



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

June 14, 2016

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JUN 14 2016

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29211

RE: *SCDHEC v. Blessed Births*
Appellate Case No.: 2016-000190
OGC# 22441

Dear Mrs. Kitchings:

Pursuant to Rule 212(b), SCACR, and with the consent of both attorneys of record, the parties have agreed to supplement the Record on Appeal. Enclosed is an email from Randall Hiller, counsel for Appellant Blessed Births, consenting to supplementing the Record on Appeal. Mr. Hiller will prepare and serve the supplemental material in accordance with the SCACR by Thursday, June 16, 2016, or such other time as ordered by the Court of Appeals.

According to Rule 211(a), SCACR, final briefs are currently due Thursday, June 16, 2016. With the parties agreeing to supplement the Record on Appeal, the parties respectfully request the deadline for filing final briefs be extended until twenty days after service of the supplemental record, or such other time as ordered by the Court of Appeals.

Should you have any questions regarding this matter, please do not hesitate to contact me at (803) 898-3350/wicevism@dhec.sc.gov or Mr. Hiller at (864) 232-0026/rsh@rshpa.org. Thank you for your assistance.

Sincerely,

Vito Wicevic

Counsel for Health Regulation

Enclosure

cc: Randall S. Hiller, Esq.

RE: Blessed Births - Record on Appeal

RECEIVED

JUN 14 2016

SC Court of Appeals

Tue 6/14/2016 2:33 PM

To: Wicevic, Vito <wicevilm@dhec.sc.gov>;

Cc: 'Alison Kelley' <ahk@rshpa.org>;

That is fine Vito, sorry for the slip up. I am told we can send the supplemental record on Thursday.

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
Greenville, S.C. 29609
(864) 232-0026

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From: Wicevic, Vito [mailto:wicevilm@dhec.sc.gov]
Sent: Tuesday, June 14, 2016 2:22 PM
To: Randall S. Hiller <rsh@rshpa.org>; 'Alison Kelley' <ahk@rshpa.org>
Cc: Jones, Jaimie <jonesjp@dhec.sc.gov>
Subject: Re: Blessed Births - Record on Appeal

Mr. Hiller:

I contacted the Clerk's Office at the Court of Appeals and asked how the parties can resolve this issue. When there is written consent of the attorneys of record, parties may supplement the Record on Appeal. See Rule 212(b), SCACR. The individual from the Clerk's Office suggested sending the Clerk a letter explaining the parties intention to supplement the record, containing the written consent of both parties, and indicating a suggested deadline for serving the supplemental material. I drafted a letter. Please see the attached.

With final briefs being due Thursday and the Record on Appeal not yet complete, the individual also suggested requesting an extension for filing the final briefs. I've also included that request in the attached draft letter.

Please let me know if filing the attached letter is acceptable to you. If it is acceptable, please: (1) provide me with a date in which you expect you can serve the supplemental material (I will insert this date in the letter); and (2) send me an email in which you consent to supplementing the record in accordance with Rule 212(b).

Please also note that when filing supplemental material, a party must do so in accordance with Rule 212(c). The person at the Clerk's Office indicated the Appendix must be bound, have an index, etc. in accordance with SCACR.

If the letter is acceptable, I will file it with the Court of Appeals. Please let me know if you have any questions or would like to discuss this matter.

Thanks,
Vito

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Vito Wicevic
Counsel for Health Regulation
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Office: 803-898-3350
Fax: 803-898-3367

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From: Randall S. Hiller <rsh@rshpa.org>
Sent: Tuesday, June 14, 2016 1:22:54 PM
To: 'Alison Kelley'; Wicevic, Vito
Subject: RE: Blessed Births - Record on Appeal

Yes, please do that ASAP.

Randall S. Hiller
Randall S. Hiller, P.A.
Attorneys at Law
850 Wade Hampton Blvd.
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(864) 232-0026

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From: Alison Kelley [<mailto:ahk@rshpa.org>]
Sent: Tuesday, June 14, 2016 12:39 PM
To: 'Wicevic, Vito' <wicevivo@dhec.sc.gov>
Cc: 'Randall S. Hiller' <rsh@rshpa.org>
Subject: RE: Blessed Births - Record on Appeal

Hi there: Randy is in Court and I am not sure what time he will be back. After looking through the file the exhibits were separated from the transcript and that is why they were inadvertently left out. I don't think Randy will mind an extension...I know I won't. I can have the exhibits copied, bound and ready to ship out on Thursday, with the record I have already prepared. We have a brief due in Supreme court the same day which has kept me completely swamped and is probably why I overlooked the exhibits. My sincere apologies. If he has responded to you already please disregard.

Thanks,

Alison H. Kelley
Paralegal to Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
(864) 242-4692 Fax

From: Wicevic, Vito [mailto:wicevism@dhec.sc.gov]
Sent: Tuesday, June 14, 2016 11:09 AM
To: Randall S. Hiller <rsh@rshpa.org>
Cc: Alison Kelley <ahk@rshpa.org>; Jones, Jaimie <jonesjp@dhec.sc.gov>
Subject: Blessed Births - Record on Appeal

Good morning Mr. Hiller:

Hope all is well. In preparing the Department's final brief, I ran into an issue with the Record on Appeal. In its Designation of Matter to be Included in the Record on Appeal, Blessed Births proposed the "Transcript of Hearing held on October 21, 2015 and all exhibits" and the "Final Decision and Order of Administrative Law Court" be included as the Record on Appeal. Similarly, in the Department's Designation of Matter to be Included in the Record on Appeal, the Department proposed the transcript and all admitted exhibit as well as Judge Robinson's Final Decision and Order be included as the Record on Appeal. However, the Record of Appeal served on the Department **does not** include the exhibits from the contested case hearing.

Rule 210(g), SCACR, states, "Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material." The certificate of counsel you included with the Record on Appeal indicates the record complies with Rule 211(b), which concerns the content of final briefs. Regardless, the Record on Appeal is deficient in that it does not contain the exhibits from the contested case - which both Blessed Births and the Department proposed as being part of the record.

Because the Record on Appeal does not contain the exhibits, I am unable to properly complete the Department's final brief, which is due this Thursday. Thus, I suspect we'll need to request a continuance of the due date for final briefs until the Record on Appeal correctly reflects what the parties proposed.

Please contact me at your earliest convenience to resolve this issue. If I do not hear back from you by 3 pm, I will give the Clerk of the Court of Appeals a call to see how to best proceed.

Thanks,
Vito

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Vito Wicevic
Counsel for Health Regulation
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Office: 803-898-3350
Fax: 803-898-3367

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