

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

JUN 22 2016

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

**SC Court of Appeals**

Case No. 2013-CP-20-0012

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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**RESPONDENT'S RETURN TO APPELLANTS'  
MOTION TO CERTIFY APPEAL TO SUPREME COURT**

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The Appellants Philip Ethier and Jeanne Ethier have filed a motion to certify this case to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR.

The Respondent Guy R. Bibeau, M.D. opposes that motion on the grounds discussed below.

In evaluating the Appellants' motion to certify this appeal, it is important for the Supreme Court to fully understand the procedural posture of this appeal in the Court of Appeals and what appears to be the true motivation for the Appellants to seek a new forum for their appeal. Prior to seeking to certify this appeal, the Appellants had filed in the Court of Appeals in January 2016, an Initial Brief totaling 79 pages in length, together with a Motion for Permission to File Brief Exceeding Page Limit. Dr. Bibeau filed an opposition to that motion on February 1, 2016, citing Rule 208(b)(5), SCACR, which establishes a fifty-page limit for all principal briefs except in death penalty cases. Dr. Bibeau pointed out various reasons that a brief exceeding the fifty-page limit was unnecessary.

The Court of Appeals agreed, and on March 14, 2016, the Court issued an Order denying the Appellants' motion. The Court of Appeals specifically found that "the issues raised on appeal do not demand a brief of this length." The Court of Appeals further directed that "Appellants may file an amended brief *totaling no more than fifty pages in length*" and gave them thirty days to file an Amended Initial Brief. *See*, Order filed March 14, 2016. (Emphasis added).<sup>1</sup>

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<sup>1</sup> A copy of the two Court of Appeals orders are attached hereto for reference.

On March 31, 2016, the Appellants filed an Amended Initial Brief in the Court of Appeals *totaling 64 pages in length*, together with another Motion for Permission to File Amended Initial Brief Exceeding Page Limit. Dr. Bibeau opposed that motion and further highlighted the Appellants' disregard for the Court's Order filed March 14, 2016, and their lack of candor about the reduction of fifteen pages from the original brief. Dr. Bibeau also argued that the Appellants are prohibited by Rule 240(i), SCACR, from seeking rehearing or reconsideration of a motion that does not result in the dismissal of the appeal.<sup>2</sup>

Again, the Court of Appeals ruled in Dr. Bibeau's favor. By Order filed June 1, 2016, the Court of Appeals denied the Appellants' renewed request to file a brief that exceeded the 50-page limit. The Court of Appeals directed the Appellants to file within 15 days "an amended brief that complies with Rule

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<sup>2</sup> The Court is urged to review Dr. Bibeau's Return to the Motion to Exceed Page Limits wherein Dr. Bibeau describes in detail the Appellants' failure to comply with the Court of Appeals order to reduce their brief from 79-pages to no more than 50-pages. In thereafter submitting a 64-page brief, the Appellants' counsel insisted that that "[s]ignificant portions of the brief were deleted." In reality, only a grand total of 1563 words was deleted from the 79-page brief, which represents less than seven percent of the original content of that brief. In order to reduce the brief by fifteen pages, the Appellants' counsel increased the footnotes from 14 to 34 and simply converted large amounts of text to footnotes. In fact, each of the 20 "new" footnotes consist of text from the original brief that was converted to single-spaced footnotes. Several of the "new" footnotes are of substantial length, each encompassing more than a page of text from the original brief. The Court is referred to footnotes 7, 10, 14, and 34 in the amended brief as examples. There are numerous other "new" footnotes that contain a half-page or more of text from the original brief. The Appellants also made two sections of the brief single-spaced where they were double-spaced in the original brief. In short, there were not "significant portions" of the brief deleted as counsel insists; instead, "significant portions" of the original brief were simply converted to lengthy footnotes.

208(b), SCACR, and does not exceed fifty pages in length." *See*, Order filed June 1, 2016.

Importantly, it was only after the Court of Appeals issued its *second order* requiring the Appellants to comply with Rule 208(b)(5) and file a brief not exceeding fifty pages that the Appellants now are seeking to have this appeal certified to this Court. In essence, the Appellants are now engaging in a type of "forum shopping." Because they refuse to comply with the Court of Appeals' procedural orders enforcing Rule 208(b)(5), they are seeking a new court in which to proceed, and they are utilizing the guise of certification under Rule 204(b) in an attempt to accomplish that purpose. Dr. Bibeau strenuously objects to this attempt to misuse Rule 204(b) certification to commit an end-run on the Court of Appeals' authority to enforce Rule 208(b)(5). This Court quite frankly should not create a precedent that a litigant who is dissatisfied with a Court of Appeals' procedural ruling can simply seek certification in this Court to start the process over and to seek a different ruling on the same procedural motions decided adversely in the Court of Appeals. That is precisely what is occurring here.

In light of this procedural history, the Appellants' true motivation for seeking certification is obvious and has nothing to do with whether this case is a proper candidate for certification. The certification motion should be denied on that basis

alone. However, should this Court entertain the certification motion on the merits, the motion should still be denied.

Rule 204(b), SCACR, provides that certification of an appeal to the Supreme Court is appropriate in cases involving "an issue of significant public interest or a legal principle of major importance." *See*, Rule 204(b), SCACR. Dr. Bibeau submits that this case does not meet those criteria.

