

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

June 12, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson*
Case No.: 2010-CP-16-0332
Tracking No.: 2011203391
TPGL File No.: 10667.101

Dear Ms. Kitchings:

Enclosed you will find the original and one copy each of Respondent's Response to Motion to Vacate the Lower Court's Order for Summary Judgment and a Certificate of Service regarding the above-referenced matter. Please file the originals and return the filed stamped copies in the self-addressed stamped envelope which is enclosed.

By copy of this letter with enclosures to counsel for the Appellant, Benjamin R. Matthews, Esquire, I am herewith serving him with copies of the same as reflected in the Certificate of Service.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:vlb
Enclosures

Cc: Jay James, II, Esq. (w/enclosures via email only)
Benjamin R. Matthews, Esq. (w/enclosures)

RECEIVED

JUN 21 2013

SC Court of Appeals

BUSINESS • LITIGATION • SOLUTIONS

319 S. Irby Street (29501) • PO Box 5478 • Florence, SC 29502
Phone (843) 662-9008 • Fax (843) 667-0828 • turnerpadget.com

**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

**APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas**

J. Michael Baxley, Circuit Court Judge

**CASE NO. 2010-CP-16-0332
(Tracking Number 2011203391)**

Pee Dee Health Care, P.A. Appellant,
v.
Estate of Hugh S. Thompson Respondent.

**RESPONDENT'S RESPONSE TO
MOTION TO VACATE
THE LOWER COURT'S ORDER FOR SUMMARY JUDGMENT**

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 21 2013

SC Court of Appeals

Appellant has made its motion to vacate the lower court's order of summary judgment in the very appeal taken from that order of summary judgment. This appeal was heard in oral argument before the Court on June 5, 2013 – less than a week before the instant motion was filed. The matter was heard by Judges Huff, Williams, and Cureton.

The issue raised in the present motion has already been addressed by the briefs submitted to the Court (Appellant's Final Brief page 30, Respondent's Final Brief pages 14-19). The suggestion of this motion is that the lower court was subject to a stay resulting from the appeal of counsel's disqualification¹ and therefore the trial court should not have entered its order of summary judgment.

Issues of subject matter jurisdiction can be raised at any time, but this issue has been raised as noted above and is under advisement. Thus, Respondents' current motion is out of order and inappropriate. The instant motion amounts to a supplemental brief and supplemental argument outside of that contemplated and allowed by the Rules. Appellant has had its opportunity to brief and argue the issues (even though Appellant failed to finalize any Reply Brief in this appeal). Moreover, Regardless, this specific issue was briefed and was even the subject of questions from the Court at oral argument June 5th.²

¹ The instant motion is signed by attorney Ben R. Matthews, who also served as Appellant's co-counsel in the trial court. Mr. Matthews renewed participation in the matter is noteworthy given the questions raised in both briefs and arguments regarding the authority of disqualified trial counsel to execute pleadings in the matter following that disqualification. Mr. Matthews' availability and previous participation in the matter is directly related to the lack of harm caused to Appellant by attorney Megna's prior disqualification. If Mr. Megna lacked authority to ask for reconsideration of the summary judgment order and Mr. Matthews was available to plead on Appellant's behalf, then Respondent contends that this appeal was filed too late because no valid motion for reconsideration tolled the time for appeal.

² As an aside, the question of whether a stay is applicable to the trial court's activities is not really a question of subject matter jurisdiction. Appeal of an issue does not deprive a trial court of authority over that subject matter generally – it does, however, pursuant to Rule and precedent stay the Court's authority to continue to exercise jurisdiction over the particular issue appealed. It does not stay matters unaffected by the appeal. In this case, not only were the issues unaffected by the disqualification order, the argument presentation was unaffected since the trial court allowed Mr. Megna to argue both against the Respondent's motion and for the Appellant's counter motion for summary judgment.

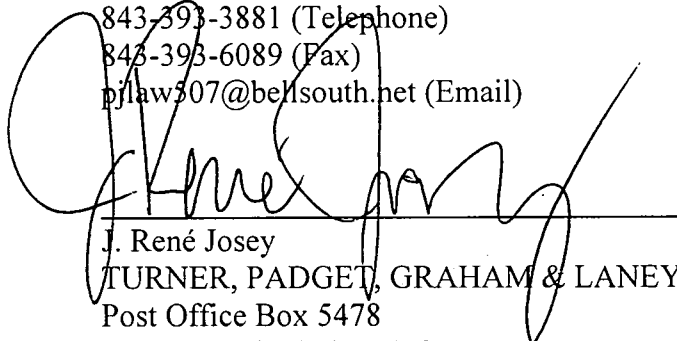
CONCLUSION

The trial court continued to have subject matter jurisdiction of the merits of the underlying case even after the appeal of counsel's disqualification. Moreover, the trial court's authority to exercise that jurisdiction was not stayed because the merits of the case were not affected by the disqualification of one of Appellant's existing two trial attorneys. The instant motion should be dismissed and costs and fees related to responding to the motion should be awarded to Respondent which has already incurred exorbitant legal fees and costs.³

June 20, 2013



John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

³ Respondent notes that Appellant, through Mr. Matthews, has written the Court as a follow-up to its June 10th motion. That letter to the Court suggest that the exorbitant cost of Respondent are related to an alleged conflict issue with Respondent's counsel. That conflict issue has been addressed by this Court as well as cleared by the Office of Disciplinary Counsel. Considerable resources were spent addressing that non-meritorious allegation – including securing the services of ethics professor Nathan Crystal . However, the ethics allegations of Appellant and its counsel – including at oral argument – are but one of many tactics employed by Appellant which have driven fees and cost disproportionate to litigation of a comparable level of damages.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332

(Appeal Tracking Number 2011203391)

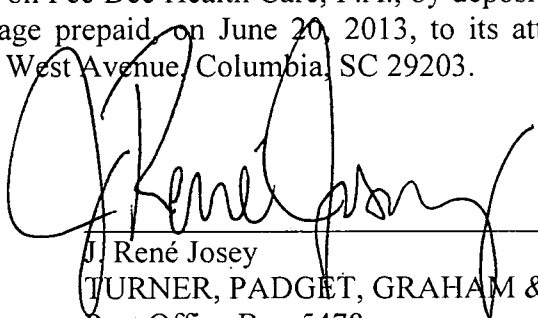
Pee Dee Health Care, P.A..... Appellant

v.

Estate of Hugh S. Thompson..... Respondent

CERTIFICATE OF SERVICE

I certify that I have served Respondent's Response to Motion to Vacate the Lower Court's Order for Summary Judgment on Pee Dee Health Care, P.A., by depositing copies of the same in the United States mail, postage prepaid, on June 20, 2013, to its attorney of record, Benjamin R. Matthews, Esquire, 3400 West Avenue, Columbia, SC 29203.



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 21 2013

SC Court of Appeals