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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 18 2015

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-3127

Angela Dawn Simmons, as general guardian of
Jerry Dale Simmons,.....Respondent

vs.

Foothills Anesthesia Consultants, P.C. and Adam D. Evec, D.O.....Appellants

RESPONDENT'S MOTION TO DISMISS APPEAL

The Respondent hereby moves the Court for an order dismissing the appeal in this action. The Order which has been appealed is an order denying the Appellants' oral motion to consolidate the action for personal injury, Civil Action No. 2012-CP-42-3127, with the action for loss of consortium, Civil Action No. 2012-CP-42-3125. The oral motion was made at a hearing on May 8, 2015 on Respondent's motion to compel. The oral motion was made ten (10) days prior to the trial date. The oral motion was denied by an email dated May 8, 2015 sent by the Trial Judge's law clerk. The Appellants requested that a written

order be issued. The Trial Judge agreed to issue a written order, and the undersigned submitted a proposed order. Upon information and belief, no written order has been issued as of yet. Thus, this is an appeal of the notice sent by email by the law clerk that the oral motion to consolidate had been denied.

This motion to dismiss is made upon the ground that the interlocutory order in question is not an order identified in S.C. Code Ann. Section 14-3-330 as being subject to an immediate appeal. The order in question is not one "involving the merits" under Section 42-3-330(1). The order does not affect a "substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action" under Section 42-3-330(2). The order is not a final order made "in any special proceeding or upon a summary application in any action after judgment" under Section 14-3-300(3). Finally, the order is not one "granting, continuing, modifying or refusing an injunction or granting, continuing, modifying or refusing the appointment of a receiver" under Section 42-3-330(4).

Upon information and belief, this appeal is frivolous and/or was taken solely for the purposes of delay. The trial date of May 18, 2015 was set months ago. Two weeks were set aside when the Spartanburg Regional Healthcare System was still in the case. Prior to filing this motion, a request was made to Appellants' attorneys for any authority for an immediate appeal and no response was made. Sanctions should be imposed pursuant to Rule 269, SCACR.

The Respondent asks this Court for an expedited ruling on her motion to dismiss, which if granted, may still enable the consortium case to be tried the week of

May 26, 2015.

The Affidavit of Pope D. Johnson, III is submitted in support of the Respondent's Motion to Dismiss Appeal.



Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (Fax)
pope@popejohnsonlaw.com
Attorney for the Respondent

Columbia, South Carolina
May 18, 2015

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AFFIDAVIT OF POPE D. JOHNSON, III

PERSONALLY APPEARED BEFORE ME, Pope D. Johnson, III, who being duly sworn, deposes and says:

1. I am Pope D. Johnson, III, attorney for the Respondent. I make this affidavit based upon personal knowledge and in support of the Respondent's Motion to Dismiss Appeal.
2. This case is an action for personal injury involving medical negligence that, according to Respondent, left her husband, then age 41, in a persistent vegetative state.
3. This action and the action for loss of consortium were filed on July 26, 2012 and the Appellants were joined on or about January 7, 2013.
4. These actions were determined to be complex and assigned to The Honorable

Roger L. Couch by an Order dated July 29, 2014. The Order makes it clear that the cases were not consolidated at that time.

"3. Absent further order of the judge set forth in paragraph 2, the above cases shall not be considered as consolidated, shall retain their individual case numbers, and shall be disposed of on an individual basis." See Order, Exhibit A.

5. The Appellants did not move to consolidate until May 8, 2015 when their counsel made an oral motion to consolidate at a hearing that was scheduled on Respondent's motion to compel discovery. Judge Couch's law clerk announced by email that the motion to consolidate was denied. See Exhibit B.

6. Appellant' counsel requested a written order and Judge Couch agreed to issue a written order. See Exhibit C.

7. I submitted a proposed order on May 14, 2015. See Exhibit D. To my knowledge, it has not yet been signed.

8. Prior to filing this motion, I asked Appellants' attorney for any authority that held that this order was immediately appealable. See Exhibit E. Appellants' attorney did not respond.

9. Upon information and belief, this appeal is frivolous and taken solely for delay. Upon information and belief, there is no basis for this immediate appeal. The court should decide whether sanctions should be imposed pursuant to Rule 269, SCACR.

10. The undersigned requests that the Court rule on this motion this week as it may be possible to try the loss of consortium case the week of May 28, 2015.

SWORN TO AND SUBSCRIBED BEFORE ME

this 18th day of May, 2015

[Signature]
Notary Public for South Carolina

My Commission Expires: 8/1/2016

[Signature]
Pope D. Johnson, III

POPE D. JOHNSON, III
Attorney at Law

1230 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE 803-799-9791
FAX 803-253-6084

Direct Dial: 803-376-8965
E-Mail: pope@popejohnsonlaw.com

May 18, 2015

(Via Hand Delivery)

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

RECEIVED
MAY 18 2015
SC Court of Appeals

Re: Angela Dawn Simmons v. Foothills Anesthesia Consultants, P.C. and Adam
D. Evec, D.O.
Case No. 2012-CP-42-3125


Dear Ms. Kitchings:

Enclosed herewith are the original and seven (7) copies of Respondent's Motion to Dismiss Appeal regarding the above-referenced action. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original and six (6) copies of the Motion and clock and return the additional copy to me.

With a copy of this letter to Ashby W. Davis and David L. Williford, attorneys for the Appellants, I am serving a copy of the Motion upon them.

I am delivering a copy of this letter with the motion to Chief Judge Few. I ask that Chief Judge Few assist me in getting my motion to dismiss resolved this week on an expedited basis so, if possible, the loss of consortium case can be tried next week.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: The Honorable John C. Few	(Via Hand Delivery)
The Honorable Roger L. Couch	(Via Email)
Ashby W. Davis, Esquire	(Via Email and First Class Mail)
David L. Williford, Esquire	(Via Email and First Class Mail)

POPE D. JOHNSON, III
Attorney at Law

1230 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE 803-799-9791
FAX 803-253-6084

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SC Court of Appeals

Direct Dial: 803-376-8965
E-Mail: pope@popejohnsonlaw.com

May 18, 2015

(Via Hand Delivery)

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

Re: Angela Dawn Simmons, as general guardian of Jerry Dale Simmons v.
Foothills Anesthesia Consultants, P.C. and Adam D. Evec, D.O.
Case No. 2012-CP-42-3127

Dear Ms. Kitchings:

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Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: The Honorable John C. Few	(Via Hand Delivery)
The Honorable Roger L. Couch	(Via Email)
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PROOF OF SERVICE

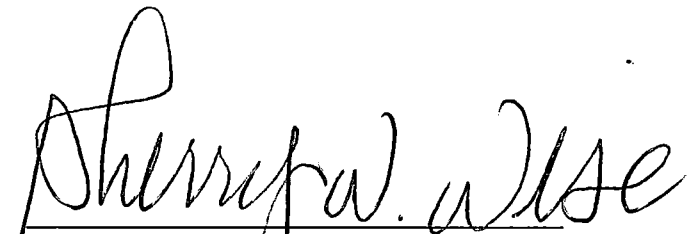
I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Ashby W. Davis and David L. Williford, attorneys for the Appellants, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 18th day of May, 2015.

COUNSEL SERVED:

Ashby W. Davis, Esquire
David L. Williford, Esquire
Davis Snyder & Williford, P.A.
5 Hawthorne Park Court
Greenville, SC 29615

PLEADINGS:

Respondent's Motion to Dismiss Appeal



Sherry W. Wise