THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YOUR COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2009-CP-46-5195

Angela Patton, as Next Friend of Alexia L., a minor,.....Appellant,

v.

Dr. Gregory A. Miller; Rock Hill Gynecological & Obstetrical Associates, P.A.; and Amisub of South Carolina, d/b/a Piedmont Medical Center,.....Respondents.

RETURN TO PETITION FOR REHEARING

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The Respondents respectfully submit this Return in opposition to the Appellant's Petition for Rehearing.

STATEMENT OF THE CASE

As her primary argument on appeal, Angela Patton[1] asked this Court to abrogate a longstanding principle of South Carolina's common law. This is a medical malpractice case in which the minor plaintiff claims the doctor and nurses who participated in her delivery breached the applicable standards of care. Patton challenges a decision by the trial court to grant partial summary judgment in favor of all Respondents. The trial court based its decision on the common law rule Patton sought unsuccessfully to change.

On November 25, 2009, Alexia L. ("the Minor"), through her "Next Friend" Angela Patton,[2] filed a Summons and Complaint against Dr. Gregory A. Miller and his medical practice, Rock Hill Gynecological & Obstetrical Associates, P.A. ("RHGO"). [R. p. 11.] The pleadings did not list Patton as a party in her own right, nor did they purport to allege or assert any claims on her behalf. [R. p. 11.] All causes of action were alleged, and all relief was sought, in the Minor's name only. [R. p. 11.] Dr. Miller and RHGO filed and served a timely Answer that denied the Minor's entitlement to any relief.

In April 2012, the Minor, again through Patton as her "Next Friend," filed a substantially similar Summons and Complaint against the Respondent Amisub of South Carolina d/b/a

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[1] Although Patton is not an actual party, the Respondents will use the name "Patton" in this Return in place of the more generic "Appellant." This usage will prevent any confusion that might arise from using the names "Patton," "the Minor" and "Appellant" at different times. However, the use of "Patton" should not be construed as an admission or agreement that Patton is actually a party in this action. As discussed below, she clearly is not.

[2] Patton is the Minor's mother.

Piedmont Medical Center.[3] [R. p. 22.] Amisub filed and served a timely Answer which also denied the plaintiff's ability to obtain any of the relief requested in the Complaint. [R. p. 33.] All of the parties then agreed to consolidate the two cases under the docket number of the first action, and the trial court filed an order to that effect on July 12, 2012.

Amisub filed a Motion for Partial Summary Judgment on April 29, 2013. [R. p. 48.] In that motion, Amisub argued that the Minor was not entitled to claim any damages for her pre-majority medical expenses, as that right belonged to her parents. [R. p. 50.] Amisub further argued that the applicable statutes of repose and limitations had expired, thereby barring any future claim by Patton for those medical expenses. [R. pp. 50-57.] Several weeks later, Dr. Miller and RHGO also filed a Motion for Partial Summary Judgment based on the same grounds. [R. p. 46.]

Both motions came before the Honorable S. Jackson Kimball on July 18, 2013. After hearing oral arguments and considering written submissions by the parties, Judge Kimball filed an Order granting partial summary judgment to all Respondents on August 2, 2013. [R. p. 3.] In the Order, Judge Kimball ruled that Patton, in her capacity as "Next Friend" of the Minor, was not a party to the case and could not assert any claims on her own behalf. [R. pp. 3-6.] This left the Minor as the only plaintiff, and because she was a minor, she could not seek to recover any pre-majority medical expenses or related necessaries under established South Carolina law. [R. pp. 3-6.] Therefore, Judge Kimball granted summary judgment in the Respondents' favor as to any and all claims for pre-majority medical expenses and related necessaries. [R. pp. 3-6.] Judge Kimball then declined to make any ruling on the statute of repose/statute of limitations issues because Patton was not a party to the action. [R. pp. 3-6.]

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[3] Respondent Amisub of South Carolina d/b/a Piedmont Medical Center is properly identified as Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center.

