

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

68725

APPEAL FROM HORRY COUNTY
J. Michael Baxley, Circuit Court Judge

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JUN 12 2013

Case Nos. 2008-CP-26-9047
2008-CP-26-9368

SC Court of Appeals

Sean D. Fay, as Personal Representative for the
Estate of Kelly L. Fay, deceased, Respondent/Appellant,

v.

Grand Strand Regional Medical Center, LLC,
d/b/a South Strand Ambulatory Care Center
Stephen W. Law, D.O., Richard Young, M.D.,
and Grand Strand Urology, LLP, Defendants,

Of whom Grand Strand Regional Medical
Center, LLC, d/b/a South Strand Ambulatory
Care Center is Appellant/Respondent,

And of whom Stephen W. Law, D.O. is Respondent/Appellant,

And of whom Richard Young, M.D. and
Grand Strand Urology, LLP are, Respondents.

MOTION TO FILE SUPPLEMENTAL RECORD ON APPEAL

The Respondent-Appellant Stephen W. Law, D.O moves this Court for an Order to prepare and file a Supplemental Record on Appeal to include pages 352, 354, 355, and 356 of the trial transcript in the Record on Appeal.

The Respondent-Appellant Stephen W. Law's motion is based on the following grounds:

1. In his Initial Reply Brief, the Respondent-Appellant Stephen W. Law specifically cited to pages 350 through 356 of the trial transcript. (See attached page 10 from Initial Reply Brief). Those pages from the trial transcript were inadvertently not included in Dr. Law's Designation of Matter to be Included in the Record on Appeal, and as a result of that error and oversight, pages 352, 354, 355, and 356 of the trial transcript have not been included in the Record on Appeal as has been filed by other counsel.

2. This oversight was not identified or recognized until Dr. Law's counsel was preparing the Final Reply Brief for filing with the Court.


3. The specific citation to pages 350 through 356 in the Initial Reply Brief (see page 10) clearly show that Dr. Law intended for those pages to be included in the Record on Appeal.

4. To correct this error and to allow for a complete record for the Court's consideration, Dr. Law requests leave of court to allow his counsel at his expense to prepare and file a Supplemental Record on Appeal containing pages 352, 354, 355, and 356 of the trial transcript.

The Respondent-Appellant Stephen W. Law requests that current deadlines be held in abeyance pending a decision on this motion.

WHEREFORE, the Respondent-Appellant Stephen W. Law, D.O., respectfully requests that he be allowed to prepare and file a Supplemental Record on Appeal to include pages 352, 354, 355, and 356 of the trial transcript in the Record on Appeal..

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Columbia, South Carolina

June 12, 2013

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Grand Strand Urology, LLP are, Respondents.

INITIAL REPLY BRIEF OF RESPONDENT-APPELLANT STEPHEN W. LAW, D.O.

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SC Court of Appeals

support for Dr. Law's position. That factual support is exclusively the testimony of Sean Fay himself. Dr. Law was careful not to rely on the testimony of anyone other than Mr. Fay for this very reason. Without question, the factual support for Dr. Law's position on comparative negligence comes from Mr. Fay's testimony and is taken in a light most favorable to the non-moving party. Mr. Fay cannot avoid his own testimony which shows that he and his wife were more than fifty percent at fault, thereby barring their claims as a matter of law.

IV. The Circuit Court erred in excluding evidence of Sean Fay's admitted extramarital affair which was relevant evidence on the issue of damages recoverable in the wrongful death action.

At the commencement of the trial, Judge Baxley granted Sean Fay's motion in limine to exclude any evidence of an acknowledged extramarital affair which he had in 1999 with a co-worker and family friend. The Defendants, including Dr. Law, took the position that evidence of the extramarital affair was relevant on the issue of damages recoverable in the wrongful death action. (Tr. 65-73).

As a threshold issue in an attempt to avoid the merits, Fay argues that this issue is not preserved as to Dr. Law because he did not proffer evidence of Fay's extramarital affair during the trial. The Defendants, however, reiterated their collective intent to present evidence of the extramarital affair after Judge Baxley's in limine ruling. In addition, a proffer of a *joint exhibit* was made that included evidence of the affair. That joint exhibit was rejected by Judge Baxley but was made a court exhibit expressly "for purposes of appellate review." (Tr. 354). Consequently, there is no question that the evidentiary issue regarding the admissibility of the affair was re-asserted during the trial, and that the judge reaffirmed his ruling in limine. (Tr. 350-356). Dr. Law's counsel participated in the colloquy with the trial judge, and it is clear from

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And of whom Stephen W. Law, D.O. is Respondent/Appellant,

And of whom Richard Young, M.D. and
Grand Strand Urology, LLP are, Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent-Appellant, Stephen W. Law, D.O., does hereby certify that service of the **Motion to File Supplemental Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 12th day of June 2013:

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John S. Nichols, Esquire
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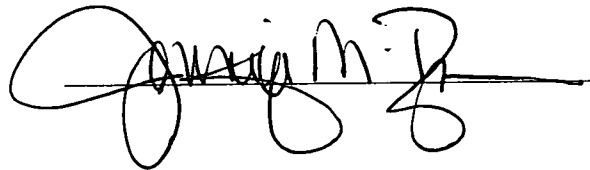
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A handwritten signature in black ink, appearing to read "Monteith P. Todd", with a long horizontal line extending to the right.

DAVIDSON & LINDEMANN, P.A.

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June 12, 2013

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Sean D. Fay, as Personal Representative for the Estate of Kelly L. Fay, deceased v. Grand Strand Regional Medical Center, LLC, d/b/a South Strand Ambulatory Care Center, Stephen W. Law, D.O., and Richard Young, M.D.
Court of Appeals Case Tracking Number: 2010167127
Civil Action Numbers: 2008-CP-26-9047 & 2008-CP-26-9368
Claim Number: CB042148M
Our File Number: 22.8406

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Motion to File Supplemental Record on Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings

June 12, 2013

Page Two

cc: Ruskin C. Foster, Esquire (*w/ Enclosure*)
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