

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Civil Action No. 2010-CP-10-3410
Appellate Case No.: 2015-000187

C. Holmes, M.D.

Appellant,

v.

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

Respondents.

**REPLY TO APPELLANT'S RESPONSE
TO RESPONDENTS' MOTION TO DISMISS**

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MAR 23 2015

SC Court of Appeals

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Attorney for Appellant

Respondents East Cooper Community Hospital, Inc., and Tenet HealthSystem Medical, Inc. (collectively “Respondents”), by and through their undersigned counsel, hereby reply to Appellant’s Response to Respondents’ Motion to Dismiss this appeal. As set forth fully below, Appellant’s Response fails to show that Appellant’s appeal was timely served or filed.

I. Appellant’s *pro se* motion to reconsider filed in the trial court did not stay the deadlines for serving and filing of her appeal.

Rule 203(b)(1) of the South Carolina Appellate Court Rules (ACR) states “a notice of appeal shall be served on all respondents within thirty (30) days after receipt of notice of entry of the order or judgment. When a timely motion...to alter or amend the judgment (Rule 52 and 59)...has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.”

Appellant’s appeal arises from a post-remittitur motion filed in the trial court moving for withdrawal of her motion to dismiss Respondents’ counterclaims filed before summary judgment dismissal and appellate affirmation in the case. **See Exhibit 7 to Respondent’s Memorandum in Support of Motion to Dismiss Appeal.** Appellant’s motion was heard and rejected by The Honorable R. Markley Dennis, Jr., who issued a Form 4 order dated October 29, 2014, and entered November 3, 2014. Appellant has failed to supply the Court of Appeals or Respondents with the date on which she received notice of this order. However, it is clear Appellant had notice of this order by at least November 15, 2014, as this is the date of her *pro se* motion to reconsider said order in the trial court. **See Exhibit 12 to Respondent’s Memorandum in Support of Motion to Dismiss Appeal.** As fully

explained in Respondents' previously submitted Motion to Dismiss and supporting Memorandum of Law, Appellant's *pro se* motion to reconsider was in violation of the December 2009 order of the South Carolina Supreme Court because it was not signed by another attorney. **See Exhibit 1 to Respondent's Memorandum in Support of Motion to Dismiss Appeal.** Because Appellant's *pro se* motion for reconsideration is in violation of this Supreme Court order, it is defective and did not stay the time in which Appellant had to file her appeal of Judge Dennis' October 29, 2014 order. And because Appellant had notice of this order by November 15, 2014 she was required to serve Respondents with a compliant notice of appeal by December 15, 2014 and file it with the Court of Appeals and trial court by December 29, 2014. Appellant's notice of appeal filed in the Court of Appeals on January 30, 2015 is more than a month beyond this deadline, and should be dismissed for this reason.

II. Appellant's notice of appeal is untimely even outside the numerous procedural defects and deficiencies outlined above and in Respondents' previously submitted Motion to Dismiss and supporting Memorandum of Law.

In her Response, Appellant argues her notice of appeal was timely served on Respondents, relying on Respondents' admission that on January 20, 2015, they received Appellant's *pro se* notice of appeal dated January 14, 2015. Appellant further alleges Respondents' affidavits of non-service regarding an entirely different notice of appeal filed in the Court of Appeals by Charles Goldberg, Esq., on January 30, 2015 are contrary to the afore-mentioned admission. Appellant either misunderstands the sequence of the filings relating to this matter or is intentionally trying to cause further confusion to the procedural mess she has created with her prohibited *pro se* practice.

Yes, Respondents did receive Appellant's *pro se* notice dated January 14, 2015 on January 20, 2015; however, this is not the notice which initiated the instant appeal. The notice giving rise to the instant appeal is the notice signed by Mr. Goldberg and filed in the Court of Appeals on January 30, 2015. **See Appellant's Notice of Appeal received by Court of Appeals January 30, 2015.** While the notice filed by Mr. Goldberg was also dated January 14, 2015, it was not the same notice of appeal received by Respondents January 20, 2015, and contained different language as to the orders purporting to be appealed. **Id., as compared to Exhibit 14 of Respondents' Memorandum of Law in Support of Motion to Dismiss.** As indicated in Respondents' Motion to Dismiss and supporting Memorandum of Law and affidavits, Respondents have never been served with notice of appeal signed by Mr. Goldberg, the very notice which is the subject of this appeal.

