

# The South Carolina Court of Appeals

Grand Strand Regional Medical Center, LLC,  
Respondent,

v.

South Carolina Department of Health and  
Environmental Control, Respondent below.

Grand Strand Regional Medical Center, LLC,  
Respondent,

v.

South Carolina Department of Health and  
Environmental Control and Carolina Regional Cancer  
Center, Respondents below,

of whom Carolina Regional Cancer Center is the  
Appellant.

Appellate Case No. 2014-000973

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## ORDER

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The South Carolina Department of Health and Environmental Control (DHEC) granted Carolina Regional Cancer Center (Appellant) a Certificate of Need (CON) to add a linear accelerator to a proposed radiation cancer treatment facility in Conway. At the same time, DHEC found a CON application by Respondent, Grand Strand Regional Medical Center, LLC, seeking to add a linear accelerator facility to its hospital campus was competing, and DHEC denied its application. On appeal to the Administrative Law Court (ALC), the ALC reversed DHEC's decision in part, finding the applications were not competing and both Appellant and Grand Strand should be granted a CON. Appellant appealed the

ALC's decision. Appellant also filed a petition for supersedeas asking this court to stay the ALC's order granting a CON to Grand Strand pending the resolution of the appeal. Specifically, Appellant seeks to prevent Grand Strand from proceeding with the project approved in its CON—adding a linear accelerator facility to its hospital campus.

We deny the petition for supersedeas. Appeals from administrative tribunals are exceptions to the automatic stay requirement of Rule 241(a) of the South Carolina Appellate Court Rules. Rule 241(b)(11), SCACR. However, a supersedeas may be ordered pursuant to Rule 241(c), SCACR. The rule provides that "[i]n determining whether [a supersedeas] should issue . . . [we] should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. We find there is no danger the court will lose jurisdiction or the issues on appeal will become moot if Grand Strand is allowed to proceed with its project. *See S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013) ("A case is moot where a judgment rendered by the [c]ourt will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the [c]ourt."). Grand Strand acknowledges it would have to cease operations at its facility if this court reverses the ALC's decision approving its CON. Therefore, whether Grand Strand proceeds with construction and operation of its facility will not moot the issues on appeal or strip this court of jurisdiction.

Appellant also asserts it will face "severe consequences" if Grand Strand is allowed to add linear accelerator services to its hospital campus "just three miles away from Appellant's existing operations." Appellant argues "[a]llowing two new linear accelerators to come online in such close proximity to [Appellant's] existing units will adversely impact the existing units in a substantial way" because referral patterns among doctors in the area will change.<sup>1</sup> Appellant maintains the \$489,431.25 bond it was required by statute to post upon appeal<sup>2</sup>

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<sup>1</sup> Appellant also contends Grand Strand's project will result in the "unnecessary duplication of facilities and services and increased health costs," which are the "very consequences the CON Act was designed to prevent."

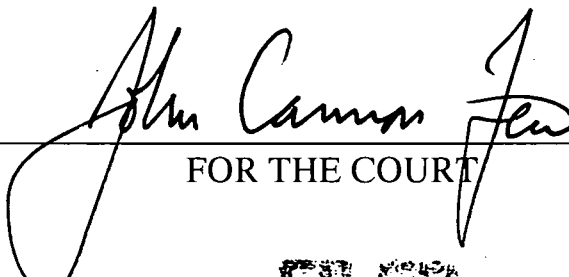
<sup>2</sup> Section 44-7-220(B) of the South Carolina Code (Supp. 2013) requires a party seeking the reversal of the ALC's decision to approve a CON application to deposit a bond with this court "in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars." If the ALC's decision is

requires this court to grant a supersedeas, which in turn will protect Appellant's competitive interests during the pendency of the appeal because Grand Strand will not be allowed to proceed with its project. We do not believe the General Assembly drafted section 44-7-220(B) with the intent of protecting the losing party's competitive interests during a CON appeal. To the extent Grand Strand was wrongfully granted a CON, as Appellant asserts, this court's ruling on the merits in Appellant's favor—not a stay—will protect Appellant's competitive interests.

Appellant further argues section 44-7-220(B) yields an absurd result if a supersedeas is not required in exchange for it posting a bond, "[d]espite the lack of the word 'stay' in the . . . bond provision." However, our rules of statutory construction do not allow courts to add language to statutes. *See Consumer Advocate for the State of S.C. v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) ("The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." (quoting *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951))). Accordingly, this court will not read into section 44-7-220(B) a requirement that supersedeas must be granted in exchange for Appellant posting its appeal bond.

Finally, Appellant argues the substantial bond requirement amounts to an unconstitutional impairment of its right to due process unless the court imposes a stay on the ALC's order. We decline to address this issue at this time, though Appellant is free to raise the issue when addressing the merits of this appeal.

Therefore, after careful consideration, Appellant's petition for supersedeas is denied.

  
FOR THE COURT C.J.

Columbia, South Carolina

**FILED**  
12/16/14

cc: William R. Thomas, Esquire

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affirmed or the appeal is dismissed, the bond must be awarded to the party whose project is subject to the appeal. S.C. Code Ann. § 44-7-220(B) (Supp. 2013).

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