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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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AUG 19 2013
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

ALISON RENEE LEE, Circuit Court Judge

Case No. 2011-CP-40-08373

JOSEPH D. McMASTER,.....Appellant,

v.

JOHN H. DEWITT, M.D. AND CAROLINA
PSYCHIATRIC SERVICES, P.A.,Respondents.

**MOTION TO ENLARGE TIME FOR RETURN; MOTION TO VACATE
ORDER GRANTING RESPONDENTS RELIEF; RETURN TO
RESPONDENTS' MOTIONS TO STRIKE; AND APPELLANT'S MOTION
TO STRIKE IN THE ALTERNATIVE**

The Court of Appeals has ordered that a motion to strike deposition excerpts and an affidavit of an expert be stricken. The Appellant asks that the order be vacated and for an enlargement of time to file a return to the motion to strike which was consolidated by the respondents only on August 8, 2013. Appellant should have until at least August 19, 2013 (the tenth day being Sunday)

to respond.

With these motions, the appellant submits the following return.

The respondents moved to strike matters designated by the appellant to be included in the record on appeal. The appellant opposes the motions, but if the respondents' motions are granted, then the appellant in turn asks that matters designated by the respondents also be stricken.

The appellant designated matters to be included in the Record on Appeal on June 18, 2013. The designated matters included portions of the deposition testimony of the appellant Joseph D. McMaster and the affidavit of appellant's expert, Dave McAlister Davis, M.D.

On July 18, 2013, respondent John H. DeWitt moved to strike designations of appellant's deposition testimony and the expert's affidavit on grounds they had not been submitted for consideration of the summary judgment motion that caused this appeal. Respondents had sought an enlargement of time until August 17, 2013, to file responses to the initial brief of appellant and designations of matter. Consequently, appellant's counsel waited for the filings of respondent Carolina Psychiatric Services, P.A. Carolina Psychiatric Services P.A by letter joined respondent DeWitt's motion to strike on August 8, 2013.

The respondents assert that they submitted only excerpts from the deposition, but not the deposition in its entirety.

Rule 56(c), SCRCF, provides that the "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission

on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

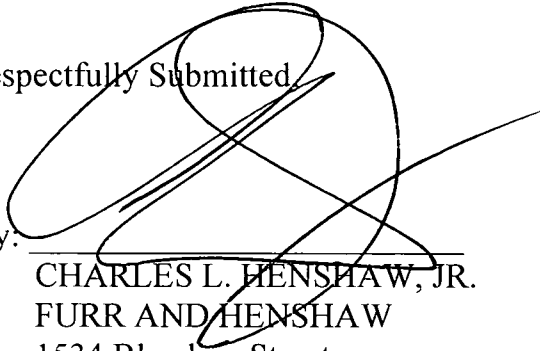
The appellant asserts that the trial judge failed to consider material parts of McMaster’s deposition and seeks to produce those material and relevant parts in the Record on Appeal.

If the deposition in its entirety was not subject to the judge’s consideration, then Respondents should not have excerpts from the deposition produced in the Record on Appeal as requested in their Designations of Matter. In that instance, the appellant moves to strike the Designation of Matter by respondents pertaining to any excerpts of the McMaster deposition on grounds that the deposition in its entirety was not made part of the hearing record.

As to the affidavit of Dr. Davis, it was submitted with the Notice of Intent to File Suit, which initiated the claim pursuant to S.C. Code § 15-79-125. Consequently, it was also subject to the judge’s consideration. Respondent DeWitt has designated the Notice of Intent to File Suit to be part of the Record on Appeal, and should not be allowed to separate the affidavit of Dr. Davis that was integral to that filing.

Respectfully Submitted,

By:



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August 19, 2013

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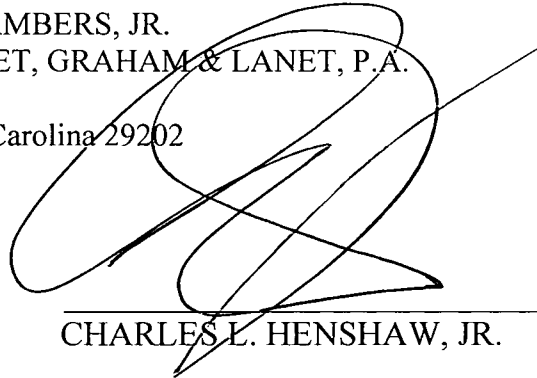
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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served a copy of the foregoing **MOTION TO ENLARGE TIME FOR RETURN; MOTION TO VACATE ORDER GRANTING RESPONDENTS RELIEF; RETURN TO RESPONDENTS' MOTIONS TO STRIKE; AND APPELLANT'S MOTION TO STRIKE IN THE ALTERNATIVE** upon the individual whose name and address are listed below by placing a copy of it in the United States Mail with proper first-class postage affixed thereon.

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CHARLES L. HENSHAW, JR.

DATED: August 19, 2013

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