

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-03410

Dr. Cynthia Holmes, M.D.,

Appellant

v.

East Cooper Community Hospital, Inc.,
and Tenet HealthSystem Medical, Inc.,

Respondents

RECEIVED

APR 27 2012

SC Court of Appeals

**Respondents' Reply in Support of Motion to Compel Appellant to Compile, Serve,
and File a Supplement or Appendix to the Record on Appeal to Include Matters
Designated by Respondents but Wholly or Partially Excluded by Appellant
and
Motion for an Extension of the Time in Which to Serve and File Their Final Brief**

Pursuant to Rule 240(f), SCACR, Respondents East Cooper Community Hospital, Inc., and Tenet HealthSystem Medical, Inc. ("Respondents") respectfully submit this reply in support of their motion to compel the Appellant to compile, serve, and file a supplement or appendix to the Record on Appeal to include documents which, although designated for inclusion by the Respondents, were wholly or partially omitted from the Record on Appeal by the Appellant.

Since Respondents' motion was filed, this Court issued a letter to the Appellant's counsel, asking him to comply with Rule 210(g), SCACR, or, in the alternative, to file a motion requesting the Court accept the Record on Appeal as filed. This letter appears to address the issues associated with Respondents' motion and seems to render the

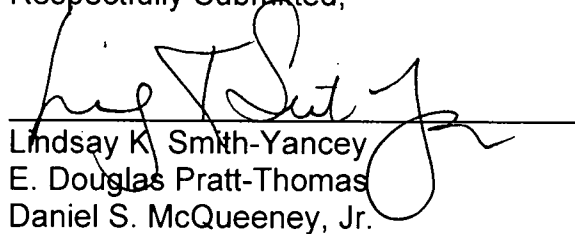
motion moot, at least in the short term. To the extent the Appellant files a motion for the Court to accept the Record on Appeal as filed, Respondents reserve their right to respond to that motion as necessary. Respondents would also reiterate their prior request for an extension of time to file and serve their final brief until after this issue is resolved.

With respect to the Appellant's claim that Respondents failed to fulfill their duties regarding Rule 11, SCRCP, the e-mail attached to the Appellant's Return indicates the substance of the Record on Appeal was indeed discussed between the parties' counsel, and that the matter was left unresolved. Appellant's counsel specifically confirmed in e-mail communications his position that Respondents would need to file a motion if they desired certain materials to be included in the Record on Appeal and that he would "consider this discussion [sic] by email as fulfilling your obligation to confer prior to filing." (Exhibit A)

With respect to the remaining errors in the Record on Appeal, the parties had previously discussed the need for Respondents to file a motion regarding the content of the Record on Appeal at the time these additional omissions were noted by Respondents' counsel. Since a motion was going to be filed either way, there did not appear to be any useful purpose in discussing the remaining omissions prior to filing the motion. See Rule 11 (recognizing that consultation is unnecessary if it would serve no useful purpose). In fact, there was no reason to address these matters separately, as Respondents requested the Supplemental Record contain materials which Appellant's counsel specifically refused to include. This issue needed to be addressed before *any* Supplemental Record should be prepared. Moreover, given that the Respondents' final

brief was due on the day the motion was filed, consultation could not have been timely held. See Rule 11 (consultation unnecessary where it could not have been timely held).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel S. McQueeney, Jr.", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Lindsay K. Smith-Yancey
E. Douglas Pratt-Thomas
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
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(843) 727-2200
Attorneys for Respondents

Charleston, South Carolina
April 26, 2012

IN THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-03410

Dr. Cynthia Holmes, M.D.,

Appellant,

v.

East Cooper Community Hospital, Inc.,
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Respondents.

PROOF OF SERVICE

I certify that I have served *Respondents' Reply in Support of Motion to Compel Appellant to Compile, Serve, and File a Supplement or Appendix to the Record on Appeal to Include Matters Designated by Respondents but Wholly or Partially Excluded by Appellant and Motion for an Extension of the Time in Which to Serve and File Their Final Brief* on Appellant Cynthia Holmes, M.D., by depositing a copy of it in the United States Mail, postage prepaid, on April 26, 2012, addressed to her attorney of record, Chalmers C. Johnson, 523 So. G Street, Apartment #402, Tacoma, WA 98405.