On August 16, 2013, Patton filed a Rule 59(e) Motion to Alter or Amend, which was combined with a Motion for Leave to Amend the Complaint. [R. pp. 72-87.] The Respondents submitted briefs in opposition to those motions, and Judge Kimball conducted a second hearing on October 17, 2013. At that hearing, Patton's attorney withdrew the request to amend the Complaint as to Amisub. [R. p. 164, line 11 – p. 165, line 16; p. 170, lines 1-14.] On November 4, 2013, Judge Kimball filed an Order that denied both of Patton's motions and left the original decision intact. [R. pp. 7-10.]

Patton filed and served a timely Notice of Appeal following Judge Kimball's second Order. This Court held oral arguments on May 12, 2015, at which time Patton's attorneys rested on the briefs as to the first issue on appeal and proceeded to argue the other three. This Court filed an unpublished opinion affirming Judge Kimball's rulings on July 22, 2015 (No. 2015-UP-367). Patton then filed the currently pending Petition for Rehearing.

ARGUMENT

According to Rule 221(a), SCACR, a rehearing petition "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Patton has failed to do that in her petition. Rather than arguing (let alone demonstrating) that the Court overlooked or misapprehended anything, Patton merely sets forth a slightly edited version of her Final Appellant's Brief. Therefore, Patton has not established any basis for a rehearing, and the petition should be denied.

I. The Court correctly applied the "necessaries" doctrine, which remains the law of South Carolina.

Any right to recover a minor's medical expenses in a legal action belongs solely to the minor's parents. *Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907). South Carolina's courts have consistently applied this rule since *Tucker* was decided. *See, e.g., Hughey*

v. Ausborn, 249 S.C. 470, 475, 154 S.E.2d 839, 841 (1967) ("[T]he amount paid for medical care and treatment by the parent is not an element of damage [for the minor] and the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor."); *Trident Reg. Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App. 1995) ("Under the common law, a parent is responsible for the support of his or her minor child.").

Patton has never denied that this rule, sometimes called the "necessaries doctrine," is the current law of South Carolina. Indeed, Patton has devoted considerable effort to arguing that this is an aspect of South Carolina's common law that should be changed. This Court declined that invitation to alter the common law rule by affirming the trial court's decision. Patton's petition does not demonstrate any reason to rehear the issue or change this Court's ruling.

During oral arguments, counsel for Patton declined to make any presentation on the issue of the necessaries doctrine. Instead, counsel for Patton rested on the appellate briefs as to that issue.[4] By doing this, Patton limited the issue presented to the Court to those briefs and the relatively small Record on Appeal. In other words, the Court could consider only Patton's written arguments to determine if any grounds for reversal existed. After examining all of those materials, as well as the applicable precedent, the Court obviously found no reason to change the common law, which would have been the only way to reverse the result below.

This fact is significant because it reveals the fatal flaw in the current petition. Patton has presented nothing in her petition that the Court has not already seen and considered. The section of the rehearing petition that addresses the necessaries doctrine is merely a restatement of the arguments in Patton's briefs, with only some of the discussion of the rule's history omitted. The

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[4] Patton had not made a motion to argue against precedent under Rule 217, SCACR.

petition does not identify any specific points that the Court supposedly overlooked or failed to comprehend. Nor does the petition present any additional legal authorities for the Court to consider. In short, the petition simply repeats Patton's basic arguments, which the Court has already addressed in its opinion. This necessarily means Patton has not established a basis for a rehearing on this issue.

In addition, although Patton's attorney did not discuss this issue during oral arguments, at least one of the Court's panel judges directed questions about the necessaries doctrine to the Respondents' attorney. This demonstrates that the Court did not misapprehend or overlook this issue when deciding the case. The Court clearly thought about Patton's arguments against the established rule and made the Respondents defend it. The fact that the Court ultimately followed the common law rule without any substantive discussion in the opinion is irrelevant. The Court considered and rejected the arguments in Patton's briefs, which are the exact same as the arguments set forth in the rehearing petition. For present purposes, this is all that matters.

