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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

C.A. No.: 2013-CP-22-0817

Appellate Case No. 2015-000674

**RECEIVED**  
MAY 20 2015  
SC Court of Appeals

Elizabeth Ribelin ..... Respondent

v.

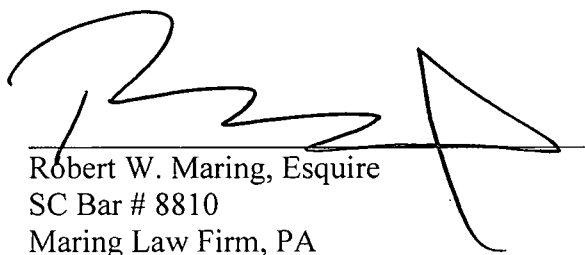
Waccamaw Chiropractic & Wellness Center, LLC, and Jeff Evans ..... Appellants.

**NOTICE OF MOTION AND MOTION TO DISMISS APPEAL**

TO: Waccamaw Chiropractic & Wellness Center, LLC, and Jeff Evans, Appellants

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through her undersigned counsel, hereby moves before the Court of Appeals for an Order Dismissing Appellants' Appeal on the grounds that the trial Court's Order denying Defendant's Motion to Dismiss is not immediately appealable pursuant to SC Code Ann. §14-3-330.

May 18, 2015



Robert W. Maring, Esquire  
SC Bar # 8810  
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Counsel for Respondent

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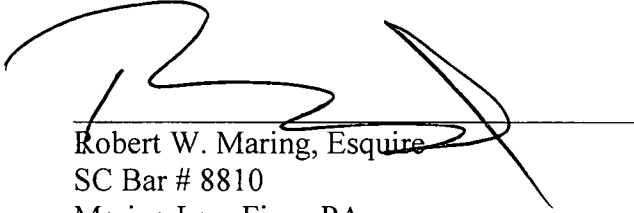
Elizabeth Ribelin ..... Respondent

v.

Waccamaw Chiropractic & Wellness Center, LLC, and Jeff Evans ..... Appellants.

**MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS**

May 13, 2015



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## I. STATEMENT OF ISSUES PRESENTED

Whether the Order Denying Defendant's Motion to Dismiss is appealable pursuant to SC Code Ann. §14-3-330.

## II. INTRODUCTION / FACTS

This appeal derives from a negligence / medical malpractice action filed in Georgetown County, South Carolina, by the Respondent. The Respondent initially filed a Notice of Intent to File Suit pursuant to the South Carolina Medical Malpractice Reform Act of 2005, SC Code Ann. § 15-79-110 *et seq.* and SC Code Ann. § 15-36-100. Subsequent to the filing of the action, Appellants filed a Motion to Dismiss the action alleging the Affidavit of the medical expert attached to the Notice of Intent was defective and that the parties had not engaged in mediation within the 120 day timeframe. The Motion to Dismiss was heard by the Honorable Larry B. Hyman, Jr., Presiding Judge of the Fifteenth Judicial Circuit. The Court denied the Appellants' Motion to Dismiss and this interlocutory appeal was filed by the Appellants. The parties have subsequently unsuccessfully mediated the case, and the action was filed within the timeframe prescribed by the Act and is currently pending in the Court of Common Pleas for Georgetown County.

## III. ARGUMENT AND AUTHORITIES

**AN INTERLOCUTORY ORDER WHICH IS NOT GOVERNED BY A SPECIALIZED APPEALABILITY STATUTE MAY NOT BE APPEALED BEFORE THE ENTRY OF FINAL JUDGMENT UNLESS THE ORDER FITS INTO ONE OF THE CATEGORIES SET FORTH IN §14-3-330 OF THE SOUTH CAROLINA CODE.**

An interlocutory order not governed by a specialized appealability statute is not appealable unless it fits into one of the categories listed in §14-3-330 of the South Carolina

Code. (1976 & Supp. 2009). *Ex Parte Capital U-Drive-It, Inc.* 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). The pertinent statute states as follows:

**§14-3-330 Appellate jurisdiction in law cases**

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal;

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An Order affecting 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 of any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying or refusing an injunction or granting, continuing, modifying or refusing the appointment of a receiver; *provided*, that the notice of appeal in any such case must be given within ten days from written notice of the filing of such interlocutory order or decree.

