

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAY 12 2015

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

ALISON RENEE LEE, Circuit Court Judge

Appellate Case No. 2015-00361

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

JOSEPH D. McMASTER,

Petitioner,

v.

JOHN H. DEWITT, M.D. and CAROLINA
PSYCHIATRIC SERVICES, P.A.,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RETURNS

The petitioner replies to the Returns to Petition for Writ of Certiorari as follows:

1. DeWitt inappropriately included "additional excerpts from Mr. McMaster's deposition that were not presented to Judge Lee to counter the excerpts Mr. McMaster now submits to this court." See DeWitt Return, fns. 3 &4. In fact, DeWitt successfully moved at the Court of

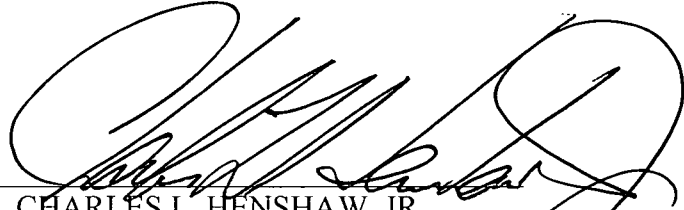
Appeals to strike the Record on Appeal of any deposition excerpts not considered by Judge Lee, including excerpts of McMaster's attestation that his memory at the deposition was poor. Unfortunately, Judge Lee did not review the deposition in its entirety, but only those portions submitted by DeWitt.

2. There is a significant inconsistency between the finding of the trial court and the appeals court. The trial court found that McMaster only suspected physician misconduct when he was told by DeWitt the diagnosis of "Adderall induced psychosis." (ROA 81). The appeals court, on the other hand, found that "Dr. DeWitt's knowledge" was "immaterial" as to when the statute of limitations ran. *See* Appendix p. 8. If McMaster's discovery of wrongdoing was dependent on DeWitt's knowledge, as the trial court found, then DeWitt's knowledge was essential to the court's finding. DeWitt's knowledge and the timing of the disclosure were material questions of fact.

3. Carolina Psychiatric Services, P.A., lists one of the considerations for certiorari is whether the case presents a novel question of law. The Court of Appeals *de novo* adopted an abuse of discretion standard for review of the trial court's decision to reject McMaster's affidavit as sham. *See* Appendix at pp. 4-5. This standard of review does not appear to have been previously considered by the South Carolina Supreme Court.

Respectfully submitted,

By:



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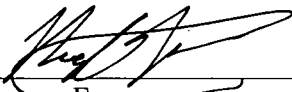
May 12, 2015

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this date served the foregoing Petitioner's Reply to Respondents' Returns, via hand delivery, upon the individuals whose names and addresses appear below.

Mr. James Edward Bradley
Moore, Taylor & Thomas
1700 Sunset Boulevard
West Columbia, SC 291717

Mr. R. Gerald Chambers
Turner, Padgett, Graham & Laney
1901 Main Street
Columbia, SC 29201



Regan Freeman

Dated: 5-12-15, 2015

F&H

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S.C. Supreme Court

Charles L. Henshaw, Jr.

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
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Reply To:

COLUMBIA

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Supreme Court – Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: Joseph McMaster v. John DeWitt
Appellate Case No. 2015-00361

Dear Mr. Shearouse:

Please find enclosed the original and seven copies of the Petitioner's Reply to Respondents' Returns in the above-captioned case.

Please file the original and six of the copies. Please send one of the clocked-in copies back with the courier of this letter.

I have also enclosed a check in the amount of \$25.00 for the filing fee.

By copy of this letter, I am serving the same on Respondents' counsel.

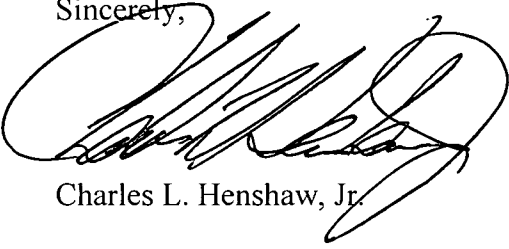
May 12, 2015

McMaster

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With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Henshaw, Jr.", written in a cursive style.

Charles L. Henshaw, Jr.

CLHJr/akh

Enclosures

cc: James Edward Bradley
Gerald Chambers