

STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 19 2014
SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Honorable R. Markley Dennis, Jr.
Circuit Court Judge

C.A. No. 2013-CP10-00088
Ct. App. No. 2013-001673

Beverly C. Moore-Rowe

Appellant,

v.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing and Management, Inc., and Steven Heath Cobb, Respondents.

Respondents.

**RESPONDENTS' MOTION TO COMPEL THE APPELLANT TO COMPLY
WITH THE APPELLATE RULES IN REGARDS TO
THE REPLY BRIEF AND RECORD ON APPEAL**

The Respondents submit this motion to address a number of issues related to the Reply Brief and Record on Appeal from the Appellant, dated June 2, 2014.

1. Incomplete Record on Appeal

Rule 210 requires that the Record on Appeal “shall” include all matter designated to be included by any party. The Record on Appeal does not include three items designated by the Respondents, and includes other items that were not designated by any party.

The Appellant did not include three items designated by the Respondents:

- Motion to Dismiss by Defendants Byron Bailey, M.d., and Charleston Neurosurgical Associates, LLC, filed 4/3/13 (Respondents’ Designation #6);
- Motion to Dismiss by Defendant Steven Heath Cobb, filed 3/15/13 (Respondents’ Designation # 3); and
- Notice of Appeal, filed 8/2/13 (Respondents’ Designation #15).

The Appellant includes several items that were not designated:

- Appellant’s Husband’s Summons & Complaint, filed in the Court of Common Pleas at Case Number: 2013-CP-10-00090, ROA p. 78;
- Notice of Appearance of Jack G. Gresh for Charleston Surgery Center, Limited Partnership, dated March 15, 2013, ROA 121;
- Motion in Opposition of Defendants’ Motion to Dismiss By Appellant, dated May 28, 2013, ROA p. 156; and
- Memorandum in Support of Motion in Opposition of Defendants’ Motions to Dismiss By Appellant, dated May 28, 2013, ROA p. 186.

The Respondents respectfully ask the Court to strike the Record for noncompliance, or in the alternative, compel the Appellant to correct the Record to comply with the Rules, include the items omitted and remove the items that were not designated.

2. Improper Service of the Initial Reply Brief and Record on Appeal

The Reply Brief and Record on Appeal were not properly served in compliance with Rules 208(a)(3), 210(a), 262, 267. Rule 208(a)(3) requires that the appellant “shall” serve one copy of the reply brief on all parties to the appeal. Rule 210(a) likewise

requires that the appellant “shall” serve a copy of the Record on Appeal on each party who has served a brief. Rule 267 addresses certain requirements for the form of all appellate papers, including margins and binding, and paper size and type. Rule 262 governs filing and service. The Certificate of Service submitted to the Court by the Appellant states that she served a copy of the reply brief and record on appeal on all counsel as listed; however, the accompanying cover letter to Counsel – which was not sent to the Court – evidences that the Appellant sent the Counsel a disk, not hard copies of the brief and record. [Copy attached.] In the cover letter, the Appellant stated that she would send paper copies if requested, but in light of the fact that the Record is incomplete/inaccurate as indicated above, the Respondents would simply request that the Appellant serve a paper copy of any corrected Record as may be ordered by the Court in response to this motion as well as all other filings as required by the Rules.

Respondents Nurse Anesthesia of South Carolina, LLC, Jeffery Wager, CRNA, and Tammy McGraw a/k/a Tammy McGraw Speicher, CRNA would also note that the Appellant did not serve their Attorney at the correct address as shown on her own Notice of Appeal and on the Respondents’ Initial Brief and Designation. Co-counsel for another Respondent has shared the electronic files, and Mr. Dunlap has separately written to the Appellant reminding them of the correct address.

3. New Issue raised in Reply Brief

In her Reply Brief, the Appellant raises a new issue asserting that the trial court abused its discretion in failing to extend the 45 day grace period of S.C. Code Ann§ 15-36-100, in the interests of justice. (Reply Brief of Appellant, pgs. 13-14). The Respondents would ask that the issue be stricken. Glasscock, Inc. v. U.S. Fid. & Guar.

