

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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Case No. 2013-CP-20-0012

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RECEIVED

APR 25 2016

SC Court of Appeals

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, P.A., .....

Defendants

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

Respondent.

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**REPLY TO APPELLANTS' RETURN TO  
MOTION TO DISMISS APPEAL**

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The Respondent Guy R. Bibeau, M.D. filed a motion pursuant to Rule 260(a), SCACR, to dismiss the Appellant's appeal as a sanction for violating the letter and spirit of Rule 208(b)(5), SCACR, and this Court's Order filed March 14, 2016. The

Appellants have now filed a return to which a brief reply on a few points is warranted.

The Appellants suggest that Dr. Bibeau is required to show prejudice in opposing their second request to exceed the 50-page limit established by Rule 208(b)(5), SCACR. There is no such requirement. The rules are in place to be followed. This appeal does not warrant a brief in excess of fifty pages. The Court has already so ruled. *See*, Order filed March 14, 2016 (this Court found that "the issues raised on appeal do not demand a brief of this length"). Moreover, the Appellants cannot ask again, which is precisely what they have done. Rule 240(i), SCACR, provides that "[t]he court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Rule 240(i), SCACR. Therefore, a party cannot seek reconsideration of an order deciding a motion. The rules are in place to be followed. The Appellants quite simply have not followed the rules, and now they have not followed an order of the Court either. That conduct warrants dismissal of the appeal.

The Appellants also contend that "the purpose of an appeal is not to count words and footnotes."<sup>1</sup> However, it is unfortunately necessary to count words and

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<sup>1</sup> While the Appellants think the briefing process does not require the "counting of words," it should be noted that the Federal Rules of Appellate Procedure includes a word limit on

footnotes when a party disregards a Court order directing them to file "an amended brief totaling no more than fifty pages in length." *See*, Order filed March 14, 2016. This is particularly true when counsel disingenuously claims to have tried to comply with the 50-page limit and further informs the Court that "significant portions" of the original brief were deleted, when the reality is "significant portions" of the original brief were simply converted to lengthy footnotes. As indicated, only a total of 1563 words was deleted from the 79-page brief, and that is hardly "significant portions." Notably, the Appellants did not dispute that they cut only 1563 words from the original brief or that they increased the footnotes from 14 to 34 or that they converted large amounts of text to footnotes.


The reality is that the Appellants did violate both the letter and the spirit of this Court's March 14, 2016 Order, and the dismissal of this appeal is warranted as a consequence.

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briefs. *See*, Rule 32(a)(7)(B), FRAP. Instead of a word limit, the South Carolina Appellant Court Rules impose a page limit. Limitations on briefing are common. They are not a "technical rule" as the Appellants claim. Appellate lawyers must comply with such limits all the time. The Appellants and their counsel are not being treated differently nor to their detriment. They are simply being required to comply with the rules that apply to everyone.

Respectfully submitted,

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*Counsel for Respondent Guy R. Bibeau, M.D.*

Columbia, South Carolina

April 21, 2016

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of the **Reply to Appellants' Return to Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 21st day of April 2016:

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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
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APR 25 2016

SC Court of Appeals

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.  
Appellate Case Number: 20158-001964  
Civil Action Number: 2013-CP-20-0012  
Claim Number: CB127439M  
Our File Number: 22.9679

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Reply to Appellants' Return to Motion to Dismiss Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
April 21, 2016  
Page Two

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cc: (w/ Enclosure)

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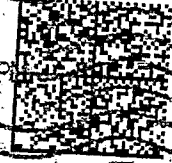
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SC Court of Appeals

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