

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 14 2016

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Consolidated Cases for Trial

Case No. 2010-CP-28-00322

Case No. 2010-CP-28-00323

APPELLATE CASE NO. 2016-000626

Jamie Curley, Plaintiff,

v.

SCENT Land Holdings, LLC, Amy Puchalski, and Robert Puchalski Respondents,

v.

South Carolina ENT, Allergy & Sleep Medicine, P.A., Amy Puchalski and Robert Puchalski, Defendants,

Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South Carolina

**DESIGNATION OF MATTER OF RESPONDENTS/APPELLANTS JAMIE
CURLEY AND DR. ORVILLE DYCE IN APPELLANTS/RESPONDENTS
APPEAL**

Respondents/Appellants Dr. Orville Dyce and Jamie Curley propose the following
be included in the Record on Appeal:

1. Plaintiff Dr. Orville Dyce' Complaint in Case No. 2010-CP-28-0323 (the "SCENT Case") filed on March 15, 2010 ("March 15, 2010 Complaint – SCENT Case");
2. Answer of Defendant Dr. Puchalski to March 15, 2010 Complaint – SCENT Case dated April 20, 2010 ("Dr. Puchalski Answer to March 15, 2010 Complaint – SCENT Case");
3. Answer of Defendant South Carolina ENT, Allergy & Sleep Medicine, P.A.'s ("SCENT") to March 15, 2010 Complaint – SCENT Case dated April 20, 2010 ("SCENT Answer to March 15, 2010 Complaint");
4. Defendant SCENT's Motion to Amend Answer to Add Counterclaims dated October 5, 2010 ("SCENT's Motion to Amend Answer to Add Counterclaims");
5. Plaintiff Dr. Orville Dyce's Amended Complaint in SCENT case with Exhibits filed on October 21, 2011 ("October 21, 2011 Amended Complaint – SCENT Case");
6. Defendant SCENT's Answer to Amended Complaint and Counterclaims filed on November 8, 2011 ("SCENT Answer to October 21, 2011 Amended Complaint – SCENT Case");
7. Defendant Dr. Puchalski Answer to Amended Complaint filed on November 14, 2011 ("Dr. Puchalski Answer to October 21, 2011 Amended Complaint – SCENT Case");

8. Plaintiff Dr. Orville Dyce's First Amended Complaint in SCENT Case with Exhibits filed on May 10, 2012 ("May 10, 2012 First Amended Complaint – SCENT Case");
9. Defendant SCENT, Dr. Puchalski and Amy Puchalski Answer to First Amended Complaint and Counterclaims (Jury Trial Demanded) filed on June 4, 2012 ("Answer to May 10, 2012 First Amended Complaint – SCENT Case");
10. Plaintiff Jamie Curley's Complaint in Case No. 2010-CP-28-0322 (the "SCENT Land Case") filed on March 15, 2010 ("March 15, 2010 Complaint – SCENT Land Case");
11. Defendant Dr. Puchalski's Answer in SCENT Land Case dated April 20, 2010 ("Dr. Puchalski Answer to March 15, 2010 Complaint – SCENT Land Case");
12. Defendant SCENT Land Holdings, LLC ("SCENT Land") Answer in SCENT Land Case dated April 20, 2010 ("SCENT Land Answer to March 15, 2010 Complaint – SCENT Land Case");
13. Defendant SCENT Land's Motion to Amend Answer to Add Counterclaims dated October 5, 2010 ("SCENT Land's Motion to Amend Answer to Add Counterclaims");
14. Plaintiff Jamie Curley's Amended Complaint in SCENT Land Case filed on October 21, 2011 ("October 21, 2011 Amended Complaint – SCENT Land Case");

