

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

JUN 11 2015

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2015-001049

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

vs.

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

**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. I am the attorney for the Respondent in the above-referenced matter and in the consortium case, *Angela Dawn Simmons v. Foothills Anesthesia Consultants, P.C. and Adam D. Evec, D.O.*, Case No. 2015-001047. I make this affidavit based upon personal knowledge.

2. These actions were declared complex and assigned to the Honorable Roger L. Couch by an Order dated July 29, 2014, a copy of which is attached as Exhibit A. The Order confirmed that the actions were not consolidated at that time. The Order stated:

“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.”

3. The defendants never filed a written motion to consolidate the actions.

4. On or about May 7, 2015, I had a conversation with Ashby Davis, the lead

attorney for the defendants. I reminded him that the actions had never been consolidated and that I expected to try the consortium action first on May 18, 2015 since it was the first action filed. He asked me to consent to consolidating the actions and I declined.

5. A hearing was held by Judge Couch on Friday, May 8, 2015 on a motion I had filed. During that hearing, counsel for the defendants made an oral motion to consolidate. Brief arguments were made. Judge Couch took the motion under advisement. Later that day, Judge Couch's law clerk sent the email attached as Exhibit B stating that consolidation would not be allowed. Defendants' attorney requested that a written order be issued so they "may appropriately advise their clients whether or not they wish to file an appeal". Exhibit C. Judge Couch authorized me to submit a proposed written order. Exhibit D. However, before I submitted the proposed written order, the defendants served by mail Notices of Appeal.

6. The Notices were served by mail on Tuesday, May 12, 2015. Although email had been used regularly, the defendants served the Notices by mail without giving notice of the filing by email. I did not receive the Notices of Appeal until late Thursday afternoon, May 14, 2015 and by then it was too late to try to get the Notices dismissed. The Notices did not have a copy of any order as required by Rule 203(d)(1)(B)(ii), SCACR. On May 15, 2015, Attorney Davis emailed copies to Judge Couch advising that the appeals stayed the trial and asking for confirmation that the trial was stayed. Exhibit E. Judge Couch responded through his law clerk that the filing of the Notices stripped his court of jurisdiction and the trial would not proceed. Exhibit F.

7. On Friday, May 15, 2015, I had an exchange of emails with Attorney Davis, a copy of which is attached as Exhibit G. I asked whether he had any research to support the appealability of an order on the oral motion to consolidate. This inquiry went unanswered.

8. The filing of the Notices of Appeal caused the day certain trial of May 18, 2015 to be continued. Witnesses who had arranged to be available had to be notified at the last minute that the trial was postponed.

9. On behalf of my client, I request that a hearing be set to take testimony to determine what sanctions, if any, should be imposed.

SWORN TO AND SUBSCRIBED BEFORE ME

this 11th day of June, 2015

Herbert W. Wise  
Notary Public for South Carolina

My Commission Expires: 8/1/2016

Pope D. Johnson, III  
Pope D. Johnson, III

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

ANGELA DAWN SIMMONS, )  
Plaintiff, )

**CONSENT ORDER GRANTING  
COMPLEX CASE DESIGNATION**

v. )

SPARTANBURG REGIONAL )  
HEALTHCARE SYSTEM, d/b/a )  
Spartanburg Regional Medical )  
Center, Foothills Anesthesia )  
Consultants, P.C. and Adam D. )  
Evec, D.O., )  
Defendants. )

C.A. Number: 2012-CP-42-3125

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

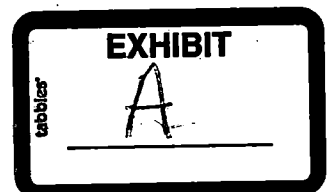
ANGELA DAWN SIMMONS, as )  
general guardian for Jerry Dale )  
Simmons, )  
Plaintiff, )

v. )

SPARTANBURG REGIONAL )  
HEALTHCARE SYSTEM, d/b/a )  
Spartanburg Regional Medical )  
Center, Foothills Anesthesia )  
Consultants, P.C. and Adam D. )  
Evec, D.O., )  
Defendants. )

C.A. Number: 2012-CP-42-3127

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SPARTANBURG COUNTY  
2014 JUL 29 PM 2:46  
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
ANGELA DAWN SIMMONS, individually )	)	
and as general guardian for Jerry Dale )	)	
Simmons, )	)	
	)	
Plaintiff, )	)	
	)	
v. )	)	
	)	
	)	
SPARTANBURG REGIONAL )	)	
HEALTHCARE SYSTEM d/b/a )	)	C.A. Number: 2013-CP-42-00509
Spartanburg Regional Medical )	)	
Center, )	)	
	)	
Defendants. )	)	

This matter involves three separate actions pending before the Spartanburg County Court of Common Pleas: C/A Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509. The matter comes before the Court by way of a Motion for Complex Case Designation of Spartanburg Regional Healthcare System d/b/a Spartanburg Regional Medical Center ("SRHS"). Specifically, SRHS seeks an order granting the above actions as complex case designation and assigning them to The Honorable Roger L. Couch for disposition of all pre-trial and trial matters. The parties to all three actions consent to the relief requested by SRHS.

