

**RECEIVED**

AUG 04 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

---

Case No. 2014-CP-42-0508

Patricia Craig,

Appellant,

vs.

E. Earl Jenkins, Jr., M.D., also known as  
Everett Jenkins, Jr., M.D., Amisub of South Carolina,  
d/b/a Piedmont Medical Center, and York Pathology  
Associates, LLC,

Respondents.

---

RETURN TO MOTION TO STRIKE

---

1. On July 13, 2016, the Respondents filed a Motion to Strike certain matters from the Designation of Matter to Be Included in the Record. Clearly, Rules 209 and 210 of the Appellate Rules state that "The Record shall not, however, include matter which was not presented to the lower court or tribunal". Therefore, the Appellant agrees that any matters not presented to the lower court should not be in the Designation or Record.

2. With regard to the Deposition of Patricia Craig, it appears that the Deposition itself was not filed in the record. However, in the Plaintiff's Memorandum filed in the case portions of the deposition transcript were referred to and quoted in the pleading filed with the court. It is the

position of the Appellant that those portions should be retained in the Designation and Record.

Those portions of Patricia Craig's deposition are as follows:

Deposition page 30, L 5-24;

Deposition page 36, L. 22-25; and

Deposition page 37, L. 1-10.

3. With regard to the Plaintiff's Discovery Requests and the Defendants's Responses, the Appellant recognizes those documents were not submitted at the hearing. However, the Appellant's Memorandum which was filed sets forth certain portions of the responses by the Defendants. Those excerpts of the discovery are as follows:

Defendant Jenkins' Answer to Plaintiff's Interrogatory No. 7;

Defendant Jenkins' Answer to Plaintiff's Interrogatory No. 9;

Defendant York Pathology's answer to Plaintiff's Interrogatory No. 7; and

Defendant York Pathology's answer to Plaintiff's Interrogatory No. 11.

Appellant argues that those excerpts are in the Record and therefore are appropriate to be designated.

4. The Appellant did not submit the medical records into the record of this case. However, when the Notice of Intent was filed on November 4, 2013, Case No. 2013-CP46-3370, the Affidavit of Dr. Kovacs set forth that he had relied on approximately 25 pages of Craig's medical records and those records were attached and filed with the Notice of Intent. The Appellant argues that those records, in addition to the ones designated by the Respondent, should be allowed as a portion of the Record. This situation is analogous to *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 763 S.E.2d 426 (S.C. 2014) and *Ranucci v. Crain*, 409 S.C. 493, 763 S.E.2d 189 (S.C. 2014) wherein the Supreme Court ruled found the cases were properly filed even though the precise affidavits were

not filed. Therefore, since the Affidavit and Records were filed in the NOI, the Appellant asserts that to the extent the Respondent has agreed certain records are proper, the Index and 25 pages of medical records should be deemed a portion of the matters submitted to the lower court.

5. With all other records specifically not argued herein as being admissible, the Appellant agrees those records should be struck from the Designation of Matter.

6. The undersigned will consent with the attorneys for the Respondents to see if an Agreement can be reached on all of these issue.

THEREFORE, having fully responded to the Motion to Strike, the Appellant prays that the Court allow the documents and materials mentioned herein to be designated in the Designation of Matters to be Included in the Record on Appeal. As to all other matters, the Appellant consents to the Motion and requests to be allowed time to amend the Designation and Initial Briefs filed with the Court.

Respectfully submitted, this the 4th day of August, 2016.



GLENN WALTERS, Esquire  
R. Bentz Kirby  
1910 Russell Street (29115)  
Post Office Box 1346  
Orangeburg, SC 29116  
Phone: 803 531-8844  
Fax: 803 531-3628  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-42-0508

Patricia Craig,

Appellant,

vs.

E. Earl Jenkins, Jr., M.D., also known as  
Everett Jenkins, Jr., M.D., Amisub of South Carolina,  
d/b/a Piedmont Medical Center, and York Pathology  
Associates, LLC,

Respondents.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 4, 2016, he served the Return to Motion to Strike of Respondent on counsel for the Respondents by placing a copy in the United States Mail, postage fully paid and addressed to the following:

J Hollis Inabinet  
Post Office Drawer 1897  
Spartanburg, SC 29304

Andrew F Lindemann  
Post Office Box 8568  
Columbia, SC 29202-8568

  
\_\_\_\_\_  
R. Bentz Kirby  
Attorney for Appellant

**RECEIVED**  
AUG 04 2016  
SC Court of Appeals

**GLENN WALTERS  
ATTORNEY AT LAW, P. A.**

1910 RUSSELL STREET • POST OFFICE BOX 1346 • ORANGEBURG, S.C. 29116  
TELEPHONE: (803) 531-8844 • FACSIMILE: (803) 531-3628

Glenn Walters, Sr.  
R. Bentz Kirby, Retired and Of Counsel

August 4, 2016

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

AUG 04 2016

SC Court of Appeals

Re: Craig vs Jenkins, et al  
Appellant Case No. 2015-002174

Dear Ms Kitchings:

Enclosed you will please find the Appellant's Reply to the Motion to Strike filed by the Respondents. Please file the original and return the copy to us in the stamped, self-addressed envelope provided for your convenience. Also, please indicate the date and time of filing. You may call me at 803-413-5676 with any questions.

With kind regards, we are

Yours very truly,



Glenn Walters  
R. Bentz Kirby

cc: Andrew F Lindemann  
J. Hollis Inabinet