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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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-42-3125

Angela Dawn 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 loss of consortium, Civil Action No. 2012-CP-42-3125, with the personal injury case, Civil Action No. 2012-CP-42-3127. 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.

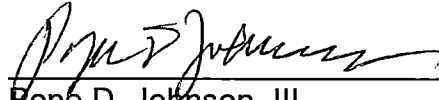
This motion to dismiss is made upon the ground that the interlocutory order in question is not an order identified in S.C. Code Ann. Section 14-3-330 as being subject to an immediate appeal. The order in question is not one "involving the merits" under Section 42-3-330(1). The order does not affect a "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 Dismissal Appeal.



Pope D. Johnson, III
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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 loss of consortium involving medical negligence that, according to Respondent, left her husband, then age 41, in a persistent vegetative state.
3. This action for loss of consortium and the personal injury case 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 10th day of May, 2015

Shirley W. Wise
Notary Public for South Carolina

My Commission Expires: 8/1/2016

Pope D. Johnson, III
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PROOF OF SERVICE

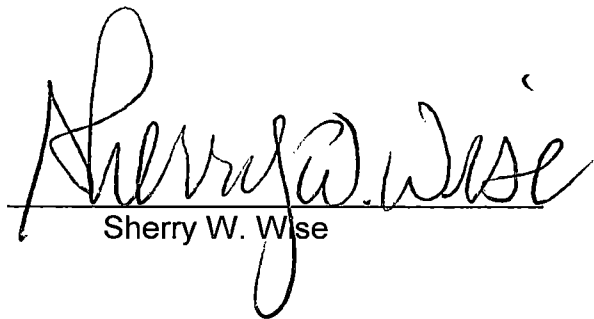
I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Ashby W. Davis and David L. Williford, attorneys for the Appellants, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses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