15. Defendant SCENT Land's Answer to Amended Complaint and Counterclaims in SCENT Land Case filed on November 8, 2011 ("**SCENT Land Answer to October 21, 2011 Amended Complaint – SCENT Land Case**");
16. Defendant Dr. Puchalski and Amy Puchalski Answer to SCENT Land Amended Complaint filed on November 14, 2011 ("**Dr. Puchalski and Amy Puchalski Answer to October 21, 2011 Amended Complaint – SCENT Land Case**");
17. Plaintiff Jamie Curley's Notice of Motion and Motion for Summary Judgment in SCENT Land Case for dissolution of SCENT Land, with Affidavit of Jamie Curley, filed on February 24, 2012 ("**February 24, 2012 Motion For Summary Judgment-SCENT Land Case**");
18. Plaintiff's Memorandum in Support of Motion for Summary Judgment in SCENT Land Case for dissolution of SCENT Land, filed on April 11, 2012 ("**April 11, 2012 Memorandum in Support of Summary Judgment-SCENT Land Case**");
19. Judge Benjamin's Form 4 Order dated July 31, 2012 and filed August 2, 2012 in SCENT Land Case granting Plaintiff Jamie Curley Summary Judgment solely on Defendants' South Carolina Unfair Trade Practices Act Counterclaim ("**August 2, 2012 Order – SCENT Land Case**");
20. Judge Benjamin's Form 4 Order dated July 31, 2012 and filed August 2, 2012 in SCENT Land Case granting Plaintiff Jamie Dyce Summary Judgment Dissolving SCENT Land ("**August 2, 2012 Order Dissolving SCENT Land Case**");

21. Judge Goodstein's Order dated November 25, 2015 and filed on December 8, 2015 ("**December 8, 2015 Order**");
22. Plaintiffs Dr. Dyce and Jamie Curley's Motion to Alter or Amend Judgment Under South Carolina Rule of Civil Procedure 59(e), filed on December 11, 2015 ("**Plaintiffs' Motion to Amend December 8, 2015 Order**");
23. Motion of Defendants SCENT, SCENT Land, Dr. Puchalski and Amy Puchalski to Alter or Amend and for Reconsideration of Judge Goodstein's Order dated December 17, 2015 ("**Defendants' Motion to Amend December 8, 2015 Order**");
24. Objection to Appointment of Receiver by SCENT, SCENT Land, Dr. Puchalski and Amy Puchalski dated December 17, 2015 ("**Defendants' Objection to Appointment of Receiver**");
25. Judge Goodstein Order denying Defendants' and Plaintiffs' motions to reconsider and Defendants' Objection to Appointment of Receiver dated February 19, 2016 and filed on February 24, 2016 ("**February 24, 2016 Order**");
26. SCENT, SCENT Land, Dr. Puchalski and Amy Puchalski Notice of Appeal served on March 24, 2016 ("**Defendants' Notice of Appeal**");
27. Dr. Dyce and Ms. Curley's Notice of Cross Appeal served on March 29, 2016 and filed on March 30, 2016 ("**Plaintiffs' Notice of Cross Appeal**");
28. Trial Transcript, November 19-22, 2013 Tr. 74:14 – 76:3;
29. Trial Transcript, November 19-22, 2013 Tr. 94:13 - 95:23;
30. Trial Transcript, November 19-22, 2013 Tr. 206:17 – 19;

31. Trial Transcript, November 25-26, 2013 Tr. 227:18-229:12;
32. Trial Transcript, November 19-22, 2013 Tr. 252:22 - 253:19;
33. Trial Transcript, November 19-22, 2013 Tr. 261:11 – 263:4;
34. Trial Transcript, November 19-22, 2013 Tr. 262:10 – 263:4;
35. Trial Transcript, November 19-22, 2013 Tr. 270:1 – 271:16;
36. Trial Transcript, November 19-22, 2013 Tr. 284:4 – 285:24;
37. Trial Transcript, November 19-22, 2013 Tr. 294:1 – 295:1-8;
38. Trial Transcript, November 25-26, 2013 Tr. 297:12 287:3;
39. Trial Transcript, November 19-22, 2013 Tr. 313:8 – 16;
40. Trial Transcript, November 19-22, 2013 Tr. 314:5-15;
41. Trial Transcript, November 19-22, 2013 Tr. 318:16 – 21;
42. Trial Transcript, November 19-22, 2013 Tr. 321:11 – 322:24;
43. Trial Transcript, November 19-22, 2013 Tr. 321:16 - 20;
44. Trial Transcript, November 19-22, 2013 Tr. 373:8 – 374:9;
45. Trial Transcript, November 19-22, 2013 Tr. 383:11 - 23;
46. Trial Transcript, November 19-22, 2013 Tr. 487:16 – 24;
47. Trial Transcript, November 19-22, 2013 Tr. 487:23 – 488:24;
48. Trial Transcript, November 19-22, 2013 Tr. 488:5 – 10, 25 - 499:3;
49. Trial Transcript, November 19-22, 2013 Tr. 488:8-24;
50. Trial Transcript, November 19-22, 2013 Tr. 489:6 – 490:14;
51. Trial Transcript, November 19-22, 2013 Tr. 492:16 – 494:8;
52. Trial Transcript, November 19-22, 2013 Tr. 506:6 – 510:5;
53. Trial Transcript, November 19-22, 2013 Tr. 509:2 – 510:5;