The three actions relate to the same set of operative facts. Civil Action Nos. 2012-CP-42-3125 and 2012-CP-42-3127 allege medical malpractice. Specifically, Plaintiff Angela Simmons, individually and as general guardian of Jerry Dale Simmons, alleges that Defendants SRHS, Foothills Anesthesia Consultants, P.C., and Adam D. Evec, D.O. provided negligent medical care and treatment to Jerry Simmons in 2010.

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Civil Action No. 2013-CP-42-00509 is a declaratory judgment action. The plaintiff, in her Second Amended Complaint in this action, has asked the Court to declare whether there is \$1,200,000.00 cap on the personal injury claim (C/A No. 2012-CP-42-3127) and a separate cap of \$1,200,000.00 on the loss of consortium claim (C/A No. 2012-CP-42-3125), or whether there is a cap of \$1,200,000.00 for both claims. In addition, the plaintiff has asked the Court to "declare the statutory cap or caps that are available with respect to the plaintiff's claims in the event the plaintiff proves that there were multiple occurrences of medical negligence...." See Second Amended Complaint, Civil Action No. 2013-CP-42-00509, Prayer for Relief. Foothills Anesthesia Consultants, P.C., and Adam D. Evec, D.O. are not parties to the declaratory judgment action.

The Court finds that Civil Action Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509 all involve common questions of fact, law, and application of fact to law. The parties agree that they will all be best served by having one judge preside over the declaratory judgment action and the medical malpractice actions. This will help insure consistent rulings on issues which overlap between the declaratory judgment action and the medical malpractice actions. It will also be more efficient and promote judicial economy if one judge presides over all these actions. The Honorable Roger L. Couch previously has presided over a dispositive motion hearing argued by the parties in C/A No. 2013-CP-42-00509 and already has gained familiarity with some of the issues in these matters.

The Court, therefore, concludes that the interests of justice and judicial economy best will be served if the above three actions are granted complex case designation and assigned to one judge for disposition.

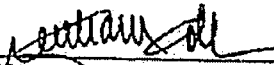
IT IS, THEREFORE, ORDERED:

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1. SRHS's Motion is granted, and Civil Action Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509 are hereby granted complex case designation.
2. The above cases are assigned to The Honorable Roger L. Couch to dispose of all pre-trial and trial matters pertaining to the cases.
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.
4. The parties, at their election, may conduct joint discovery where the interests of efficiency and judicial economy will be served.

IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable J. Derham Cole  
Chief Administrative Judge for Common Pleas,  
Seventh Judicial Circuit

Spartanburg, South Carolina

7/29

\_\_\_\_\_, 2014

(CONSENT SIGNATURE PAGES TO FOLLOW) ✓

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

WE SO MOVE:

HOLCOMBE BOMAR, P.A.



---

Perry D. Boulier  
Joshua T. Thompson  
Post Office Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300

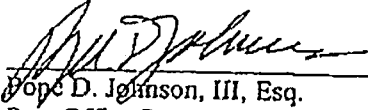
Attorneys for Defendant Spartanburg  
Regional Healthcare System d/b/a  
Spartanburg Regional Medical Center

5

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WE CONSENT:

JOHNSON & BARNETTE, LLP



Pope D. Johnson, III, Esq.  
Post Office Drawer 11209  
Columbia, SC 29211-1209  
(843) 881-8644

Attorneys for Plaintiff

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WE CONSENT:

DAVIS & SNYDER, P.A.

*Ashby W. Davis (w/ permission)*

Ashby W. Davis, Esq.  
5 Hawthorne Park Court  
Greenville, SC 29615  
(864) 335-3500

Attorneys for Defendants Foothills  
Anesthesia Consultants, P.C. and  
Adam D. Evcc, D.O.

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SPARTANBURG COUNTY  
2014 JUL 29 PM 2:46  
M. HOPE BLACKLEY

## Pope Johnson

---

**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [rcouchlc@sccourts.org]

**Sent:** Friday, May 08, 2015 1:44 PM

**To:** Ashby Davis; Couch, Roger L.

**Cc:** Pope Johnson; Keith Knowlton

**Subject:** RE: Motion to Consolidate

Good afternoon,

After hearing the arguments this morning, Judge Couch will not allow consolidation and will continue forward with just one claim at a time. If you have any questions, please let me know.