Contrary to the Appellants' assertions, this appeal does not raise any issue of significant public interest nor does the appeal present any legal issue of major importance. The Appellants' first issue on appeal pertains to whether Mrs. Ethier is entitled to a verdict on her loss of consortium claim despite the jury's finding that Mr. Ethier was seventy percent negligent. The Appellants are not challenging the finding of seventy percent fault on the part of Mr. Ethier. Thus, the Appellants have presented purely a legal question -- for which there is existing South Carolina case law that can be competently addressed and applied by the Court of Appeals. The three other issues on appeal address alleged juror misconduct by one single juror during voir dire, the trial, and deliberations. None of these issues are complex, either factually or legally. The trial judge properly conducted a *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) hearing to voir dire the jurors post trial, as this Court requires. The trial judge then applied the tests adopted by this Court for such a post-trial analysis and issued his findings which upheld the jury's

verdict. There is no contention that the trial judge applied the wrong legal tests. Instead, the Appellants take issue only with his ultimate findings, which do not present a novel issue or certainly one of "significant public interest."

In their motion, the Appellants argue that these issues present "novel facts." Dr. Bibeau does not agree with that characterization, but at any rate, "novel facts" do not warrant Rule 204(b) certification; instead, novel issues of law do. Furthermore, the appellate court will be bound by the trial court's fact-finding at any rate unless there is an absence of evidentiary support.

In sum, Dr. Bibeau urges the Court to see the Appellants' motion to certify for what it truly is: an attempt to circumvent the Court of Appeals insistence – after two unsuccessful motions – that the Appellants comply with Rule 208(b)(5) and file an initial brief that does not exceed fifty-pages in length. This case is clearly appropriate to be adjudicated in the Court of Appeals. The motion to certify should therefore be denied.

Respectfully submitted,

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

Columbia, South Carolina

June 20, 2016

# The South Carolina 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, PA, Defendants,

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

Appellate Case No. 2015-001964

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## ORDER

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Appellants have filed a motion to exceed the page limit for their initial brief as set forth in Rule 208(b)(5) of the South Carolina Appellate Court Rules and seek to file a brief seventy-nine pages in length. After careful review of the parties' filings, we find the issues raised on appeal do not demand a brief of this length. Appellants may file an amended brief totaling no more than fifty pages in length. Appellants have thirty days to serve and file the amended brief, and Respondent's brief shall be due thirty days thereafter.

  
FOR THE COURT

Columbia, South Carolina

cc:

Robert David Proffitt, Esquire  
Ronald Brian Cox, Esquire  
Andrew F. Lindemann, Esquire  
G. Murrell Smith, Jr., Esquire  
Stanley Lamont Myers, Sr., Esquire

**FILED**

March 14, 2016

# The South Carolina 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, PA, Defendants,

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

Appellate Case No. 2015-001964

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## ORDER

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On March 14, 2016, this court denied Appellants' motion to exceed the page limits for their initial brief and ordered Appellants to serve and file an amended brief totaling no more than fifty pages within thirty days. On April 1, 2016, Appellants filed a new motion to exceed the page limits for their initial brief. We construe the new motion as a request for the court to reconsider its decision and, consequently, we decline to entertain the motion. *See* Rule 240(i), SCACR ("The 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."). Within fifteen days of the date of this order, Appellants shall serve and file an amended brief that complies with Rule 208(b), SCACR, and does not exceed fifty pages in length.

Respondent has also filed a motion to dismiss, which this court will consider on receipt of Appellants' initial brief or the expiration of the fifteen days.

  
FOR THE COURT

Columbia, South Carolina

cc: Robert David Proffitt, Esquire  
Ronald Brian Cox, Esquire  
Andrew F. Lindemann, Esquire  
G. Murrell Smith, Jr., Esquire  
Stanley Lamont Myers, Sr., Esquire

FILED  
SF 6/1/16

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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

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Case No. 2013-CP-20-0012

**SC Court of Appeals**

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

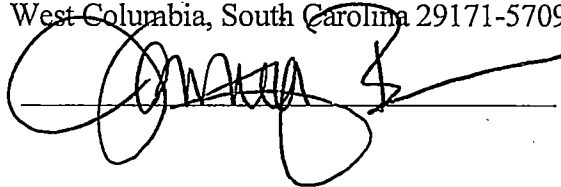
**CERTIFICATE OF SERVICE**

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of **Respondent's Return to Appellants' Motion to Certify Appeal to Supreme Court** and **Respondent's Return to Appellants' Motion for Permission to File Amended Initial Brief Exceeding Page Limit** 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 20th day of June 2016:

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A handwritten signature in black ink, appearing to read "Stanley L. Myers", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

DAVIDSON & LINDEMANN, P.A.

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June 20, 2016

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JUN 22 2016  
SC Court of Appeals

Hand Delivered

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.  
Court of Appeals Case Number: 2015-001964  
Civil Action Number: 2013-CP-20-0012  
Claim Number: CB127439M  
Our File Number: 22.9679

Dear Mr. Shearouse:

Please find enclosed for filing the originals and seven copies each of **Respondent's Return to Appellants' Motion to Certify Appeal to Supreme Court and Respondent's Return to Appellants' Motion for Permission to File Amended Initial Brief Exceeding Page Limit** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me by way of my courier.

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 Daniel E. Shearouse  
June 20, 2016  
Page Two

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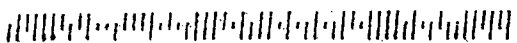
cc: (w/ Enclosures)

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JUN 22 2016  
SC COURT OF APPEALS

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