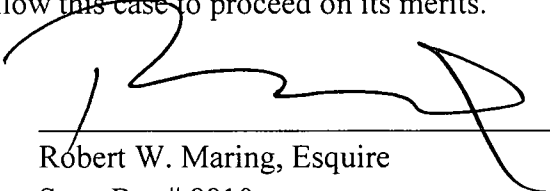
The Appellants' Appeal of a Motion to Dismiss does not fall under any of the categories listed in the statute. The South Carolina Supreme Court has held in *Woodard v. Westvaco Corp.*, 460 S.E.2d 392 (1995), that a Motion to Dismiss under Rule 12(b)(1) was not immediately appealable because it did not fall into any of the categories provided by the statute. Our Courts have routinely held that interlocutory orders denying Motions to Dismiss are not immediately appealable because the issues raised by these motions (1) can be raised again at a later stage in the proceedings, See *McLendon v. SC Highways and Dept. of Transportation*, 436 S.E.2d 539 (1994), (2) do not in effect determine the action, (3) prevent a judgment from which an appeal

might be taken or discontinue the action, and (4) do not involve the merits of the claim. See *Mid-State Distributors v. Century Importers*, 310 SC 330, 426 S.E. 2d 777 (1993).

#### IV. CONCLUSION

This appeal does not arise from a final judgment and therefore is not immediately appealable unless it fits into one of the categories listed in SC Code Ann. §14-3-330. Appellants cannot meet any of the requirements of the statute. First, the Appellants cannot claim that there is a final judgment. This matter may be reviewed by the Court of Appeals after a final judgment in this matter has been entered. Second, the Appellants cannot claim that the intermediate order determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, grants or refuses a new trial, or strikes any pleading in the action. Third, the Appellants cannot claim that this is a final order affecting any claim or right. Finally, the Appellants cannot claim that this order involves an injunction or the appointment of a receiver. In conclusion, the issues presented by the Appellants for consideration by this Court are not ripe for appeal and should therefore be dismissed to allow this case to proceed on its merits.

May 18, 2015



---

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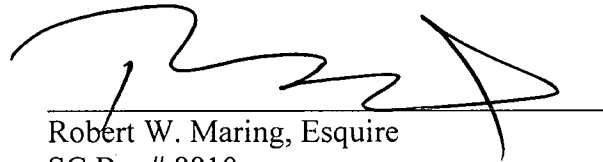
Waccamaw Chiropractic & Wellness Center, LLC, and Jeff Evans ..... Appellants.

**PROOF OF SERVICE**

I certify that on this 18<sup>th</sup> day of May, 2015, a copy of the Notice of Motion and Motion to Dismiss and Memorandum In Support of Respondent's Motion to Dismiss was served on Waccamaw Chiropractic & Wellness Center, LLC, and Jeff Evans, Appellants, by depositing said Notice of Motion and Motion to Dismiss and Memorandum In Support of Respondent's Motion to Dismiss in the U.S. Mail, postage prepaid, addressed to counsel of record as follows:

Jack G. Gresh, Esquire  
Elizabeth Schwartz Corn, Esquire  
Hall Booth Smith, P.C.  
40 Calhoun Street, Suite 550  
Charleston, SC 29401

May 18, 2015



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Counsel for Respondent



Robert W. Maring  
Laura M. Moyer \*  
James D. Floyd  
\* Certified Family Court Mediator

May 18, 2015

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SC Court of Appeals

Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: *Elizabeth Ribelin v Waccamaw Chiropractic & Wellness Center, LLC and Jeff Evans, DC*; Court of Appeal Case No. 2015-000674

Dear Sir/Madam:

Please find enclosed an original and six (6) copies of a Notice of Motion and Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss in the above referenced matter, along with a Proof of Service. Also enclosed is my firm's check in the amount of \$25.00 for the filing of the motion.

Please file these documents with your Court and return a clocked copy to this office in the enclosed prepared envelope.

With kindest regards, I remain

Very truly yours,

Robert W. Maring

RWM:amp

Enclosures

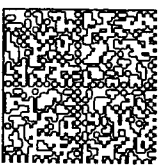
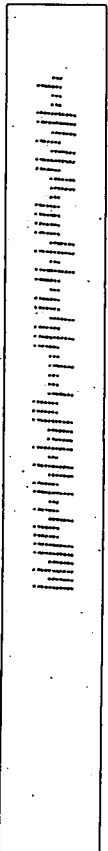
cc: Jack G. Gresh, Esq., counsel for Appellants


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**MARING LAW FIRM, P.A.**  
 1130 Highmarket Street  
 P.O. Box 478  
 Georgetown, SC 29442-0478

**TO:** Clerk of Court  
 South Carolina Court of Appeals  
 P.O. Box 11629  
 Columbia, SC 29211

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**SC Court of Appeals**