Kind regards,

John

---

**From:** Ashby Davis [mailto:ADavis@davissnyder.com]

**Sent:** Thursday, May 07, 2015 1:54 PM

**To:** Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.

**Cc:** Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton

**Subject:** Motion to Consolidate

John,

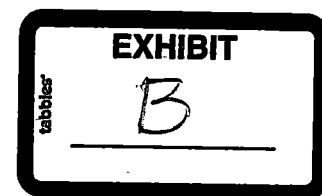
Given the fact that both Amended Complaints are identical, have the same allegations of professional negligence against the same defendants, have the same witnesses and same medical records, Keith Knowlton tomorrow morning will simply make an oral motion to consolidate (Rule 42). We feel strongly that trying both cases together will save substantial costs and time for both parties and will more efficiently dispose of these cases rather than having two separate trials with the same facts, same allegations, and same evidence and witnesses.

Thanks,

Ashby Davis

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6/11/2015



**Pope Johnson**

**From:** Ashby Davis [ADavis@davissnyder.com]  
**Sent:** Friday, May 08, 2015 1:49 PM  
**To:** Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.  
**Cc:** Pope Johnson; Keith Knowlton; David Williford  
**Subject:** RE: Motion to Consolidate

John,

I would respectfully ask for a written order regarding this so we may appropriately advise our clients whether or not they wish to file an appeal.

Thanks,

Ashby

---

**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [mailto:rcouchlc@sccourts.org]  
**Sent:** Friday, May 08, 2015 1:44 PM  
**To:** Ashby Davis; Couch, Roger L.  
**Cc:** Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton  
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John

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**Sent:** Thursday, May 07, 2015 1:54 PM  
**To:** Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.  
**Cc:** Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton  
**Subject:** Motion to Consolidate

John,

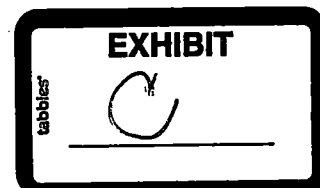
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Thanks,

Ashby Davis

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6/11/2015



**Pope Johnson**

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**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [rcouchlc@sccourts.org]

**Sent:** Thursday, May 14, 2015 10:07 AM

**To:** Pope Johnson

**Cc:** Ashby Davis

**Subject:** RE: Simmons v. Foothills and Evec

Pope, thank you. Judge Couch has also requested that you draft a proposed order regarding the bifurcation of the case.

Secondly, this applies to Pope and Ashby, Judge Couch would like to know why this case has not settled yet. I will be calling your office in 10-15 minutes regarding the issues that stand in between settlement. Judge Couch will not share this information with opposing counsel either. I look forward to speaking with both of you shortly.

John

---

**From:** Pope Johnson [mailto:pope@popejohnsonlaw.com]

**Sent:** Thursday, May 14, 2015 9:49 AM

**To:** Couch, Roger L. Law Clerk (John Connell Jr.)

**Cc:** Ashby Davis

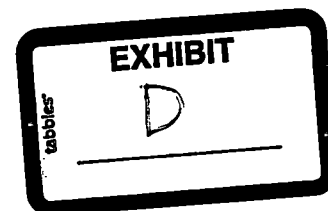
**Subject:** Simmons v. Foothills and Evec

John, attached is a copy of the Second Amended Complaint that I am filing today.

Also attached are the plaintiff's deposition excerpts for the video deposition of Dr. Evec which I submit to Judge Couch pursuant to Rule 32(a)(5), SCRCP.

Pope D. Johnson, III  
Attorney at Law  
1230 Richland Street  
Columbia, SC 29201  
803-799-9791  
803-376-8965 (direct)  
803-730-1078 (cell)  
803-253-6084 (fax)

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6/11/2015

**Pope Johnson**

---

**From:** Ashby Davis [ADavis@davissnyder.com]  
**Sent:** Friday, May 15, 2015 10:18 AM  
**To:** Couch, Roger L.; Couch, Roger L. Law Clerk (Jean Marie Jennings) (rcouchlc@sccourts.org)  
**Cc:** Pope Johnson; David Williford; Trip Lehn  
**Subject:** Simmons  
**Re:** Simmons v. Foothills Anesthesia Consultants, PC and Adam Evec, DO  
Case No. 2012-CP-42-3125 (Loss of consortium)  
Case No. 2012-CP-42-3127 (Medical malpractice)

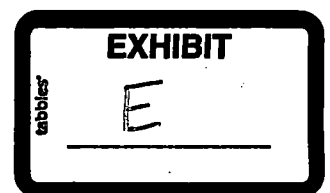
Judge Couch:

Attached are courtesy copies of two notices of appeal we served on Tuesday, appealing your order denying our motion to consolidate these two cases for trial. Pope has received notice of these appeals. Our understanding is that jurisdiction now rests with the Court of Appeals and that the trial scheduled for Monday in the loss of consortium case is now stayed. We would appreciate your acknowledgment of the fact that the case is stayed and that we are not required to appear for trial on Monday. Negotiations between the parties are ongoing, and perhaps the cases can be resolved.

