

**RECEIVED**

**Apr 25 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Georgetown County  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2019-CP-22-00961  
Appellate Case No. 2020-001167

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Kevin Greene,  
as Attorney in Fact for and on Behalf of  
Eleanor Greene Wragg,

Respondent,

v.

Palmetto Prince George Operating, LLC  
d/b/a Prince George Healthcare Center;  
Palmetto Health Care, LLC;  
Murray Forman, Individually; and  
Richard Porter, Individually,

Defendants.

Of whom Palmetto Prince George Operating, LLC  
d/b/a Prince George Healthcare Center;  
Palmetto Health Care, LLC; and  
Richard Porter, Individually, are the

Appellants.

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**APPELLANTS' PETITION FOR REINSTATEMENT/REHEARING**

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CLEMENT RIVERS, LLP

Stephen L. Brown (SC Bar No. 66468)

D. Jay Davis, Jr. (SC Bar No. 12084)

Russell G. Hines (SC Bar No. 72100)

Matthew O Riddle (SC Bar No. 76650)

Gaillard T. Dotterer, III (SC Bar No. 103620)

25 Calhoun Street, Suite 400

Charleston, South Carolina 29401

P.O. Box 993 (29402)

(843) 720-5488

*Attorneys for Appellants*

NOW COME Appellants, by and through their undersigned counsel, pursuant to Rule 260(a), SCACR, and, to the extent necessary, Rule 221(a), SCACR, following this Court’s order filed March 24, 2023 (the “Subject Order,” a copy of which is attached hereto as Exhibit 1), which dismissed this appeal as moot and relieved attorneys Dirk J. Derrick and S. Taylor Hooven as counsel for Respondent, and, **solely out of an abundance of caution**, ask this Honorable Court to reinstate or, alternatively, rehear this matter, whichever is procedurally proper,<sup>1</sup> on the grounds set forth below.

1. This is a nursing home malpractice lawsuit arising out of Eleanor Greene Wragg’s (“Ms. Wragg”) residency at a skilled nursing facility.

2. The lawsuit was brought on Ms. Wragg’s behalf by Kevin Greene (“Mr. Greene”) as her attorney-in-fact.

3. This appeal is from the denial of Appellants Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center (the “Facility”) and Richard Porter’s (“Porter”) respective motions to compel arbitration and Appellant Palmetto Health Care, LLC’s (“PHC”) motion for a stay pending the outcome of the arbitration that the Facility and Porter sought to compel.

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<sup>1</sup> Because the Subject Order dismissed this appeal, Appellants believe the instant petition is properly viewed as a request for reinstatement under Rule 260(a), rather than a request for rehearing under Rule 221(a). Nonetheless, out of an abundance of caution, the instant petition relies on Rule 221(a) to the extent it may apply.

4. On January 12, 2022, attorney Hooven wrote the Court, advising that Ms. Wragg had died on or about November 21, 2021, and that once a personal representative was appointed for her estate, a motion would be made to substitute the personal representative in place of Mr. Green, pursuant to Rule 265(b), SCACR. (A copy of this letter is included in Exhibit 2 attached hereto.)<sup>2</sup>

5. On February 6, 2023, attorneys Derrick and Hooven moved the Court to be relieved as counsel for Respondent (the “Motion to be Relieved”). (A copy of the Motion to be Relieved, including its Exhibit A, which is attorney Hooven’s letter of January 12, 2022, is attached hereto as Exhibit 2.)

6. The Motion to be Relieved explained that, pursuant to S.C. Code Ann. § 62-8-110, Mr. Greene’s authority as Ms. Wragg’s attorney-in-fact had terminated upon Ms. Wragg’s death and that, since Ms. Wragg’s death, no person with legal authority to continue this matter on behalf of her estate had retained attorneys

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<sup>2</sup> Rule 265(b) provides, “If a party to an appeal dies . . . , the appellate court may, upon motion or on its own initiative, order substitution of the proper parties or remand the case to the trial court for the substitution of the proper parties as provided by Rule 25, SCRCR.” Rule 25(a)(1), SCRCR, provides, “If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided by Rule 4 for the service of summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party. Counsel of record for such deceased party shall give notice to all other parties of the death of such party as soon as practicable after obtaining

Derrick and Hooven to continue to pursue the matter; no personal representative or other administrator had been appointed for Ms. Wragg's estate; and, indeed, no estate had been opened for Ms. Wragg. (Exhibit 2.)

7. On March 24, 2023, the Court granted the Motion to be Relieved via the Subject Order, which, again, dismissed this appeal as moot and relieved attorneys Derrick and Hooven as counsel for Respondent. (Exhibit 1.)