Co., 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (“an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief”). In the alternative, the Respondents request that they be allowed the opportunity to submit a sur-reply to address this new issue.

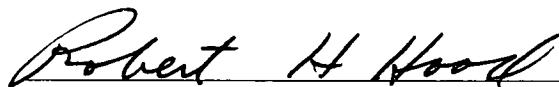
Request to Hold Final Briefing in Abeyance

Pursuant to Rule 211, the Respondents are required to file and serve their final brief within 20 days of service of the Record on Appeal. Based on the Appellant’s certificate of service, the final brief would be due June 23, 2014. The Respondents would request that the Court hold the final brief due date in abeyance pending disposition of this motion and service of a Record on Appeal that fully complies with all the Appellate Rules.

Conclusion

While the Appellant is proceeding *pro se*, the Respondents maintain that she still must comply with the Appellate Court Rules in regards to the matters set forth above. WHEREFORE, the Respondents respectfully move the Court to strike the Record on Appeal or to compel the Appellant to comply with this Court’s Rules as addressed above.

Respectfully submitted,


Robert H. Hood(2599)/James B. Hood(70212)
For All Respondents with Permission as Listed Below

June 17, 2014

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Bon Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital and Roper St. Francis Healthcare,
Roper St. Francis Healthcare, Roper St.
Francis Foundation, d/b/a Roper St. Francis
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Roper Hospital, Inc., d/b/a Roper St. Francis
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Beverly C. Moore-Rowe

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June 2, 2014

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Letter to Mr. Sanders, et al
Monday, June 2, 2014
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BEVERLY C. MOORE-ROWE

SC Court of Appeals

RE: Beverly C. Moore-Rowe vs. Bon Secours-St Francis Xavier Hospital, Inc., et al
Court Of Appeals Case Number: 2013-001673
Charleston County Civil Action No.: 2013-CP10-00088

Dear Ladies and Gentlemen:

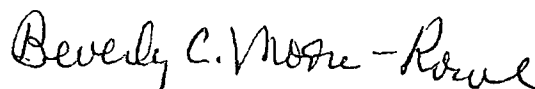
I am serving upon you, copies of the Reply Brief, and the Record On Appeal. Due to the amount of Pages, I am requesting that you please accept the PDF copies being provided to you on the enclosed CD. I am of course willing to accept from you your copies of your Records on Appeal and your Briefs by receipt of PDF files on CD's. If you should nevertheless require hard copies, please inform me of the same and I will send you the hard copies upon request.

I am also enclosing a copy of the Proof of Delivery. I am simultaneously mailing the originals and 14 bound copies of the Record On Appeal to the S.C. Court of Appeals.

Thank you for your consideration.

With kind regards, I am

Sincerely yours,



Beverly C. Moore-Rowe

BCM-R
Enclosures

June 17, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals


Re: Beverly C. Moore-Rowe v. Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., **Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D.**, Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing and Management, Inc., and Steven Heath Cobb C/A No. 2013-CP-10-00088 (NOI), Charleston CP Appellate Case No. 2013-001673
HLF File No.: 242.163

Dear Madam Clerk:

Enclosed for filing please find the original and seven (7) copies of the Respondents' Motion to Compel the Appellant to Comply with the Appellate Rules in Regards to the Reply Brief and Record on Appeal regarding the above-referenced case, along with our firm check for the filing fee. Please return a clocked-in copy of each in the envelope provided. By copy of this letter, I am serving the Pro-se Appellant and all counsel.

Kind regards,

Yours truly,


for James B. Hood

JBH/jad
Enclosures

cc: Beverly C. Moore-Rowe / Arthur Peter Rowe
Christine K. Toporek, Esquire
Fred W. Suggs, III, Esquire
Darren K. Sanders, Esquire
Jack G. Gresh, Esquire
Jonathan Dunlap, Esquire