

RECEIVED

May 28 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
In the Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000952

Kelly Bingham and Kayla Bingham ..... Appellants-Respondents,

v.

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

**RESPONDENT-APPELLANT'S MOTION FOR LEAVE TO FILE RULE 60(A)  
MOTION FOR RELIEF FROM FEBRUARY 7, 2023 ORDER**

M. Dawes Cooke, Jr., Esq. (S.C. #1376)  
John W. Fletcher, Esq. (S.C. #69550)  
BARNWELL WHALEY PATTERSON &  
HELMS, LLC  
211 King Street, Suite 300 (29401)  
PO Drawer H  
Charleston, SC 29402  
Phone: (843) 577-7700 Fax: (843) 577-7708  
*Counsel for Respondent-Appellant Medical  
University of South Carolina*

**RESPONDENT-APPELLANT'S MOTION FOR LEAVE TO FILE RULE 60(A)**  
**MOTION FOR RELIEF FROM FEBRUARY 7, 2023 ORDER**

AND NOW COMES Respondent-Appellant Medical University of South Carolina (“MUSC”), by and through its undersigned counsel, and moves this Court for an Order granting certain relief to rectify an obvious clerical error in the Court's February 7, 2023 Form 4 Order:

**INTRODUCTION**

1. In this lawsuit, Plaintiffs Kellie and Kayla Bingham ("Plaintiffs") allege that they are monozygotic identical twin girls who, on May 5, 2016, were second year medical students at MUSC. On that date, Plaintiffs were both taking their Block 12 examination, which was being monitored remotely in real time by Debra Hazen-Martin, PhD, the Associate Dean for Curriculum of Basic Sciences. Plaintiffs allege that Dr. Hazen-Martin and Dr. Laura Kasman made defamatory statements about them relating to allegations of academic dishonesty.

2. This case was tried in the trial court by jury before the Honorable Kristi Curtis from November 14-18, 2022, resulting in a verdict in favor of Plaintiffs for \$750,000 each.

3. On November 28, 2022, Defendant MUSC filed its Post-Trial Motions, asking the trial court “for a judgment *non obstante veredicto* . . . , for a new trial, or for such other relief as the Court deems appropriate under the circumstances.” MUSC's Post-Trial Motions also asked the Court to reduce the verdicts from \$750,000 to \$300,000 for each Plaintiff to conform them to the South Carolina Tort Claims Act caps.

4. The following day (November 29, 2022), Plaintiffs filed a Motion to Determine the Number of Occurrences, asserting that there were multiple "occurrences" under the Tort Claims Act and that, as a result, the trial court should not reduce the verdict.

5. On February 1, 2023, the trial judge conducted oral argument on the parties' post-trial motions.

6. On February 7, 2023—before ruling on the post-trial motions—the trial court entered a Form 4 order reciting the jury's verdict. In relevant part, the order states as follows:

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

The jury unanimously found in favor of Plaintiffs Kayla Bingham and Kellie Bingham for the defamation cause of action in the amount of \$750,000 for Kayla Bingham and \$750,000 for Kellie Bingham on November 18, 2022.

ORDER INFORMATION

This order  ends  does not end the case.

See Page 2 for additional information.

(See Ex. A). This Form 4 Order makes no explicit or implicit reference to, let alone adjudicate, the pending post-trial motions that both sides had filed. It only references the jury verdict.

7. On May 5, 2023, the Court entered an Order Granting Defendant's Motion to Reduce the Verdict Per the SCTCA and Denying Plaintiff's Motion to Determine Number of Occurrences. (See Ex. B). In that Order, the trial judge found "that the jury's verdict is limited to the statutory cap of \$300,000 for Kellie Bingham and \$300,000 for Kayla Bingham."

8. On May 15, 2023, the Court entered a Form 4 Order denying MUSC's Post-Trial Motions and asked Plaintiffs' counsel to draft a formal order consistent therewith. (See Ex. C). On September 19, 2023, Judge Curtis entered a detailed formal Order denying MUSC's Post-Trial Motions.

9. On or about June 9, 2023, Plaintiffs filed a Notice of Appeal from Judge Curtis' May 5, 2023 order reducing the jury's verdict to conform with the South Carolina Tort Claims Act.

10. On June 12, 2023, MUSC filed a Notice of Cross-Appeal from, *inter alia*, the denial of its post-trial and trial motions. On October 16, 2023, MUSC filed its second Notice of Appeal from the trial court's September 19, 2023 formal Order.

11. The parties filed cross-appeals to the South Carolina Court of Appeals. On May 16, 2024, Plaintiffs filed their Reply Brief as Appellants. In that Reply Brief, Plaintiffs argued, *inter alia*, that (emphasis added):

The Court entered this Order after MUSC's post-trial motions, the Bingham's motion to determine the number of occurrences, and all supporting memoranda had

been filed, and after the motions were heard by the Circuit Court on February 1, 2023. Because the box indicating that the Order ended the case has been checked, and the order indicates that it is a separate, standalone “Statement of Judgment”, the Order clearly meets the requirements of a final judgment under the plain language of the Rules of Civil Procedure.

