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Nov 13 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

Kellie Bingham and Kayla Bingham Appellants-Respondents,

v.

Medical University of South CarolinaRespondent-Appellant.

**RESPONDENT-APPELLANT MEDICAL UNIVERSITY OF SOUTH CAROLINA'S
CONSENT MOTION FOR LEAVE TO FILE APPENDIX TO RECORD ON APPEAL**

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**RESPONDENT-APPELLANT MEDICAL UNIVERSITY OF SOUTH CAROLINA'S
CONSENT MOTION FOR LEAVE TO FILE APPENDIX TO RECORD ON APPEAL**

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. Plaintiffs allege that employees of MUSC 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, *inter alia*, to reduce the verdicts to conform to the South Carolina Tort Claims Act. On November 29, 2022, Plaintiffs filed a Motion to Determine the Number of Occurrences, asserting that the trial court should not reduce the verdicts because there were multiple "occurrences."

4. On February 7, 2023, the trial court entered a Form 4 order (“Form 4 Order”), stating in part:

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.

5. On May 5, 2023, the trial court entered an Order finding “that the jury’s verdict is limited to the statutory cap of \$300,000 for Kellie Bingham and \$300,000 for Kayla Bingham.”

6. The parties appealed (Plaintiffs) and cross-appealed (MUSC) various orders to this Court.

7. On May 16, 2024, Plaintiffs filed their Reply Brief as Appellants, arguing in part that the Form 4 Order was a final judgment that should have been appealed because the box indicating that it ended the case had been checked. (See Pl.'s Init Br. as Respondent, at 20).

8. On May 28, 2024, Respondent-Appellant MUSC filed in this Court a Motion for Leave to File Rule 60(A) Motion for Relief from February 7, 2023 Order, arguing that the checking of that box was a clerical error by the trial judge. On July 1, 2024, the Court granted MUSC leave to file a motion under Rule 60(a) with the trial court.

9. On July 16, 2024, Respondent-Appellant MUSC filed its Notice of Motion and Motion for Relief Pursuant to Rule 60(a) as to February 7, 2023 Form 4 Order (“Rule 60 Motion”) in the trial court.

10. During July, 2024, the parties filed the Record on Appeal and their final briefs in this appeal.

11. On October 29, 2024, the trial judge granted MUSC’s Rule 60 Motion and entered the attached Order Granting Defendant’s Motion for Relief Pursuant to Rule 60(a) as to February 7, 2023 Form 4 Order (“October 29, 2024 Order”).

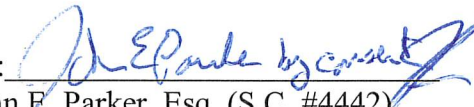
12. The October 29, 2024 Order is potentially relevant to some of the arguments made in this appeal.

13. The parties agree that the Record on Appeal should be supplemented with an Appendix including only the attached October 29, 2024 Order.

WHEREFORE, for the foregoing reasons, Respondent-Appellant Medical University of South Carolina—with the consent of Appellants-Respondents Kellie Bingham and Kayla Bingham—moves this Honorable Court to grant it leave to file an Appendix to the Record on Appeal containing the attached October 29, 2024 Order.

WE CONSENT:

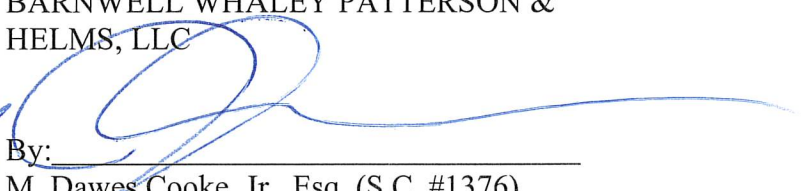
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Kellie Bingham and Kayla Bingham***

November 13, 2024

WE SO MOVE:

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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.](#)

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. The Court subsequently entered an Order denying Defendant's motion for a new trial or for judgment notwithstanding the verdict.

Pursuant to S.C.R. Civ. P. 60(a), "[c]lerical 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." *See* S.C.R. Civ. P. 60(a). The Court erroneously checked the box stating that "[t]his order ends the case" on the February 7, 2024 Form 4 Order. This was a clerical error. The Court did not intend for the February 7, 2024 Form 4 Order to be a final order or final judgment. The Court was aware that there were pending motions that needed to be decided before it could enter final judgment on the verdict.

Therefore, the Court GRANTS Defendant's Motion for Relief Pursuant to Rule 60(a) as to February 7, 2023 Form 4 Order.

It is hereby ORDERED, ADJUDGED, and DECREED that the February 7, 2024 Form 4 Order is hereby amended and corrected so that the box stating that "[t]his order ends the case" is not checked and the box stating that "[t]his order does not end the case" is checked. The February 7, 2024 Form 4 Order is not a final order or judgment..

IT IS SO ORDERED!

BY THE COURT

Dated: October __, 2024
Charleston, South Carolina

Honorable Kristi F. Curtis



Charleston Common Pleas

Case Caption: Kellie Bingham VS Medical University of South Carolina

Case Number: 2017CP1005699

Type: Order/Relief

So Ordered

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

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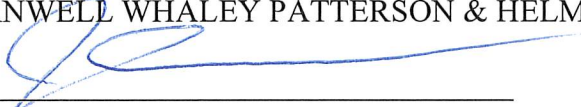
PROOF OF SERVICE

I certify that I have served the **RESPONDENT-APPELLANT'S CONSENT MOTION FOR LEAVE TO FILE RULE 60(A) MOTION FOR LEAVE TO FILE APPENDIX TO RECORD ON APPEAL** 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 November 13, 2024, addressed to her attorneys of record:

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