Furthermore, Patton did not make a complicated argument about the necessaries doctrine. Patton spent a considerable amount of effort explaining the history of the doctrine and addressing how some other jurisdictions have changed it, but the central theme of Patton's case was (and always has been) abundantly clear. Patton claimed the necessaries doctrine no longer serves a purpose and should be abolished in South Carolina. The Court rejected that assertion, as it plainly demonstrated by citing to the line of cases that have stated and followed the common law rule for more than a century. Consequently, Patton cannot legitimately claim that the Court overlooked or misapprehended anything on this issue. The Court understood and addressed Patton's position; the Court's decision simply was not to Patton's liking. The Respondents

respectfully assert that this is not a proper basis for requesting or granting a rehearing on this issue, and the petition should be denied.[5]

II. This Court properly held that the Minor may not rely upon the doctrines of implied waiver and equitable assignment to assert her parents' claim for her pre-majority medical expenses and related necessaries.

As her second issue for rehearing, Patton argues this Court erred in finding that the Minor may not rely upon the doctrines of implied waiver and equitable assignment to salvage her claims for pre-majority medical expenses and related necessaries. This Court, however, properly held the doctrines are inapplicable in the contexts in which Patton asserts them.

Patton has not set forth any arguments that the Court has not already considered. Instead, she reiterates that arguments set forth in her Appellant's Brief. Initially Patton argues she impliedly waived or equitably assigned her right to bring a claim for pre-majority medical expenses and related necessaries in favor of the Minor by choosing not to seek recovery in her own name and instead filing suit as the Minor's next friend. Patton cites non-binding case law in support of her arguments.[6] Although South Carolina recognizes the doctrine of implied waiver, no South Carolina appellate court has ever invoked that doctrine to find that a named plaintiff holds a cause of action which properly belongs to a non-party. The Court correctly concluded that South Carolina law is clear on the following point: while waiver "may be invoked as [an]

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[5] To the extent necessary, the Respondents incorporate by reference all of the arguments on this issue contained in the Final Respondents' Brief.

[6] As she did in her Appellant's Brief, Patton relies heavily on two South Carolina federal district court opinions, *Sox v. United States*, 187 F. Supp. 465 (E.D.S.C. 1960) and *McNeill v. United States*, 519 F. Supp. 283 (D.S.C. 1981), in support of her arguments. Those opinions are not controlling because (1) decisions of the United States District Court for South Carolina are not binding on South Carolina's appellate courts; (2) neither *McNeill* nor *Sox* interpreted, cited to, or otherwise referenced South Carolina law in noting that a parent may waive a claim for pre-majority medical expenses in favor of a minor child; and (3) no decisional court of this State has ever cited to *Sox* or *McNeill* for the proposition that a minor can recover his or her own pre-majority medical expenses or related necessaries.

affirmative defense[] to counterclaims," it "may not be asserted in a complaint as [an] offensive weapon[]." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992).

Patton claims she is not invoking the doctrine of implied waiver offensively because she only raised it after the Respondents challenged the Minor's right to recover pre-majority medical expenses and related necessaries in her own name. Semantics aside, Patton is attempting to use the doctrine of implied waiver to allow the Minor to pursue a claim for medical expenses against the Respondents, which the Minor otherwise has no right to assert. The doctrine of implied waiver, however, may not be used as an "instrument[] of gain or profit." *Janasik*, 307 S.C. at 345, 415 S.E.2d at 388. This Court, therefore, correctly held that the Minor cannot rely on the doctrine of implied waiver to salvage a claim for pre-majority medical expenses and related necessaries.

The Court also properly held that Patton has not established appropriate grounds for applying the doctrine of equitable assignment to this case. To establish an equitable assignment under South Carolina law, Patton must show (1) "words or transactions which show an intention on the one side to assign," (2) words or transactions which show "an intention on the other [side] to receive," and (3) "valuable consideration" for the assignment. *Player v. Player*, 240 S.C. 274, 278, 125 S.E.2d 636, 638 (1962). In the absence of an express agreement, Patton must have pled facts sufficient to demonstrate the existence of an equitable assignment. *Georgia-Carolina Gravel Co. v. Blassingame*, 129 S.C. 18, 123 S.E. 324, 326 (1924).

