

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

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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, PA,

Defendants,

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

**APPELLANTS' MOTION FOR PERMISSION TO FILE
SECOND AMENDED INITIAL BRIEF OUT OF TIME**

Appellants, by and through their undersigned counsel and pursuant to Rules 240 and 263(b), SCACR, move for permission to file their Second Amended Initial Brief out of time.

Appellants in this complex, medical malpractice case filed an initial brief on January 22, 2016, that was 79 pages. Appellants also filed their Designation of Matter. Appellants simultaneously submitted a motion for permission to file a brief exceeding the page limit.

Respondent filed a return in opposition to the motion on February 1, 2016. Appellants filed a reply to Respondent's return on February 8, 2016.

The Court of Appeals by order filed March 14, 2016, denied Appellants' motion, stating that the "issues on appeal do not demand a brief of this length." The Court of Appeals directed Appellants to file an amended initial brief of no more than 50 pages.

Appellants on April 1, 2016, filed an amended initial brief of 64 pages and simultaneously submitted a second motion for permission to file a brief exceeding the page limit, explaining in detail the contents of the amended brief and why it was necessary to exceed the page limit.

Respondent filed a return in opposition to the motion and a motion to dismiss the appeal on April 11, 2016.

Appellants filed a reply to Respondent's return and a return in opposition to Respondent's motion to dismiss the appeal on April 18, 2016.

Respondent filed a reply to Appellant's return on the motion to dismiss the appeal on April 21, 2016.

The Court of Appeals by order filed June 1, 2016, denied Appellants' motion. The Court of Appeals deemed the second motion to file a longer brief to be a motion for reconsideration and declined to consider it pursuant to Rule 240(i), SCACR. The Court of Appeals directed Appellants to file an initial brief of no more than 50 pages within 15 days.

Appellants by motion filed June 10, 2016, asked the Supreme Court to certify this case for review from the Court of Appeals pursuant to Rule 204(b), SCACR, due to the existence of one or more novel legal issues of major importance or significant public interest. In conjunction with that motion, Appellants also moved the Supreme Court to allow them to file an initial brief exceeding the page limit by 14 pages.

Respondent on June 20, 2016, filed returns in opposition to the motions in the Supreme Court. Appellants on June 23, 2016, submitted a reply to Respondent's returns in the Supreme Court.

Appellants' motions remain pending before the Supreme Court. Appellants have submitted copies of their motions and reply filed in the Supreme Court to the Court of Appeals.

By letter dated June 23, 2016, the Clerk of the Court of Appeals informed Appellants that their initial brief and designation of matter were overdue pursuant to the Court of Appeals' order dated June 1, 2016. The Clerk informed Appellants that the motions filed in the Supreme Court do not hold the appeal in abeyance. The Clerk instructed Appellants to file their initial brief and designation of matter within 10 days of the date of the letter, along with a motion to file them out of time, or the appeal would be dismissed.

Appellants have submitted a Second Amended Initial Brief which contains 50 pages, as ordered by the Court of Appeals, and now move for permission to file the Second Amended Initial Brief. Appellants incorporate by reference their Designation of Matter previously filed on January 22, 2016.

In order to comply with the Court of Appeals' order, Appellants were required to entirely eliminate the separate discussion of the facts, law and argument for Issue IV (juror misconduct during actual jury deliberations) and combine it with the discussion of Issue III (juror misconduct during premature deliberations). Appellants were required to delete significant portions of their brief.

Appellants believed that submitting a motion for certification to the Supreme Court would hold the appeal in abeyance in the Court of Appeals until the Supreme Court decides

whether it wishes to review this appeal. Upon receiving the Clerk's letter, Appellants timely submitted their Second Amended Initial Brief within the deadline set forth in the letter.

Appellants ask that the Court of Appeals accept their Second Amended Initial Brief out of time in the event that the Supreme Court chooses not to certify this appeal for review. Appellants do so without waiving or withdrawing their motions filed in the Supreme Court.

Respectfully submitted,



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June 30, 2016

Attorneys for Appellants

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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: Appellants' Motion for Permission to File Second Amended
Initial Brief Out of Time
and
Appellants' Second Amended Initial Brief dated June 30, 2016

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A handwritten signature in cursive script, appearing to read "Stanley L. Myers", is written over a horizontal line.

June 30, 2016