The above referenced filing requirements of the ACR indicate an Appellant must file with the Court of Appeals the same notice of appeal previously served on Respondents. **ACR Rule 203(d)1(B); Rule 203(d)1(B)(i-iii).** These rules do not reference or allow amendments to the notice in the ten (10) days between the time an Appellant is required to make service on Respondents and file the notice with the courts. Indeed, Appellant herein has never requested permission to file or proceed on an amended notice of appeal.

Regardless, even if Appellant's service of her *pro se* January 14, 2015 notice constitutes service of the different notice of appeal signed by Mr. Goldberg as contemplated by ACR Rule 203(d)1(B), the notice signed by Mr. Goldberg is still untimely filed. As fully shown in Respondents' Motion to Dismiss and supporting Memorandum of Law, the January 14, 2015 *pro se* notice of appeal is deficient and procedurally defective in a number of respects, including lack of filing with the trial court and the Court of Appeals, as well as

contrary to the December 2009 Order of the SC Supreme Court. **See Exhibit 1 to Respondent's Memorandum of Law in Support of Motion to Dismiss.** However, even if said deficiencies didn't exist, and viewing the timing of the various filings in the light most favorable to Appellant, the notice signed by Mr. Goldberg is still untimely.¹

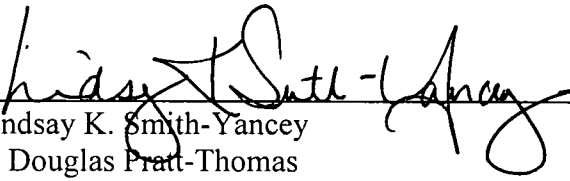
Both the *pro se* notice of appeal as well as the notice signed by Mr. Goldberg purport to appeal Judge Dennis' order dated December 3, 2014 and entered December 9, 2014, denying Appellant's *pro se* motion for reconsideration of his earlier order dated October 29, 2014, denying Appellant's post-remittitur motion. Notice of entry of Judge Dennis' December 3, 2014 order was served on the parties December 10, 2014 via first class mail. **Exhibit A.** As such, Appellant's thirty (30) day deadline to serve her notice of appeal on Respondents began to run December 15, 2014, requiring said service on or before January 15, 2014. **Rule 6 (a) South Carolina Rules of Civil Procedure (SCRCP); Rule 203 (b)(1) South Carolina Appellate Court Rules (ACR).** Appellant was next required *file* the notice of appeal in the trial court and Court of Appeals by January 25, 2014. **ACR Rule 203(d)1(B).** She was also required to *file* her proof of service, copies of the orders on appeal, and submit the filing fee to the Court of Appeals by January 25, 2015 as well. **ACR Rule 203(d)1(B)(i-iii).** This was not done. The notice of appeal signed by Mr. Goldberg and the required attending documents were not filed in the Court of Appeals until January 30, 2015, five (5) days after expiration of this deadline. **See Appellant's Notice of Appeal received by Court of Appeals January 30, 2015.** Therefore, the instant notice of appeal is untimely and should be dismissed.

¹ Respondents do not waive and specifically preserve all arguments set forth in this Reply as well as in their previously submitted Motion to Dismiss and supporting Memorandum of Law.

For the foregoing reasons, as well as those contained in Respondents' Motion to Dismiss and supporting Memorandum of Law, Appellant's notice of appeal should be dismissed.

Respectfully submitted,

March 20, 2015



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APPEAL FROM CHARLESTON COUNTY
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The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-3410

C. Holmes, M.D.

Appellant,

v.

East Cooper Community Hospital, Inc.
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PROOF OF SERVICE

I certify that I have served *Reply to Appellant's Response to Respondents' Motion to Dismiss* on Appellant Cynthia Holmes, M.D., by service via Federal Express – First Overnight Delivery, postage prepaid, on March 20, 2015, addressed to her attorney of record, Chalmers C. Johnson, Esq., 1029 Bay Street, Apt. 7, Port Orchard, WA, 98366.