(See Pl.'s Init Br. as Respondent, at 20).

12. Plaintiffs argue that, because the box marked "This Order ends the case" was checked on the February 7, 2023 Form 4, "the Order clearly and unequivocally does just that: it disposes of all pending motions and any other matters related to the verdict by ending the case as to all of the parties." (See *id.*, at 22).

13. They continue by stating: "There was no further amount of relief to be determined. The Order does not set forth that any further action was necessary to settle and determine the entire controversy, and it does not indicate that a formal order would be forthcoming." (See *id.*).

14. Plaintiffs contend that—because this box was checked on the February 7, 2024 Form 4—MUSC was required to file a Rule 59 motion and/or appeal from *that order*. Because MUSC did not do so, they conclude that MUSC did not properly preserve this issue for appellate review.

15. This was the first time that Plaintiffs raised the checking of this box in support of their argument that the checking of this box on the February 7, 2024 order prevented MUSC from making certain arguments on Plaintiffs' appeal.

16. Respectfully, Plaintiffs' representations to the Court are inaccurate. Irrespective of which box was checked on the Form 4, the trial court did not intend for the February 7, 2023 Form 4 to "dispose[] of all pending motions" or that "[t]here was no further relief to be determined."

17. Clearly, the trial court's February 7, 2023 Order was not intended to finally resolve all issues, particularly those pertaining to the statutory cap on damages under the South Carolina Tort Claims Act. We do not need to speculate about what the Court intended. Less than two months later (on May 5, 2023), this Court ruled that the verdict should be reduced to \$300,000 per Plaintiff under the Tort Claims Act. On May 15, 2023, the Court indicated it would be denying MUSC's Post-Trial Motions—aside from its request to reduce the verdict.

18. If, as Plaintiffs now argue, the trial court intended for the February 7, 2023 Form 4 to finally end the case and resolve all motions, it would not have subsequently: (a) reduced the jury's verdict; (b) denied MUSC's substantive post-trial motions; and (c) denied Plaintiff's Motion to Determine Number of Occurrences.

19. To the extent Plaintiffs now argue that the trial court's checking of this box expressed an intention to finally end the case and dispose of all pending motions, this is inconsistent with the trial court's own actions.

20. It is apparent that the checking of this box on the February 7, 2023 Form 4 was a mere clerical error by the trial court.

21. Pursuant to S.C.R. Civ. P. 60(a):

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

*See* S.C.R. Civ. P. 60(a).

22. In light of the foregoing, MUSC wishes to file a motion asking that the trial judge correct this obvious mistake in the February 7, 2023 Form 4.

23. Respondent-Appellant MUSC respectfully moves this Court to grant it leave to file such a motion.

WHEREFORE, for the foregoing reasons, Respondent-Appellant Medical University of South Carolina moves this Honorable Court to grant it leave to move the trial court, pursuant to South Carolina Rule of Civil Procedure 60(a), to grant relief as to a clerical error in the February 7, 2023 Form 4.

BARNWELL WHALEY PATTERSON &  
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq. (S.C. #1376)

John W. Fletcher, Esq. (S.C. #69550)

211 King Street, Suite 300 (29401)

PO Drawer H

Charleston, SC 29402

Phone: (843) 577-7700 Fax: (843) 577-7708

***Counsel for Respondent-Appellant Medical  
University of South Carolina***

May 28, 2024

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
In the Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000952

Kelly Bingham and Kayla Bingham..... Appellants-Respondents,

v.

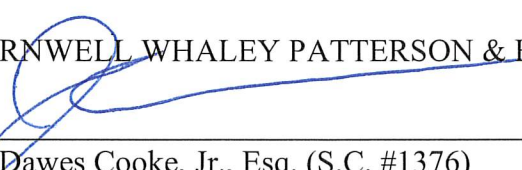
Medical University of South Carolina .....Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT-APPELLANT'S MOTION FOR LEAVE TO FILE RULE 60(A) MOTION FOR RELIEF FROM FEBRUARY 7, 2023 ORDER** on counsel for the above-referenced Appellants-Respondents by email in accordance with the South Carolina Supreme Court's Order re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) on May 28, 2024, addressed to her attorneys of record:

John E. Parker, Esq.  
John E. Parker, Jr., Esq.  
PARKER LAW GROUP, LLP  
101 Mulberry Street East  
Post Office Box 487  
Hampton, SC 29924-0457  
Phone: (803) 943-2111  
*Attorneys for Appellants-Respondents Kellie Bingham and Kayla Bingham*

BARNWELL WHALEY PATTERSON & HELMS, LLC

By:   
M. Dawes Cooke, Jr., Esq. (S.C. #1376)  
John W. Fletcher, Esq. (S.C. #69550)  
211 King Street, Suite 300 (29401)  
PO Drawer H  
Charleston, SC 29402  
Phone: (843) 577-7700 Fax: (843) 577-7708  
*Counsel for Respondent-Appellant*