

**RECEIVED**

**Jun 21 2023**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

---

Appellate Case.: 2023-000952

---

Kellie Bingham and Kayla Bingham .....Appellants-Respondents

-v-

Medical University of South Carolina.....Respondent-Appellant

---

**PROOF OF FILING OF NOTICE OF APPEAL  
WITH THE CLERK OF THE CIRCUIT COURT**

---

Appellants Kellie Bingham and Kayla Bingham certify that they filed their Notice of Appeal with the Clerk of Common Pleas of Charleston County, South Carolina on June 9, 2023. (Ex. A). Since Appellants served their Notice of Appeal on June 9, 2023, this filing is timely pursuant to Rule 203(d)(1)(B), SCACR (“The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.”)

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

PARKER LAW GROUP, LLP

By: \_\_\_\_\_



John E. Parker, Jr., Esq.

John E. Parker, Esq.

Post Office Box 487

Hampton, South Carolina 29924

Phone: (803) 903-1781

Fax: (803) 903-1793

[jparker@parkerlawgroupsc.com](mailto:jparker@parkerlawgroupsc.com)

[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

**Attorneys for Appellants**

June 21, 2023

Hampton, South Carolina



IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Civil Action No.: 2017-CP-10-05699

Kellie Bingham and Kayla Bingham .....Appellants,

-v-

Medical University of South Carolina.....Respondent.

NOTICE OF APPEAL

PLEASE take notice that Kellie Bingham and Kayla Bingham (“Appellants”), pursuant to Rule 203, SCACR, appeal the following Orders in this matter:

- Filed Order rendered May 5, 2023, granting Defendant Medical University of South Carolina’s motion to reduce the verdict and denying Plaintiffs’ motion to determine the number of occurrences. (Exhibit A).
- Order denying Plaintiffs’ motion to reconsider the Circuit Court’s May 5, 2023 Order reducing the verdict and denying Plaintiffs’ motion to determine the number of occurrences, filed May 16, 2023. (Exhibit B).

Appellants received notice of entry of the Order denying Plaintiff's motion to reconsider on May 16, 2023. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

Respectfully submitted,

PARKER LAW GROUP, LLP

By: 

John E. Parker, Jr., Esq.  
John E. Parker, Esq.  
Post Office Box 487  
Hampton, South Carolina 29924  
Phone: (803) 903-1781  
Fax: (803) 903-1793  
[jparker@parkerlawgroupsc.com](mailto:jparker@parkerlawgroupsc.com)  
[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

**Attorneys for Appellants**

Other Counsel of Record:

BARNWELL, WHALEY, PATTERSON, AND HELMS, LLC  
M. Dawes Cooke, Jr., Esq.  
John W. Fletcher, Esq.  
P.O. Drawer H (29402)  
211 King Street, Suite 300  
Charleston, SC 29401  
(843) 577-7700

**Attorneys for Respondent**

June 9, 2023  
Hampton, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KELLIE BINGHAM AND KAYLA BINGHAM,

Plaintiffs,

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-10-5699

**ORDER GRANTING DEFENDANT'S MOTION TO REDUCE THE VERDICT PER THE SCTCA AND DENYING PLAINTIFFS' MOTION TO DETERMINE NUMBER OF OCCURRENCES**

This matter went to a jury trial on Plaintiffs' claims for defamation from November 14-18, 2022. The jury returned a verdict in favor of Plaintiffs and awarded each Plaintiff \$750,000 in compensatory damages, using a general verdict form. Following the verdict, Defendant MUSC argued that the trial judge should, consistent with the Tort Claims Act, reduce the verdicts to \$300,000 each for Kayla and Kellie Bingham. Plaintiffs filed a post-trial Motion to Determine Number of Occurrences, asking the court to determine the number of occurrences and to increase or amend the verdict accordingly. For the reasons that follow, Plaintiffs' Motion to Determine Number of Occurrences is denied and the Defendant's motion to reduce the verdict to \$300,000 for each of the Plaintiffs is granted.

Under the South Carolina Tort Claims Act (SCTCA), recovery is limited to \$300,000 per claimant for a single occurrence, with the total maximum amount of recovery for a single occurrence (if multiple claimants) of \$600,000. *See* S.C. Code § 15-78-120(a)(1) & (2). The term "occurrence" is defined not as single wrongful act, but rather as "an unfolding sequence of events which proximately flow from a single act of negligence." *See* S.C. Code § 15-78-30(g).

In order for Plaintiffs to obtain a judgment that includes more than one occurrence, the jury must have been properly instructed to determine the number of occurrences and presented with appropriate special interrogatories.