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SC Court of Appeals

Dolores M. Catapano

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Paralegal to E. Douglas Pratt-Thomas,
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RETURN SERVICE REQUESTED



www3.charlestoncounty.org

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LINDSAY K SMITH-YANCEY
PO BOX 22247
CHARLESTON SC 29413-2247

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

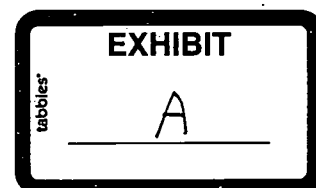
Order/plntff's mot filed on 11/19/14 is improper; Judge

CASE NO: 2010CP1003410

Cynthia Dr Md Holmes VS East Cooper Community Hospital Inc Etc , defendant, et al

This judgment was entered on the 09th day of December, 2014, and a copy mailed first class on Wednesday, December 10, 2014, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.



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Via Federal Express-First Overnight Delivery

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

RE: C. Holmes, M.D. v. East Cooper Community Hospital, Inc. and Tenet HealthSystem Medical, Inc.
Case No. 2010-CP-10-3410
Appeal Tracking No.: 2015-000187

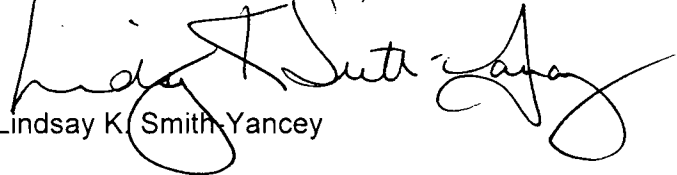
Dear Ms. Kitchings:

Please find enclosed for filing an original and seven (7) copies of Reply to Appellant's Response to Respondents' Motion to Dismiss 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.

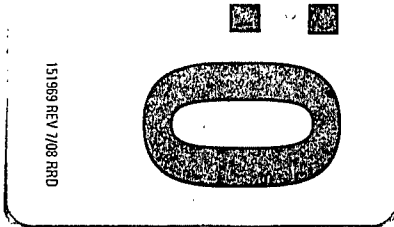
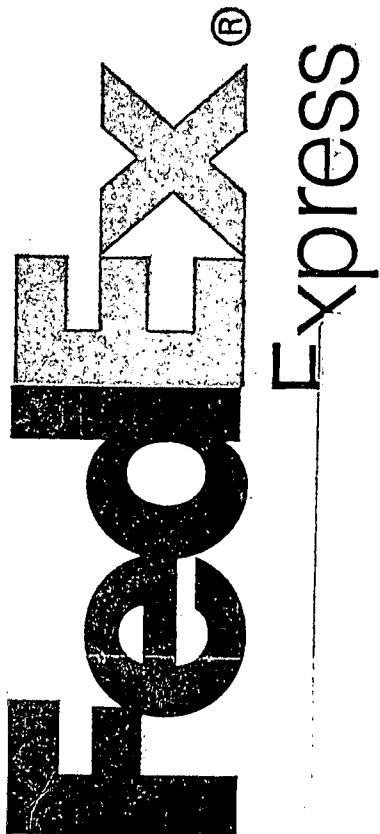
As evidenced by the enclosed Proof of Service, and by copy of this letter to Appellant's counsel, I am serving Appellant with a copy of the Reply.

With kindest regards, I remain,

PRATT-THOMAS WALKER, P.A.


Lindsay K. Smith-Yancey

LKS-Y:dmc
Enclosure
cc: Chalmers C. Johnson, Esquire



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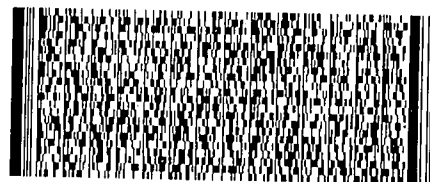
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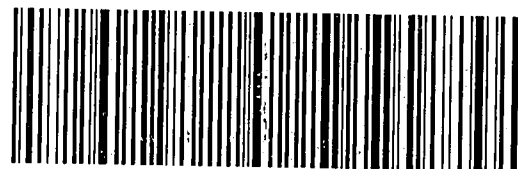
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