I don't know what does. There  
19 are reports of babies even dying in less than five  
20 minutes. So I think that once you determine that there's  
21 a shoulder dystocia, you have to call it what it is. And  
22 it is truly one of the main or major emergencies that we  
23 deal with and part of that is because it is so  
24 unpredictable. Part of that is because it is  
25 unpreventable. And, unfortunately, sometimes, injuries to

1 THE COURT: Any objection, Mr. Graham?

2 MR. GRAHAM: No, Your Honor. I did have one matter.  
3 Some days ago, last week I guess, an issue had come up,  
4 probably at the end of our case about gross negligence and  
5 so forth. Your Honor, you had tentatively ruled but you  
6 invited briefs. I note that Mr. Davis has presented a  
7 proposed charge number nine.

8 THE COURT: He withdrew that one.

9 MR. GRAHAM: I am just wondering, depending on Your  
10 Honor's ruling, whether we should add to the verdict form  
11 a question about recklessness.

12 THE COURT: No, sir. I granted a directed verdict on  
13 the punitive and on the gross negligence. That was my  
14 recollection.

15 MR. GRAHAM: I thought you said you had tentatively  
16 done that but invited briefs.

17 THE COURT: What I meant to say and if I didn't say  
18 this I apologize. I said I was granting the motion but I  
19 would be happy to reconsider it if the Plaintiffs wanted  
20 to put briefing in. Let me clarify for the record, that  
21 is what I intended to say, that I granted the Defendant's  
22 motion for a directed verdict on the issue of punitive and  
23 gross negligence. But I am open to reconsidering that  
24 ruling.

25 MR. GRAHAM: We would like to submit a very short --

1 THE COURT: All right, thank you. Mr. Graham, I  
2 don't, I try to listen pretty carefully. I don't recall  
3 any expert testimony from any of the Plaintiffs experts  
4 that there was gross negligence or recklessness involved  
5 in this case. Did I miss any?

6 MR. GRAHAM: Well, Your Honor, here is what is out  
7 there for you to decide. Dr. Miller testified, he  
8 testified, of course, he used gentle proper traction. He  
9 also testified that he used the amount of traction that he  
10 chose to use or he intended to use, not that he intended  
11 to cause harm but he intended to use the amount of  
12 traction force he used and that he was aware of the risk  
13 of using the amount of traction that we contend he did, in  
14 fact, use. So I am not addressing gross negligence.  
15 Recklessness, he had a conscious awareness of the danger  
16 and he was indifferent, in viewing the case it the light  
17 most favorable to us, he was aware of the danger, he  
18 consciously applied as much traction as he intended and  
19 that was a devastating amount of traction that caused a  
20 life changing injury to Alexia.

21 THE COURT: Doesn't that sort of swallow all of the  
22 negligence. I mean, as I understand your argument, you  
23 are saying that Dr. Miller understood the risk of  
24 excessive traction and he, it wasn't an accident, he  
25 didn't slip; he intended to do what he did therefore that

1 makes it intentional?

2 MR. GRAHAM: No, sir. It makes it, it makes it  
3 conscious disregard for the rights of Alexia.

4 THE COURT: I mean, if you apply that to a wreck  
5 case, isn't that the same thing as saying, well, the  
6 Defendant, did you intend to press the gas pedal. Yes, I  
7 intended to press the gas pedal. Then you intended to  
8 cause, isn't that the same argument?

9 MR. GRAHAM: I don't believe so, Your Honor, because  
10 pressing the gas pedal does not foreseeable cause an  
11 injury. Running a red light intentionally, I believe  
12 would be a better analogy.

13 THE COURT: If the question is, did you, you saw the  
14 light, you stepped on the gas. I don't want to spend time  
15 on hypothetical. I think, let me hear from Mr. Davis.

16 MR. DAVIS: Your Honor, I think the burden of proof  
17 on the Plaintiff is to prove excessive force. That has  
18 been the whole allegation, the whole case. This whole  
19 entire case comes down to, according to Dr. Duboe's  
20 testimony, and Dr. Gurewitsch's testimony, two or three  
21 seconds or less after the rotational maneuver was  
22 performed, when they allege that at that point he placed  
23 his hands on the baby's head and they allege that he then  
24 used excessive force. I mean, that is, the whole case  
25 comes down to those few seconds. It is their burden to

1 prove that, they are trying to, as I heard Mr. Graham's  
2 argument, he seemed to be saying, well, because Dr. Miller  
3 intended to use what he characterized under oath as  
4 minimal downward traction at that point where they allege  
5 excessive force, that because he intended to use minimal  
6 force, which he clearly testified to, that that  
7 constitutes intent to use excessive force. I don't know  
8 how they get there from his testimony.

9 THE COURT: I think, as I understand Mr. Graham's  
10 argument is, Dr. Miller said he intended to use the amount  
11 of force that he used therefore, their theory that is  
12 excessive force. I just don't think that is enough. My  
13 understanding of the law is, in almost every case expert  
14 testimony is required to establish, to send gross  
15 negligence to a jury in a medical malpractice case. And I  
16 think, there are exceptions but I don't think this is one  
17 of them.

18 MR. GRAHAM: And frankly, I am not a fan of gross  
19 negligence as a target for me to try to prove because of  
20 how it is defined. But recklessness is a different matter  
21 and Ashby's argument is really, if you construe the facts  
22 in our favor, then the motion should be denied. But his  
23 motion should be granted but obviously the facts have to  
24 be construed in our favor, in the light most favorable to  
25 us.

1 THE COURT: You are talking about conscious disregard  
2 of a known risk. Again, I just don't think, I mean how  
3 does that not cover every medical malpractice claim. I  
4 mean, Doctor, when you evaluated this spot on the  
5 patient's skin, didn't you know there was a risk of  
6 cancer. Then you disregard that.

7 MR. GRAHAM: I understand.

8 THE COURT: I understand your argument. I think  
9 conscious disregard has to be more than he has medical  
10 training and he knows the risk of making an error in the  
11 procedure.

12 MR. GRAHAM: I understand and I would just make one  
13 more important. As far as expert witness is concerned,  
14 Dr. Gurewitsch did talk about an extreme amount of force,  
15 way more than would be typical.

16 THE COURT: Was she asked at deposition, did that  
17 constitute gross negligence.

18 MR. GRAHAM: No sir, we did not use the word, gross  
19 negligence. I frankly, unless that statute has been plead  
20 and I have to deal with gross negligence, my preference is  
21 to deal with recklessness. To me it is easier to prove.

22 THE COURT: Did you ask her if he was reckless?

23 MR. GRAHAM: No sir, I don't recall doing that. I am  
24 certain I did not do that. But she did talk, she did talk  
25 about just how extreme this man's action was. It was 60