

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

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JUL 11 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.

**RESPONDENT'S RETURN TO APPELLANTS'
MOTION TO FILE SECOND
AMENDED INITIAL BRIEF OUT OF TIME**

The Appellants Philip Ethier and Jeanne Ethier have filed a Motion for Permission to File Second Amended Initial Brief Out of Time. The Respondent Guy R. Bibeau, M.D. opposes that motion and respectfully requests that the Court

grant Dr. Bibeau's Motion to Dismiss Appeal that is currently under advisement.¹

The procedural history is well established in prior filings with this Court and with the Supreme Court, including the pending Motion to Dismiss Appeal. In sum, the Appellants have now disregarded and violated two orders of this Court directing that an amended Initial Brief not exceeding fifty pages be filed.

After the Appellants filed an Initial Brief totaling 79 pages in length, this Court denied a motion to exceed the page limitation established by Rule 208(b)(5), SCACR. This Court specifically found that "the issues raised on appeal do not demand a brief of this length." This Court 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.

Instead of following that directive, the Appellants next filed an Amended Initial Brief totaling 64 pages in length. By Order filed June 1, 2016, this Court denied the Appellants' renewed request to file a brief that exceeded the 50-page limit. This Court *again* directed the Appellants to file within 15 days "an amended brief that complies with Rule 208(b), SCACR, and does not exceed fifty pages in length." *See*, Order filed June 1, 2016.

The Appellants did not comply with that directive either. Instead, in an attempt to avoid compliance with now two orders of this Court, the Appellant

¹ In its Order filed June 1, 2016, the Court states: "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."

engaged in a type of "forum shopping" by filing a motion for Rule 204 certification with the Supreme Court and asking that Court to allow the filing of a brief that exceeds fifty pages, i.e., to do precisely what this Court had denied on two occasions.

In doing so, the Appellants ignored once again this Court's Order. They did not file an Amended Initial Brief with this Court within the 15-day limit set by the June 1, 2016 Order. The Amended Initial Brief was only filed after this Court sent a letter dated June 23, 2016, advising the Appellants' counsel that they were not in compliance with this Court's Order and that compliance was still required despite the motions filed with the Supreme Court.

This procedural history reflects the type of disregard for this Court's orders that warrants a denial of the Appellants' motion to file out of time. Moreover, Dr. Bibeau re-asserts his position that the Appellants' conduct warrants the dismissal of this appeal for the reasons outlined in the pending Motion to Dismiss Appeal as well as based on the events that have occurred subsequent to the filing of that motion, including the disregard for this Court's second order and the use of Rule 204 certification simply to seek a different ruling from the Supreme Court on the same procedural motions already decided by this Court adversely to the Appellants.

For the foregoing reasons, the Respondent Guy R. Bibeau, M.D. respectfully requests that the Court deny the Appellants' Motion for Permission to File Second

Amended Initial Brief Out of Time. Dr. Bibeau further requests that the Court rule on the pending Motion to Dismiss Appeal in his favor based upon the Appellants' repeated disregard for this Court's Orders.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:



ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

DAVID C. HOLLER
G. MURRELL SMITH, JR.
LEE ERTER WILSON JAMES
HOLLER & SMITH, LLC
Post Office Box 580
Sumter, South Carolina 29151-0580
(803) 778-2471

STANLEY L. MYERS
MOORE TAYLOR LAW FIRM, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160

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

Columbia, South Carolina

July 11, 2016

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 File Second Amended Initial Brief Out of Time** 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 11th day of July 2016:

David Proffitt, Esquire
Ronald B. Cox, Esquire
Proffitt & Cox, LLP
Wildewood Business Center
140 Wildewood Park Drive - Suite A
Columbia, South Carolina 29223

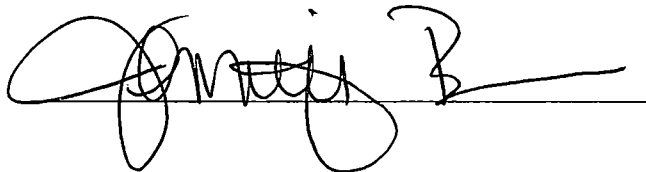
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SC Court of Appeals

David C. Holler, Esquire
G. Murrell Smith, Jr., Esquire
Lee Erter Wilson James Holler & Smith, LLC
Post Office Box 580
Sumter, South Carolina 29151-0580

Stanley L. Myers, Esquire
Moore Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171-5709



A handwritten signature in black ink, appearing to read 'Stanley L. Myers', is written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

July 11, 2016

Daniel C. Plyler
Joel S. Hughes
David A. DeMasters
Steven R. Spreeuwiers
Brandon M. Briggs

*Also Admitted In North Carolina
†Certified Mediator

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondent's Return to Appellants' Motion to File Second Amended Initial Brief Out of Time** in the above referenced matter. Please file the original and return a clocked-in copy 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 Jenny Abbott Kitchings
July 11, 2016
Page Two

cc: (w/ Enclosure)

David Proffitt, Esquire
Ronald B. Cox, Esquire
Proffitt & Cox, LLP
Wildewood Business Center
140 Wildewood Park Drive - Suite A
Columbia, South Carolina 29223

David C. Holler, Esquire
G. Murrell Smith, Jr., Esquire
Lee Erter Wilson James
Holler & Smith, LLC
Post Office Box 580
Sumter, South Carolina 29151-0580

Stanley L. Myers, Esquire
Moore Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171-5709