Plaintiffs bear the burden of proving multiple "occurrences" and must submit a verdict form to the jury (the finder of fact), if they seek a judgment in excess of the cap:

In her post-trial order, the judge gave as one reason for reducing appellant's award the impossibility of determining from the jury instruction and verdict forms whether the jury found one or more than one nurse had rendered negligent care to appellant. Thus, she held, it was impossible to conclude that the jury had found more than one occurrence. Appellant now contends that AnMed bore the burden of proving there was only one occurrence. We disagree.

Just as in any tort action, a CFA plaintiff bears the burden of proof. If she alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence. *Here, the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict. The trial judge correctly reformed this verdict to reflect a single occurrence.*

*See Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543-44 (2010) (emphasis added).

In this case, the court did not instruct the jury on the definition of "occurrences," and Plaintiff did not object to the sufficiency of the instructions. In addition, the verdict form did not require the jury to determine the number of occurrences, and again the Plaintiff did not object or request a different verdict form. In fact, both parties agreed to the verdict form that was used in this case. The verdict form asked the jury to answer the following questions:

1. Do you, the jury, unanimously find by a preponderance of the evidence that Defendant Medical University of South Carolina made a false and defamatory statement about the Plaintiffs Kellie and Kayla Bingham?
2. Do you, the jury, unanimously find by a preponderance of the evidence that the

defamatory statement exceeded the scope of Defendant's qualified privilege?

3. What is the amount of damages, if any, sustained by each Plaintiff?

Plaintiffs did not ask the jury to make specific determinations as to the number of occurrences or the losses attributable to each. The jury was not instructed about determining the number of occurrences. It was not asked to, and did not, find more than one occurrence. It did not specifically identify what conduct gave rise to its verdict. It did not determine the "loss" attributable to each alleged occurrence.

At the time the parties agreed upon the verdict form and jury instructions, the parties discussed and agreed, as is customary in cases tried under the South Carolina Tort Claims Act, that the jury would not be informed of the statutory cap and that the Court would, if necessary, apply the cap before entering judgment. Plaintiffs did not mention that they intended to argue that there were multiple occurrences. The Court does not recall any discussion whatsoever of the possibility of there being more than one occurrence. Similarly, there was no stated agreement that the Court would determine the number of occurrences after the entry of a verdict and after the jury was excused.

South Carolina law is clear that it is for the jury to determine whether there were multiple occurrences. It would be impossible for the court to determine the number of occurrences without knowing the basis for the jury's verdict. It would be inappropriate for this court to speculate as to the basis for the jury's verdict or to make post-trial findings of fact that come within the exclusive province of the jury.

Because Plaintiffs failed to request a verdict form in compliance with *Chastain*, they cannot now ask the Court to find multiple occurrences, and are limited to a single occurrence.

*See Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 191, 708 S.E.2d 787, 797

(Ct. App. 2011) ("We find that Appellants had an obligation to request a special interrogatory once the jury returned its verdict. Appellants waived appellate review of this issue because they failed to request a special interrogatory when the deciding jury was available and in place to review such a matter.").

**CONCLUSION**

The court finds that the jury's verdict is limited to the statutory cap of \$300,000 for Kellie Bingham and \$300,000 for Kayla Bingham.

AND IT IS SO ORDERED.

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_, 2023



Charleston Common Pleas

**Case Caption:** Kellie Bingham VS Medical University of South Carolina

**Case Number:** 2017CP1005699

**Type:** Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762



Kellie Bingham et al  
PLAINTIFF(S)

Medical University of South Carolina  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Plaintiffs' motion for reconsideration of the court's May 5, 2023 order (granting Defendant's motion to reduce the verdict in accordance with the statutory cap and denying Plaintiffs' motion to determine the number of occurrences) is DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/16/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Charleston Common Pleas

**Case Caption:** Kellie Bingham VS Medical University of South Carolina

**Case Number:** 2017CP1005699

**Type:** Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

---

Civil Action No.: 2017-CP-10-05699

---

Kellie Bingham and Kayla Bingham .....Appellants,

-v-

Medical University of South Carolina.....Respondent.

---

PROOF OF SERVICE

---

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by emailing a copy of the same, this 9th day of June 2023.

M. Dawes Cooke, Jr., Esq.  
John W. Fletcher, Esq.  
BARNWELL, WHALEY, PATTERSON, AND HELMS, LLC  
P.O. Drawer H (29402)  
211 King Street, Suite 300  
Charleston, SC 29401  
(843) 577-7700  
Counsel for Defendant Medical University of South Carolina

[SIGNATURE PAGE FOLLOWS]

By:  \_\_\_\_\_

John E. Parker, Esq.  
John E. Parker, Jr., Esq.  
Post Office Box 487  
Hampton, South Carolina 29924  
Phone: (803) 903-1781  
Fax: (803) 903-1793  
[jparker@parkerlawgroupsc.com](mailto:jparker@parkerlawgroupsc.com)  
[jayparker@parkerlawgroupsc.com](mailto:jayparker@parkerlawgroupsc.com)

**Attorneys for Appellants**