Alison A. B. Preacher
Paralegal to E. Douglas Pratt-Thomas,
Lindsay K. Smith-Yancey and
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
(843) 727-2230
Attorneys for Respondents

Exhibit #1



Chalmers Johnson <chalmersjohnson@gmail.com>

record on appeal

3 messages

Chalmers Johnson <chalmersjohnson@gmail.com>

Thu, Mar 22, 2012 at 7:48 PM

To: Lindsay Smith-Yancey <Lsy@p-tw.com>, Chip McQueeney <dsm@p-tw.com>

Cc: Colten Holmes <coltenh708@msn.com>

Dear Lindsay and Chip,

I am finishing up the record on appeal in this case and I have identified two documents that you designated, which can not be included in the record on appeal, namely the motion for sanctions and the order granting them. Of course, my position is that these could not possibly have been "before the Court" in coming to a decision on summary judgment, as neither were filed until after the order granting Summary Judgment, so they can not be included in the record on appeal. See Rule 210(c) SCACR "The Record shall not, however, include matter which was not presented to the lower court or tribunal." I will be finishing up the record on appeal soon. If you think you have some basis for including these documents, please let me know what it is. I will be available for a conference tomorrow at 11am my time (pacific time), which is 2pm your time, if you feel like you need to have a conference and file a motion to supplement the record.

Chalmers Johnson

Chip McQueeney <dsm@p-tw.com>

Fri, Mar 23, 2012 at 11:09 AM

To: Chalmers Johnson <chalmersjohnson@gmail.com>, Lindsay Smith-Yancey <lsy@p-tw.com>

Chalmers:

The sanctions order was issued by the Court, and the motion was presented to the Court, as required by the rule. This issue has arisen at least once before in another case I am involved in on appeal, and the Court required the additional matter be included in the Record on Appeal. If the designated items are not included in the Record, we will need to file a motion to have you supplement the Record. Thanks.

Chip

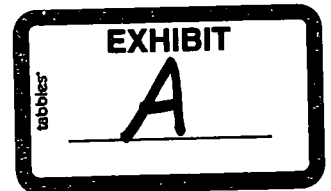
From: Chalmers Johnson [mailto:chalmersjohnson@gmail.com]

Sent: Thursday, March 22, 2012 10:49 PM

To: Lindsay Smith-Yancey; Chip McQueeney

Cc: Colten Holmes

Subject: record on appeal



Dear Lindsay and Chip,

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Chalmers Johnson

Chalmers Johnson <chalmersjohnson@gmail.com>
To: Chip McQueeney <dsm@p-tw.com>
Cc: Colten Holmes <coltenh708@msn.com>

Fri, Mar 23, 2012 at 11:13 AM

Chip,
Thanks for responding so quickly. I realize that the same court issued the sanctions order, but since it was after the order on appeal, I think that Rule 210 would preclude it. Just due to the timing, it could not possibly have had any effect on the order under appeal. The fact that that particular order is now the subject of another appeal means that the Court will be considering it independently. If you need to file a motion, I will consider this discussion by email as fulfilling your obligation to confer prior to filing. I should have the record on appeal done this evening or at least by the end of the weekend.
Chalmers

[Quoted text hidden]

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IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

April 26, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Holmes v. East Cooper Comm. Hosp., Inc., et al.
Case No. 2010-CP-10-03410

Dear Ms. Kitchings:

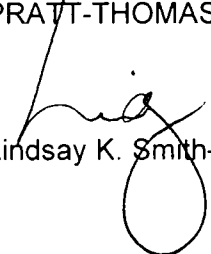
Please find enclosed an original and seven (7) copies of Respondents' Reply in Support of Motion to Compel in connection with the above-referenced matter. I would appreciate it if you could return a filed copy of the Reply to me in the self-addressed, stamped envelope enclosed herewith.

As evidenced by the enclosed Proof of Service, and by copy of this letter to Appellant's counsel, I am serving Appellant with a copy of the Reply.

Thank you for your assistance in this regard.

With kindest regards, I remain,

PRATT-THOMAS WALKER, P.A.


Lindsay K. Smith-Yancey

LKS-Y:aabp
Enclosure
cc (w/encl): Chalmers C. Johnson, Esquire

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