Because she cannot establish that the elements of an equitable assignment are present in this case, Patton falls back on the specious assertion that the Respondents do not have standing to challenge the alleged equitable assignment. The Respondents explained the illogical nature of

that argument in their Final Brief, and they will not repeat that analysis here. For present purposes, it is suffice to say that Patton has not provided any new authorities to warrant a rehearing on this point.

Instead of attempting to establish consideration, Patton argued to the trial court that, pursuant to non-binding, secondary sources, consideration is not required in this situation. [R. p. 138:8 – 11]. Likewise, as set forth in the trial court's August 2, 2013 Order [R. p. 8], the record is devoid of any evidence of words or transaction which show Patton's intent to assign her claim for pre-majority expenses to Minor or which show the Minor's intent to accept an assignment. Finally, given that Patton concedes there was no express agreement supporting the alleged equitable assignment [R. p. 153, line 25 – p. 154, line 5], she was required to plead facts sufficient to evidence an equitable assignment. Patton still has not explained why she failed to do so. Thus, this Court properly ruled that South Carolina law does not recognize equitable assignment on the facts of this case.

Considering binding South Carolina law, this Court correctly held that the doctrines of implied waiver and equitable assignment do not apply to salvage Patton's claims for pre-majority medical expenses and related necessaries.[7] Patton has failed to demonstrate that the Court overlooked or misapprehended any arguments or authorities related to this ruling, and, therefore, the rehearing petition should be denied.

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[7] The Respondent Amisub incorporates and does not waive its argument that even if Patton established the necessary elements of implied waiver or equitable estoppel and South Carolina law recognized those doctrines as allowing a minor to pursue a claim for pre-majority expenses which her parents abandoned, the claim as to Amisub would be time-barred pursuant to S.C. Code Ann. § 15-3-545(A). See Respondents' Final Brief, p. 20 – 21.

III. Patton has not established any basis for rehearing as to the Court's decision to affirm the trial court's denial of her motion to amend.

As with the other issues, Patton's petition is silent as to any points supposedly overlooked or misapprehended by the Court with regard to the denial of her motion to amend. Patton only repeats the arguments from her appellate briefs, cites the same cases and does not explain how or why the Court failed to consider them. This omission warrants denial of the rehearing petition.

The Court properly concluded that the trial court was correct in denying the motion to amend because it would have added a new plaintiff to the case. As the Court has previously explained:

> **Rule 15, SCRCP, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant.** Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant. Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments. **None of these subsections addresses a motion to add a plaintiff as contemplated in this case.**

Valentine v. Davis, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995) (emphasis added). This language is straightforward and does not require any substantial analysis. Under *Valentine*, an existing plaintiff cannot use Rule 15 to add a new plaintiff to the case. This is the law of South Carolina, and the Court correctly applied it to this case.

As she did in her briefs and at oral arguments, Patton continues to claim that the proposed amendment would not have added her as a plaintiff but would only have changed her "capacity." Ironically, here it is Patton, not the Court, who has overlooked or misapprehended a key point. Patton is not, and never has been, a plaintiff or party in this case. Patton is only a "next friend" for the Minor – a role akin to that of a guardian ad litem. The original Complaints did not identify Patton as a plaintiff, nor they did state (or even attempt to state) any claims on her

behalf. Thus, Patton was not a "plaintiff" or even a "party" in the legal sense of those terms. Patton was merely a conduit through which the Minor asserted claims against the Respondents, and the only causes of action that were part of the case were those belonging to the Minor. This means that neither Patton, nor her claim for the Minor's pre-majority medical bills and necessaries were involved in the case. Accordingly, the proposed amendment to include a claim by Patton for those damages necessarily constituted an attempt to add a plaintiff to the case.

