

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
Doyet A. Early, III, Circuit Court Judge

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JUL 23 2013

S.C. Supreme Court

Opinion Number 2012-UP-475 (S.C. Ct. App. filed Aug. 1, 2012)

Supreme Court Appellate Case No. 2013-000225

Paresh Shah, M.D. and Paresh Shah, M.D., P.A., Petitioners,

v.

Palmetto Health, f/k/a Richland Memorial Hospital.....Respondent.

SUR-REPLY TO PETITIONER'S REPLY IN SUPPORT OF WRIT OF CERTIORARI

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SUR-REPLY ARGUMENTS

The Respondent (Palmetto) will not endeavor here to correct all of the mis-statements made by the Petitioner (Shah) in his Reply but relies on its Return in opposition to the Shah's certiorari petition. Two matters, however, require a short sur-reply.

I. The 35 Emergency Room Cases

Shah argues that Judge Early erred in finding this issue was not properly before him for failure to raise the issue in the prior contempt motions and memoranda. (Reply at 8). Shah asserts that he specifically raised this issue in a November 24, 2008 memorandum that was "addressed to Judge Keesley [author of the Settlement Orders], years before the hearing before Judge Early" and that this memorandum stated "Members of the MEC also reviewed, considered, and made clinical determinations about medical cases of Patient X and thirty-five emergency department cases without sending them to Dr. Selby [the Outside Reviewer]." (Reply at 8) (underlining in Reply) (quoting App. 253). Shah's argument is simply false.

The November 24, 2008 memorandum, which is actually dated November 12, 2008 (App. 233, 261), was not "addressed to Judge Keesely, years before the hearing before Judge Early." Rather, the memorandum was submitted to Judge Early two days after the commencement of the hearing before Judge Early, which began November 10, 2008. (App. 41; 312). The memorandum made the above-quoted assertion, but Judge Early found it was not properly before him, because it had not been made in the contempt motions and memoranda that had been submitted to Judge Keesley. (App. 41, 41-42). Shah never raised the "35-ER cases" in any of those motions or memoranda. (App. 59-113, *passim*). Thus, Shah's reply argument is manifestly without merit and is based on a false factual premise.

II. Shah's Artful Redactions

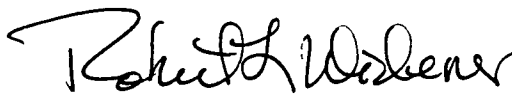
At page 9 of his Reply, Shah complains that his attorneys have been wrongly accused of misquoting the 2008 Consent Order (dismissing the 2006 Action), and he references page 8 of his certiorari petition as not being a misquote of the 2008 Consent Order. (Reply at 9). All of this is simply more artful redaction, because it ignores the argument actually made by Palmetto.

It is true that Shah accurately quotes the relevant portion of the 2008 Consent Order at page 8 of his certiorari petition in summarizing the procedural history of the case. At page 15 of his certiorari petition, however, where he argues about the meaning of the 2008 Consent Order, Shah clearly redacts the 2008 Consent Order to change its plain meaning. Palmetto's argument that Shah had "artfully" redacted the 2008 Consent Order was made in response to that argument at page 15 of Shah's certiorari petition. (See Cert. Return at 11-12, citing p. 15 of Cert. Pet.).

CONCLUSION

For the reasons set forth above, and for the reasons stated in Palmetto's Brief of Respondent, Return to Petition for Rehearing, Return to Petition for a Writ of Certiorari, which are incorporated herein, it is respectfully submitted that this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,



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