8. Specifically, the Subject Order reads as follows:

After careful consideration, this appeal is dismissed as moot, due to the death of Respondent. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.”). Accordingly, the remittitur will be sent as required by Rule 221(b), SCACR.

Attorneys Dirk J. Derrick and S. Taylor Hooven have moved to be relief as counsel for the late Respondent. The motion is granted.

(Exhibit 1.)

9. Appellants have NO objection to attorneys Derrick and Hooven being relieved as counsel, and for that matter, *provided Appellants' understanding of the Subject Order is correct*, Appellants have NO objection to the Subject Order at all—again, Appellants are filing the instant petition solely out on an abundance of caution, i.e., in case somehow their understanding of the Subject Order is incorrect.

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such knowledge and of the name and address of the proper parties who should be

10. As Appellants understand the Subject Order, the Court has concluded that this appeal is moot, i.e., that a decision by the Court on the merits of the appeal will have no practical legal effect upon existing controversy, because the underlying claims will NOT be proceeding in any forum, arbitral or otherwise.

11. Again, *provided Appellants' understanding of the Subject Order is correct*, Appellants have NO objection to the Subject Order and have NO reason to ask the Court to reinstate or, alternatively, rehear this matter—or to otherwise grant Appellants any relief; *however, again, solely out of an abundance of caution, to the extent that Appellants' understanding of the Subject Order is incorrect*, i.e., to the extent that the Subject Order does not preclude the underlying claims from proceeding in the future, the Subject Order is erroneous, because a decision by the Court on the merits of the appeal—which goes to the forum in which those claims will proceed—will clearly have a practical legal effect upon existing controversy.

WHEREFORE, again, **solely out of an abundance of caution**, i.e., **solely to the extent that Appellants' above-explained understanding of the Subject Order is incorrect**, Appellants ask this Honorable Court to reinstate or, alternatively, rehear this matter, again, whichever is procedurally proper—or otherwise, if it is not necessary to reinstate or, alternatively, rehear this matter to do

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substituted.”

so, to issue such an order as may be necessary to protect and preserve Appellants' rights to argue/advance their respective positions as to the merits of the issues/subject matter involved in this appeal (i.e., the Facility and Porter's rights to argue that any claims against them should be compelled to arbitration and PHC's right to argue that any claims against it should be stayed pending the outcome of arbitration) going forward.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Russell G. Hines  
Stephen L. Brown (SC Bar No. 66468)  
D. Jay Davis, Jr. (SC Bar No. 12084)  
Russell G. Hines (SC Bar No. 72100)  
Matthew O Riddle (SC Bar No. 76650)  
Gaillard T. Dotterer, III (SC Bar No. 103620)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488  
*Attorneys for Appellants*

Charleston, South Carolina

April 25, 2023

# The South Carolina Court of Appeals

Kevin Greene, as Attorney in Fact for and on behalf of  
Eleanor Greene Wragg, Respondent,

v.

Palmetto Prince George Operating, LLC d/b/a Prince  
George Healthcare Center; Palmetto Health Care LLC;  
Murray Forman, Individually; and Richard Porter,  
Individually, Defendants,

Of Whom Palmetto Prince George Operating, LLC d/b/a  
Prince George Healthcare Center; Palmetto Health Care,  
LLC; and Richard Porter, Individually are the Appellants.

Appellate Case No. 2020-001167

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ORDER

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**EXHIBIT**

1

After careful consideration, this appeal is dismissed as moot, due to the death of Respondent. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy."). Accordingly, the remittitur will be sent as required by Rule 221(b), SCACR.

Attorneys Dirk J. Derrick and S. Taylor Hooven have moved to be relieved as counsel for the late Respondent. The motion is granted.



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FOR THE COURT

Columbia, South Carolina

**FILED**  
**Mar 24 2023**

cc:

Stephen Lynwood Brown, Esquire

Donald Jay Davis, Jr., Esquire

Russell Grainger Hines, Esquire

Matthew Oliver Riddle, Esquire

Gaillard Townsend Dotterer, III, Esquire

Dirk Julius Derrick, Esquire

Steven Taylor Hooven, Esquire

**THE STATE OF SOUTH CAROLINA  
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**Feb 06 2023**

**SC Court of Appeals**

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Benjamin H. Culbertson, Circuit Court Judge

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Kevin Greene,  
as Attorney in Fact for and on Behalf of  
Eleanor Greene Wragg,

Respondent,

v.

Palmetto Prince George Operating, LLC  
d/b/a Prince George Healthcare Center;  
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Murray Forman, Individually; and  
Richard Porter, Individually,

Defendants.

Of whom Palmetto Prince George Operating, LLC  
d/b/a Prince George Health Care Center;  
Palmetto Health Care, LLC; and  
Richard Porter, Individually, are

Appellants.