Patton has not squarely addressed this crucial point, other than to deny it without any citation to applicable authority. The Court recognized it, however, as evidenced by the opinion's citation to *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009). There, the Court concluded that the addition of a party is not the same as the substitution of a party, and Rule 15(c), SCRCP, applies only to the latter. The citation to *Gause* demonstrates that the Court comprehended the issue and analyzed it under the correct legal standards.[8]

Again, Patton has not identified any specific points that the Court missed or misunderstood when reviewing the denial of the motion to amend. Patton has merely repackaged her original arguments in the form of a rehearing petition. In doing this, Patton is not really asking for a rehearing as contemplated by Rule 221(a), SCACR. Rather, she is arguing the Court erred in deciding this issue the way it did. Patton might, or might not, have further recourse with regard to that assertion, but it is not arise from the current procedural posture of the appeal. Therefore, the Court should deny the rehearing petition on this issue.[9]

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[8] In addition, the Court asked the parties' attorneys several questions about the case law relating to this issue during oral arguments. This further demonstrates that the Court understood the issue and fully addressed it.

[9] The Respondents incorporate by reference all of the arguments on this issue contained in the Final Respondents' Brief. Particularly, Amisub does not waive its argument that Patton abandoned her attempts to amend the Complaint against Amisub in the trial court. [R. p. 170.

IV. The Court properly held that the Respondents did not waive their defenses to the Minor's claim for pre-majority expenses, as Patton first argued in her Rule 59(e) motion.

As the last issue in her rehearing petition, Patton argues the Respondents waived their right to contest the Minor's recovery of pre-majority expenses and related necessaries because the Respondents failed to raise this issue as an affirmative defense. This Court, however, correctly affirmed the trial court by finding that Patton did not properly preserve this issue for appellate review and, that even if she had, the trial court correctly ruled that the Respondents' position is not an affirmative defense that they were required to plead.

AS will all other arguments raised in her petition, Patton does not point to any issues that the Court allegedly misapprehended or overlooked. She merely restates this argument as set forth in her Final Appellant's Brief. Considering these arguments, the record on appeal is devoid of any evidence that Patton raised her concern with the Respondents' responsive pleadings prior to the trial court's decision to grant partial summary judgment. Instead, Patton raised the issue for the first time as part of her Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. It is well-established that a Rule 59(e) motion cannot be used as a vehicle for raising new arguments. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). This was certainly a "new argument," as it related to the issues involved in the original summary judgment hearing, but was not raised at that time. Thus, Patton's argument on this issue was never properly before the trial court and it could not have been properly preserved for appellate review. *See Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.").

Although the trial court rejected Patton's argument as untimely pursuant to *Hickman*,

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lines 1-12] and did not challenge the trial court's ruling [R. p. 9] on this issue in her Final Appellant's Brief.

supra,[10] Patton failed to challenge or even mention the trial court's ruling in her Appellant's Brief. *See First Union Nat. Bank of S. Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) ("Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance."). Because Patton raised her concern with the Respondents' pleadings for the first time as part of her Rule 59(e) Motion to Alter or Amend and did not challenge the trial court's ruling on this point in her Appellant's Brief, this Court correctly affirmed the result below pursuant to *Hickman*, Patton's failure to challenge the trial court's ruling, and the two issue rule.[11]

The Court also correctly recognized that the end result would be the same even if Patton's challenges to the Respondents' responsive pleadings were properly before the Court. The Respondents assert that the Minor cannot claim or recover any damages based on her pre-majority medical expenses and related necessaries. As the trial court concluded, this is not an affirmative defense that must be pled or is waived. "An affirmative defense conditionally admits the allegations of the complaint, but asserts new matter to bar the action." *FMI, Inc. v. RMAX, Inc.*, 286 S.C. 343, 347, 333 S.E.2d 360, 363 (Ct. App. 1985). The Respondents do not admit that the Minor is entitled to recover for pre-majority medical expenses and necessaries. Instead, the Respondents unequivocally deny the Minor's allegation that she is entitled to recover those damages. Because the Minor cannot possibly seek pre-majority medical expenses and necessaries, she has failed to state a claim for recovery of those expenses. Thus, the

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[10] *See* R. p. 8.

