

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

Philip Ethier and Jeanne Ethier,

Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; and Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN
TO APPELLANTS' MOTION FOR PERMISSION TO FILE AMENDED BRIEF
EXCEEDING PAGE LIMIT
AND
APPELLANTS' RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL**

Appellants, by and through their undersigned counsel and pursuant to Rule 240, submit their reply to Respondent's return opposing Appellants' motion to file an initial brief exceeding the 50-page limit. Appellants also submit their return to Respondent's motion to dismiss the appeal.

In his returns to the present and prior motions to exceed the page limit, Respondent never has asserted or even tried to assert that he is in any way aggrieved or prejudiced by a brief which

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exceeds the page limit. That is because there plainly is no prejudice. Cf. Rule 201, SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”).

Given that, why does Respondent so vigorously attack Appellants on the application of an arbitrary page limit and even urge the nuclear option of dismissing the appeal? Why does Respondent now resort to counting words and footnotes and even accuse counsel of trying to mislead this Court?

The answer is simple. Respondent wishes to convince this Court to apply a technical rule to force Appellants to further eliminate discussion of the facts, issues, law and arguments. Respondent wishes to blunt Appellants’ ability and opportunity to raise and fully address the merits of novel and multiple issues in a complex, medical malpractice case. If allowed, Respondent’s tactic can only accrue to his benefit and will unfairly and unnecessarily prejudice Appellants’ right to pursue their appeal.

Appellants submit that the page-limit rule was never intended to be applied in a manner which deprives an appellant of the opportunity to raise all necessary issues and explain the prejudice and error resulting from the trial court’s actions.

Respondent openly ridicules Appellants’ effort to reduce the length of the brief and even goes so far as to accuse Appellants of a lack of candor with the Court. Appellants flatly reject Respondent’s spurious and offensive contentions. Respondent’s counsel are welcome to express their view about the revisions to the brief, but a difference of opinion about the extent of the revisions is no ground to defame opposing counsel by trying to paint them as underhanded. That accusation is absolutely offensive and inappropriate. The Court has the original and amended briefs, and there is nothing secret about either of them or the revisions made.

It is Appellants' belief that it absolutely was necessary to cut into the bones of the case in an effort to comply with the Court's order. Appellants do not seek to waste the Court's time or cause undue work, but they raise novel and multiple issues which require adequate explanation of the facts, citation of law and argument, as explained in Appellants' motion.

The purpose of an appeal is not to count words and footnotes like an accountant tallying up columns of numbers, but to address and consider issues on the merits. There is no requirement that a certain number of words be cut or a certain number of footnotes be used in complying with a page limit. Appellants in their motion explained in detail the contents of their amended brief and why it was necessary to exceed the page limit.

No judge is a mind reader. The Court will only know what the parties tell it about this case and will only consider what it is asked to consider. As Chief Judge Sanders so famously put it in 1984, "appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), rev'd on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985).

Consequently, it is Appellants' right and burden to raise issues and rulings which Appellants believe constitute reversible error by the trial court. It is Appellants' right and burden to present a sufficient record of the facts and evidence, a sufficient description of the law, and sufficient, persuasive arguments to convince the Court of errors below.

Respondent's motion to dismiss the appeal is utterly without merit. Appellants have not violated the spirit or the letter of the rules or the Court's order. Rule 208(b)(5), SCACR, explicitly allows the Court to grant a party's request to submit a brief longer than 50 pages. After significantly reducing the length of the brief but still necessarily exceeding the page limit,

Appellants certainly are entitled to ask the Court to allow them to exceed that limit in an amended brief.

Appellants ask that the Court grant their motion to file an amended brief which exceeds the usual page limit by 14 pages. Appellants also ask that the Court deny Respondent's motion to dismiss the appeal.

Respectfully submitted,



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Attorneys for Appellants

April 14, 2016

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PROOF OF SERVICE

I, the undersigned lawyer or employee in the offices Proffitt & Cox, LLP, Attorneys for Appellants, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading:

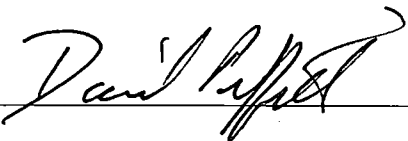
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April 14, 2016

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April 14, 2016

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.
C.A. No. 2013-CP-20-12
PC File No. 1236.01

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SC Court of Appeals

Dear Ms. Kitchings:

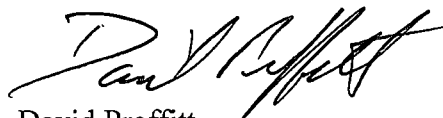
Please find enclosed the original and seven copies of Appellants' Reply to Respondent's Return to Appellants' Motion for Permission to File Amended Brief Exceeding Page Limit and Appellants' Return In Opposition to Respondent's Motion to Dismiss Appeal.

Please file the original and return a date-stamped copy to us in the enclosed envelope.

With kindest personal regards, I remain

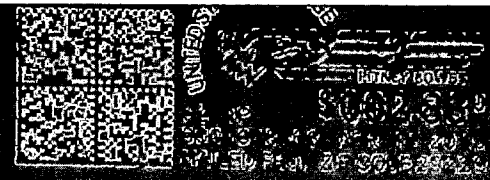
Sincerely yours,

PROFFITT & COX, LLP


David Proffitt

RDP/nif
Enclosures

cc: Andrew F. Lindemann (w/ enclosures)
G. Murrell Smith, Jr. (w/ enclosures)
David Holler (w/ enclosures)
Stanley L. Myers (w/ enclosures)



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