Sincerely,

Ashby W. Davis

6/11/2015



**Pope Johnson**

---

**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [rcouchlc@sccourts.org]

**Sent:** Friday, May 15, 2015 10:30 AM

**To:** Ashby Davis; Pope Johnson

**Subject:** Notice of Appeal

Good morning,

It was the Court's intention to issue a final written Order. As always, it is the Court's right to amend or change it's written Order until it is signed. An Order has yet to be signed. However, it is the Court's understanding that the filing of the notice of intent to appeal removes jurisdiction from this Court as to the cases and therefore, Judge Couch does not intend to proceed with trial on Monday.

Kind regards,

**John F. Connell, Jr.**

Law Clerk to the Honorable Roger L. Couch

Seventh Judicial Circuit

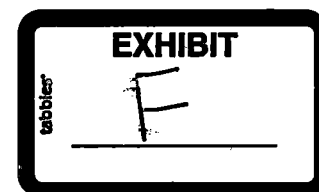
180 Magnolia Street

Spartanburg, SC 29306

Office: (864) 596-2285

Fax: (864) 562-4234

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## Pope Johnson

---

**From:** Ashby Davis [ADavis@davissnyder.com]  
**Sent:** Friday, May 15, 2015 11:16 AM  
**To:** Pope Johnson  
**Subject:** RE: Simmons v. Foothills and Evec

Pope,

I have forwarded your email to Sam at MAG.

Ashby

---

**From:** Pope Johnson [mailto:pope@popejohnsonlaw.com]  
**Sent:** Friday, May 15, 2015 11:08 AM  
**To:** Ashby Davis  
**Cc:** David Williford  
**Subject:** RE: Simmons v. Foothills and Evec

Ashby, if you have any research that supports the appealability of the order denying your oral motion to consolidate, please send it to me.

I am fine with continuing informal settlement negotiations rather than reschedule a mediation. However, since the case is now continued for next week, I would like to have the informal communications next week while everything is fresh. Please ask Sam to call me as the ball is in his court.

Pope D. Johnson, III  
Attorney at Law  
1230 Richland Street  
Columbia, SC 29201  
803-799-9791  
803-376-8965 (direct)  
803-730-1078 (cell)  
803-253-6084 (fax)

---

**From:** Ashby Davis [mailto:ADavis@davissnyder.com]  
**Sent:** Friday, May 15, 2015 10:29 AM  
**To:** Pope Johnson  
**Cc:** David Williford  
**Subject:** RE: Simmons v. Foothills and Evec

Pope,

My clients would prefer continuing informal settlement negotiations as opposed to mediation next week. Our position is that the trial is stayed.

We would only consent to go forward with a trial if the cases are consolidated for trial.

I look forward to hearing from you in this regard.

Ashby

6/11/2015



IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

JUN 11 2015

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

SC Court of Appeals

Roger L. Couch, Circuit Court Judge

Case No. 2015-001049

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

vs.

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

**PROOF OF SERVICE**

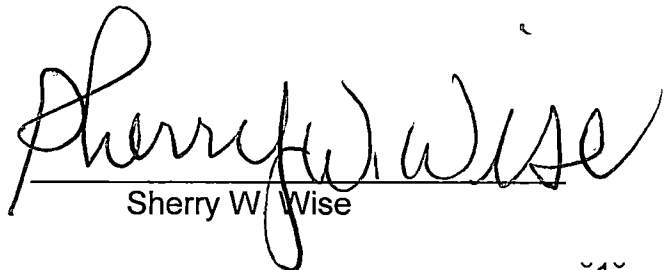
I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Ashby W. Davis and David L. Williford, attorneys for the Appellants, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 11th day of June, 2015.

**COUNSEL SERVED:**

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

**PLEADINGS:**

Affidavit of Pope D. Johnson, III

  
Sherry W. Wise

POPE D. JOHNSON, III  
Attorney at Law

**RECEIVED**

JUN 11 2015

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

SC Court of Appeals

Direct Dial: 803-376-8965  
E-Mail: [pope@popejohnsonlaw.com](mailto:pope@popejohnsonlaw.com)

June 11, 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. 2015-001049

Dear Ms. Kitchings:

Enclosed herewith are the original and seven (7) copies of the Affidavit of Pope D. Johnson, III regarding the above-referenced action. Please file the original and six (6) copies of the Affidavit 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 Affidavit upon them.

Sincerely,

  
Pope D. Johnson, III

PDJIII/sww  
Enclosures

cc: **(Via Email and First Class Mail)**  
Ashby W. Davis, Esquire  
David L. Williford, Esquire