[11] *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

Respondents' general denials of the Minor's allegation that she is entitled to claim pre-majority expenses and necessaries were sufficient.[12]

Furthermore, the Respondents were free to raise the Minor's failure to state a claim by motion for summary judgment. *See* Rule 12(b)(6), (h)(2), SCRCP. *See also* James G. Flanagan, *South Carolina Civil Procedure* 3rd (2010) ("Rule 12(h)(2) lists two non-waivable defenses: the failure to state a claim or defense;...."). This is precisely what all of the Respondents did. After denying the Minor's entitlement to seek or recover pre-majority medical expenses or related necessaries, the Respondents sought a ruling to that effect through motions for partial summary judgment. The Respondents were not required to do anything else to present this issue to the trial court for a decision. Therefore, this Court correctly decided this issue .[13]

Patton has not identified any arguments or authorities that the Court overlooked or misapprehended in ruling on this issue. The rehearing petition challenges the Court's decision, but it bases that challenge solely on arguments the Court has already considered and rejected. Because it is merely a repetition of previous arguments, the petition does set forth any reason for the Court to analyze the issue again. Accordingly, the Court should allow its original decision on this issue to remain intact.

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[12] In fact, Amisub specifically raised the defense of failure to state a claim in its April 24, 2012 Answer. [*See* R. p. 34, ¶ 11 ("In answer to paragraph 21, it is admitted that Plaintiff has complied with statutory requirements to commence an action, but it is denied Plaintiffs [sic] have a valid cause of action.").]

[13] The Respondents incorporate by reference all the arguments on this issue contained in the Final Respondents' Brief. Particularly, Amisub incorporates and does not waive its argument that Patton was not prejudiced by Amisub's alleged failure to raise the Minor's inability to recover pre-majority medical expenses and related necessaries because Patton did not commence suit against Amisub until after the three year state of limitations on the parents' claim for pre-majority expenses expired. No amount of notice in Amisub's responsive pleading could have given Patton time within the limitations period to amend and properly plead recovery of pre-majority medical expenses against Amisub.

CONCLUSION

Patton disagrees with the Court's decision, which is understandable. However, her Petition for Rehearing does not reveal anything that the Court overlooked or apprehended in making that decision. The Court fully understood the issues in the case and reached its decision by applying well-established law. For this reason, as well as those set forth above, the Court should deny the Petition for Rehearing.

Respectfully submitted,

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August 17, 2015

THE STATE OF SOUTH CAROLINA
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v.

Dr. Gregory A. Miller; Rock Hill Gynecological & Obstetrical Associates, P.A.; and Amisub of South Carolina, d/b/a Piedmont Medical Center,.....Respondents.

PROOF OF SERVICE

The undersigned, attorneys in this matter for the Respondents, certifies that we have this **17th day of August, 2015**, served a copy of the **Return to Petition for Rehearing** upon counsel of record for the Appellant by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Edward L. Graham, Esq., and J. Layton Ruffin, Esq.; Graham Law Firm; 383 W. Cheves St.; Florence, SC 29501.

(Signatures on next page.)

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August 17, 2015

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August 17, 2015

VIA HAND DELIVERY

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: Angela Patton v. Dr. Gregory A. Miller, et al.
Appellate Case No.: 2013-002670
Our File No.: 10350.109

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and seven copies of the Respondents' Return to Petition for Rehearing, and (2) the original and one copy of the Proof of Service. Please file the originals and necessary copies and return the extra stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

R. Hawthorne Barrett

R. Hawthorne Barrett

RHB:
Enclosures

cc: Edward L. Graham, Esq.
J. Layton Ruffin, Esq.
William U. Gunn, Esq.
Joshua T. Thompson, Esq.