**MOTION TO BE RELIEVED AS COUNSEL**

THE DERRICK LAW FIRM, P.C.  
Dirk J. Derrick (SC Bar No. 11278)  
S. Taylor Hooven (SC Bar No. 103451)  
901 Main Street  
Conway, SC 29526  
P.O. Box 28 (29528)  
(843) 248-7486

*Attorneys for Respondent*

COME NOW Dirk J. Derrick, individually, S. Taylor Hooven, individually, and The Derrick Law Firm, P.C. d/b/a Derrick Law Firm Injury Lawyers (“Movants”), and move this Honorable Court, pursuant to Rule 264 of the South Carolina Rules of Appellate Procedure, for an Order relieving them and any other attorneys or affiliates of The Derrick Law Firm, P.C. d/b/a Derrick Law Firm Injury Lawyers as counsel in this matter, and additional relief as requested below.

Ms. Eleanor Wragg was Movants’ client by and through her Attorney-in-Fact acting on her behalf. Upon information and belief, Ms. Wragg passed away on or about November 21, 2021. By letter filed January 12, 2022, counsel alerted this Court of the passing of Ms. Eleanor Wragg and noted an appropriate motion to substitute party would be made when a Personal Representative was appointed. *See Exhibit A.* As of the filing of this instant Motion, no person with appropriate authority to continue this matter on behalf of Ms. Wragg’s estate has retained Movants to continue representation in this matter. To Movants’ best knowledge, no estate has been opened and no Personal Representative or other administrator appointed.

In South Carolina, “[a] power of attorney terminates when the: (1) principal dies; . . . .” and “[a]n agent’s authority terminates when the: . . . (4) power of attorney terminates.” S.C. Code Ann. § 62-8-110(a)(1), (b)(4). Accordingly, with Ms. Wragg’s passing, any power vested in an Attorney-in-Fact to act on her behalf terminated, as did the authority of Movants, who were retained to act on her behalf while she was living. When she passed, Movants were left without a client. Unless and until an estate is opened, Movants are informed and believe no person is authorized to pursue this matter, generally. To date, it does not appear an estate has been opened; likewise, no person with requisite authority has retained or otherwise authorized Movants to proceed on behalf of Ms. Wragg’s estate.

Consequently, Movants have no legal authority to continue their representation in this matter because their agency expired with Ms. Wragg's passing; they now have no client. Furthermore, no person with requisite authority has retained or otherwise authorized Movants to proceed on behalf of Ms. Wragg's estate, which remains unopened as far as Movants are aware.

WHEREFORE as Movants have no legal, ethical, or other basis upon which to act in furtherance of this matter, and as they no longer have a client who is a party to this case, Movants are prevented from presently continuing as counsel. Accordingly, Movants respectfully request this Honorable Court grant their Motion and Relieve Dirk J. Derrick, Esq.; S. Taylor Hooven, Esq.; and The Derrick Law Firm, P.C., d/b/a Derrick Law Firm Injury Lawyers and its other attorneys or affiliates as counsel in this matter.

MOREOVER, as the statute of limitations likely has run for the matters alleged in the Complaint below, and to whatever extent it is proper for Movants to make the following request, in the event this Court grants Movants' motion Movants respectfully ask this Court stay argument, remand, or other decision in this matter for such time as this Court deems just and proper to allow time for the estate to be opened, a Personal Representative to be appointed, and, as appropriate, that Personal Representative to be substituted as a party.

Respectfully submitted,

THE DERRICK LAW FIRM, P.C.

By: s/Dirk J. Derrick  
Dirk J. Derrick (SC Bar No. 11278)  
S. Taylor Hooven (SC Bar No. 103451)  
901 Main Street  
Conway, South Carolina 29526  
P.O. Box 28 (29528)  
(843) 248-7486

Individually: s/Dirk J. Derrick  
Dirk J. Derrick (SC Bar No. 11278)

Individually: s/S. Taylor Hooven  
S. Taylor Hooven (SC Bar No. 103451)

Conway, South Carolina

February 6, 2023

# Exhibit A



# DERRICK LAW FIRM

A PROFESSIONAL CORPORATION

Dirk J. Derrick  
S. Taylor Hooven *(admitted in SC & GA)*  
Dakota J. Derrick  
Daniel R. McCoy  
Dorsey W. Strickland  
Allyson R. Pittman  
Fred H. Oliver  
M. Travis Hyman

**Mailing Address:**  
Post Office Box 28  
Conway, South Carolina 29528  
PHONE: (843) 248-7486  
www.derricklawfirm.com

AJ Holloway  
T. Dyllan Rankin  
J. Brandon Hylton  
Robert D. Corney  
Todd E. Rigler  
*(admitted in SC, NC & WV)* Stacy Jo Townsend  
Justin J. Arenas  
Ralitsa C. François

**RECEIVED**

**Jan 12 2022**

**SC Court of Appeals**

January 12, 2022

**Via E-mail ONLY([ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))**

The South Carolina Court of Appeals  
Jenny Abbott Kitchings  
Clerk  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Kevin Greene v. Palmetto Prince George Operating, LLC  
Appellate Case No.: 2020-001167

Dear Sir or Madam:

I hope this letter finds you well. I write today on behalf of Mr. Kevin Greene, who as Attorney-in-Fact for Ms. Eleanor Wragg filed the underlying action to the case above-named in the Court of Common Pleas for Georgetown County, South Carolina.

