

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-42-0508

RECEIVED

DEC 07 2015

SC Court of Appeals

Patricia Craig.Appellant,

vs.

E. Earl Jenkins, Jr., M.D., also known as
Everett Jenkins, Jr., M.D., Amisub of South Carolina,
d/b/a Piedmont Medical Center, and York Pathology
Associates, LLC.Respondents.

**APPELLANT’S RETURN TO
RESPONDENTS’ MOTION TO DISMISS OR
IN THE ALTERNATIVE TO RESPONDENTS’ MOTION TO
REQUEST EXTENSION OF TIME TO FILE INITIAL BRIEF¹**

NOW COMES APPELLANT, Patricia Craig, by and through the undersigned attorney,
responding to the Respondents’ Motions to Dismiss or in the Alternative Motion Requesting an
Extension of Time to File Initial Brief as follows:

INTRODUCTION

This is a complex medical malpractice case. Appellant Patricia Craig (sometimes
referred to as “Appellant”, “Plaintiff”, or “Craig”) filed the statutorily required Notice of Intent
to File Suit, with supporting affidavit, on November 8, 2013, in the Court of Common Pleas,

¹Appellant notes that each respondent filed a separate motion as titled above. Although the Respondents’ Motions
were filed separately, the grounds asserted are basically identical. Therefore, this Return responds to both Motion
and, unless otherwise stated, refers to the Motions as if they are one motion.

County of York. After the parties were unable to resolve the case during the mediation period, Plaintiff filed the Summons and Complaint on February 21, 2014. The parties engaged in discovery; however, at the time the trial judge issued the dispositive order in the case, discovery had not yet been completed by the parties.

Defendants filed a Motion for Summary Judgment on July 10, 2015. The Court granted the Defendants' Motion for Summary Judgment by written order dated September 17, 2015. Appellant filed timely Notice of Appeal on October 16, 2015. Appellant did not order a transcript and proceeded to file her Initial Brief and Designation of Matter in a timely manner as required by the governing appellate court rule.

ARGUMENT IN OPPOSITON TO RESPONDENTS'
MOTION TO DISMISS

The gravamen of both of the Respondents' Motion to Dismiss is that Appellant's appeal should be dismissed because Appellant failed to order the transcript from the summary judgment hearing.² This argument is without merits or legal support. To that end, Appellant vehemently opposes the Respondents' Motions to Dismiss based upon the argument stated herein.

Contrary to Respondents assertion, the appellate court rules of our state do not impose a mandatory requirement for the Appellant to order the transcript of the proceedings below. Both Respondents rely upon Rule 207(a)(1), SCACR, for the erroneous proposition that it is a mandatory procedural requirement for the Appellant to order the transcript of the proceeding below. In pertinent parts, Rule 207(a)(1), SCACR provides as follows:

Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the

²Alternatively, the Respondents request an extension of time in order to file the Initial Brief. Appellant does not oppose the requests for extension of time. Therefore, this return argues solely against the Respondents' Motion to Dismiss.

transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.

See Rule 207(a)(1), SCACR. Contrary to the Respondents' assertions, Rule 207(a)(1), this rule nor any of the other appellate court rules make it procedurally mandatory for the Appellant to order the transcript of the proceeding below. Respondents do not cite a single case to support their claim that Rule 207(a)(1) requires the Appellant to order the transcript, nor did the undersigned counsel's research reveal such a procedural requirement. To the contrary, counsel asserts that there is authority elsewhere in the rules that supports Appellant's position of filing the brief without ordering the transcript.

"In construing statutory language, the statute [rule] must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998). In applying this principle of statutory construction, Appellant asserts that Rule 208(a)(1), SCACR, supports her position of filing the initial brief without ordering the transcript from the summary judgment hearing. This rule provides, in pertinent part, the following:

(a) Time for Serving and Filing Initial Briefs.

- (1) Brief of Appellant. Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.

See, Rule 208(a)(1), SCACR. Rule 208(a)(1) specifically envisions an appellant proceeding on appeal before this Court without ordering the transcript. If ordering the transcript was a mandatory procedural requirement, this section would not have envisioned that the appeal would proceed without ordering the transcript. In light of the fact that there is no other appellate court rule or controlling authority requiring the appellant to order the transcript, Appellant asserts that

this Honorable Court should read the rules in whole and uphold Appellant's position that there was no mandatory requirement to order the transcript. Further, the Appellant asks the Court to note that the matter on appeal involves an order that granted summary judgment. The record of the oral arguments of counsel during the hearing on the Motion for Summary Judgment simply are not relevant in the resolution of the appeal now before this Court.

In the event the Court agrees with the Respondents' that the transcript was required to be order, Appellant requests the Court to find that no prejudice ensued to the Respondents, and that the proper remedy would be to grant the Respondents an extension of time to file the initial briefs.

WHEREFORE, based upon the argue stated above, Appellant requests the Court to deny the Respondents' Motion to Dismiss. In the alternative, the Appellant requests the Court to grant the Respondents' Motion for Extension of Time.

November 12, 2015



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PROOF OF SERVICE

I, Glenn Walters, certify that I served the following individuals a copy of the foregoing

**APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS OR
IN THE ALTERNATIVE TO RESPONDENTS' MOTION TO REQUEST
EXTENSION OF TIME TO FILE INITIAL BRIEF**

by depositing copies in the United States Mail, postage prepaid, return address clearly visible,
addressed as follows on December 07, 2015:

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William U. Gunn, Esquire
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Spartanburg, SC 29304

At Orangeburg, SC



GLENN WALTERS, Esquire