THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Horry County
Benjamin H. Culbertson, Judge

Jane RM Doe, Respondent

v.

Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia Consultants, Cardiology and Arrhythmias Consultant, Institute of Electrophysiology, P.C.

Of whom Omar Jaraki and Halla Jaraki are the Appellants

Appellate Case No. 2012-212373

APPELLANTS' PETITION FOR REHEARING
Unpublished Opinion No. 2013-UP-444
Filed November 27, 2013

COME NOW THE APPELLANTS, who would pursuant to S.C.A.C.R 221, petition this Court for a rehearing in the above matter.

I. Background

This case is in the nature of a medical malpractice action. From January 2007 through February, 2008, Respondent came to Dr. Jaraki's medical office on a weekly basis, Tr. 24, lines 1-6, for treatments related to heart problems. Early in that process, while placing EKG leads on Respondent's chest, Respondent claims that Appellant, Omar Jaraki, "cupped" her breast and felt her nipple inappropriately. Tr. 5. She didn't report this however until the following spring, 2008, when she learned another patient

had made a claim against Appellant, Omar Jaraki. Tr. 70, lines 19 – 23. Respondent filed suit for multiple causes of action. Before Respondent's counsel filed an affidavit of default and default judgment had been entered, Appellants filed and mailed a letter to Respondent's counsel within 30 days of service asking for identifying information about the plaintiff. Appellants argued that the letter constituted an answer and "otherwise defended" the action, and alternatively, that good cause existed for granting relief from default. The trial court refused to grant relief from the default judgment. This Court heard oral arguments in this case on November 6, 2013, and affirmed the trial court by order entered November 27, 2013.

II. Grounds for Granting Relief

In the Brief of Appellants' filed in the appeal, the Appellants advanced the following questions for review in this case:

> I. DID THE TRIAL COURT COMMIT ERROR AND ABUSE ITS DISCRETION WHEN IT RULED THAT THE LETTER APPELLANTS SENT SEEKING ADDITIONAL INFORMATION ABOUT THE IDENTITY OF THE RESPONDENT DID NOT CONSTITUTE AN ANSWER OR "OTHERWISE DEFEND" PURSUANT TO S.C.R.C.P. 7 & 55?
>
> II. DID THE TRIAL COURT COMMIT ERROR AND ABUSE ITS DISCRETION WHEN IT RULED THAT THE APPELLANTS HAD FAILED TO ESTABLISH GOOD CAUSE TO BE RELEIVED FROM DEFAULT JUDGMENT PURSUANT TO S.C.R.C.P. 60?

In its Opinion, this Court did not specifically address whether the letters submitted by the Appellants constituted an answer which was sufficient to avoid default judgment pursuant to S.C.R.C.P. 60. This Court did cite authorities which stood for the legal propositions that

> (a) Relief from default judgment under Rule 60(b) requires a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party;
>
> (b) An abuse of discretion arises where the judgment is controlled by an error of law or is based on factual conclusions that are without evidentiary support;
>
> (c) In deciding whether to set aside a default judgment under Rule 60(b), the trial judge should consider (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties;
>
> (d) The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge;
>
> (e) The decision of whether to set aside a default judgment will not be reversed absent an abuse of discretion; and
>
> (f) Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney; the failure to understand the legal process is not excusable neglect under Rule 60(b).

And while the foregoing may implicitly state that this Court is holding that the letters submitted by the Appellants were not adequate to constitute an answer under the rules 7 & 55, the opinion does not directly so hold. Appellants would respectfully request that this Court review the foregoing matters and hold that the letters did constitute a responsive pleading sufficient to avoid default.

Conclusion

Appellants would respectfully request that this Court grant the petition for rehearing and hold that the letters submitted by the Appellants seeking additional

information about the identity of the plaintiff Jane "RM" Doe were sufficient to constitute a responsive pleading pursuant to S.C.R.C.P. 7 and S.C.R.C.P. 55. Accordingly, the trial Court's ruling was controlled by an error of law.

Respectfully submitted,

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

ATTORNEY FOR THE APPELLANTS

This 12 day of December, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Case No. 2010-CP-26-0659

Jane "RM" Doe,

Respondent,

v.

Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia Consultants, Cardiology and Arrhythmias Consultant, Institute of Electrophysiology, P.C.,

Defendants

Of Whom

Omar Jaraki and Halla Jaraki, are Appellants

CERTIFICATE OF SERVICE

This is to certify that I have this 12 day of December, 2013, deposited one copy of the Petition for Rehearing in the U.S. Postal Service with proper postage affixed thereto and addressed to opposing counsel as follows:

John S. Nichols
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

O. Fayrell Furr, Jr., Esquire
Post Office Box 2909
Myrtle Beach, SC 29578

William Isaac Diggs