I regret to inform this Honorable Court that Ms. Eleanor Wragg passed away on or about November 21, 2021. To date, a personal representative of her estate has not yet been appointed. When a personal representative is appointed, a motion to substitute a party will be made in accordance with Rule 265(b) of the South Carolina Rules of Appellate Procedure.

If I can be of any further service, please do not hesitate to let me know. Thank you for your time and consideration.

Very truly yours,

January 12, 2022

Page 2

A handwritten signature in black ink, appearing to be 'T. Hooven', with a stylized, cursive script.

Taylor Hooven

STH/

cc:

Russell G. Hines, Esq. ([rhines@yclaw.com](mailto:rhines@yclaw.com))

Stephen L. Brown, Esq. ([sbrown@yclaw.com](mailto:sbrown@yclaw.com))

D. Jay Davis, Jr., Esq. ([jdavis@yclaw.com](mailto:jdavis@yclaw.com))

Matthew O. Riddle, Esq. ([mriddle@yclaw.com](mailto:mriddle@yclaw.com))

Galliard T. Dotterer, III, Esq. ([gdotterer@yclaw.com](mailto:gdotterer@yclaw.com))

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**Apr 25 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
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Appeal from Georgetown County  
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Murray Forman, Individually; and  
Richard Porter, Individually,

Defendants.

Of whom Palmetto Prince George Operating, LLC  
d/b/a Prince George Healthcare Center;  
Palmetto Health Care, LLC; and  
Richard Porter, Individually, are the

Appellants.

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**PROOF OF SERVICE**

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CLEMENT RIVERS, LLP

Stephen L. Brown (SC Bar No. 66468)

D. Jay Davis, Jr. (SC Bar No. 12084)

Russell G. Hines (SC Bar No. 72100)

Matthew O Riddle (SC Bar No. 76650)

Gaillard T. Dotterer, III (SC Bar No. 103620)

25 Calhoun Street, Suite 400

Charleston, South Carolina 29401

P.O. Box 993 (29402)

(843) 720-5488

*Attorneys for Appellants*

I, Russell G. Hines, of Clement Rivers, LLP, counsel for Appellants, do hereby certify that **APPELLANTS' PETITION FOR REINSTATEMENT/REHEARING** was served on all other parties to this matter on April 25, 2023, via email (see attached) to Respondent's counsel of record:

Dirk J. Derrick, Esquire  
[dirk.derrick@derricklawfirm.com](mailto:dirk.derrick@derricklawfirm.com)  
S. Taylor Hooven, Esquire  
[taylor.hooven@derricklawfirm.com](mailto:taylor.hooven@derricklawfirm.com)  
The Derrick Law Firm  
P.O. Box 28  
Conway, SC 29528  
*Attorneys for Respondent*

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Russell G. Hines  
Russell G. Hines (SC Bar No. 72100)  
*Attorneys for Appellants*

Charleston, South Carolina

April 25, 2023

## Bell, Pollyana (Polly)

---

**From:** Bell, Pollyana (Polly)  
**Sent:** Tuesday, April 25, 2023 3:21 PM  
**To:** 'dirk.derrick@derricklawfirm.com'; 'taylor.hooven@derricklawfirm.com'  
**Cc:** Hines, Russell; Justman, Aimee; Dotterer III, Gaillard T. (Gilly); Riddle, Matthew; Davis, Jay  
**Subject:** Greene v. Palmetto Prince George; Appellate Case No. 2020-001167 (CR 200085)  
**Attachments:** 2020-001167 (Greene v. Palmetto) -- Petition for Reinstatement-Rehearing.pdf; Exhibit 2 -- Motion to be Relieved.pdf; Exhibit 1 -- Subject Order.pdf

Enclosed please find Appellants' Petition for Reinstatement/Rehearing and the exhibits referenced therein which will be filed today in the above-referenced matter.

Thank you,

Pollyana Bell  
Project Assistant  
Commercial Litigation Practice Group  
Phone:(843)720-5488 | Fax:(843)579-1369



**CLEMENT RIVERS, LLP**  
25 Calhoun Street • Suite 600 • Charleston, SC 29401  
FOR OFFICE