54. Trial Transcript, November 19-22, 2013 Tr. 554:13 – 555:15;
55. Trial Transcript, November 19-22, 2013 Tr. 641:16-17;
56. Trial Transcript, November 25-26, 2013 Tr. 51:25 – 52:16;
57. Trial Transcript, November 25-26, 2013 Tr. 191:2 -15;
58. Trial Transcript, November 25-26, 2013 Tr. 204:21– 205:2;
59. Trial Transcript, November 25-26, 2013 Tr. 227:18-229:12;
60. Trial Transcript, November 25-26, 2013 Tr. 236;
61. Trial Transcript, November 25-26, 2013 Tr. 242;
62. Trial Transcript, November 25-26, 2013 Tr. 242:24 – 243:2;
63. Trial Transcript, November 25-26, 2013 Tr. 274:20 – 25;
64. Trial Transcript, November 25-26, 2013 Tr. 281:3-9;
65. Trial Transcript, November 25-26, 2013 Tr. 282:9-12;
66. Trial Transcript, November 25-26, 2013 Tr. 283:10-21;
67. Trial Transcript, November 25-26, 2013 Tr. 297:12 – 287:3;
68. Trial Transcript, November 25-26, 2013 Tr. 297;
69. Trial Transcript, March 31 – April 2, 2014 Tr. 8:11 – 10:7;
70. Trial Transcript, March 31 – April 2, 2014 Tr. 22:14-22;
71. Trial Transcript, March 31 – April 2, 2014 Tr. 137:10-144:17-18;
72. Trial Transcript, March 31 – April 2, 2014 Tr. 265:9-22;
73. Trial Transcript, March 31 – April 2, 2014 Tr. 298:1-4;
74. Trial Transcript, March 31 – April 2, 2014 Tr. 402:16 -403:7;
75. Trial Transcript, March 31 – April 2, 2014 Tr. 408:12-18;
76. Trial Transcript, March 31 – April 2, 2014 Tr. 410:9-12;

77. Trial Transcript, March 31 – April 2, 2014 Tr. 414:17 – 417:16;
78. Trial Transcript, March 31 – April 2, 2014 Tr. 417:1-16;
79. Trial Transcript, March 31 – April 2, 2014 Tr. 427:5-9;
80. Trial Transcript, March 31 – April 2, 2014 Tr. 442:7 – 443:10;
81. Trial Transcript, March 31 – April 2, 2014 Tr. 443:11 – 446:11;
82. Trial Transcript, March 31 – April 2, 2014 Tr. 448:4-7;
83. Trial Transcript, March 31 – April 2, 2014 Tr. 448:15-471:4;
84. Trial Transcript, March 31 – April 2, 2014 Tr. 470:10 - 471:4;
85. Trial Transcript, March 31 – April 2, 2014 Tr. 474:3-23;
86. Trial Transcript, March 31 – April 2, 2014 Tr. 475:2 – 21;
87. Trial Transcript, November 24-25, 2014 Tr. 22:14-22;
88. Trial Transcript, November 24-25, 2014 Tr. 95:3-24;
89. Trial Transcript, November 24-25, 2014 Tr. 136:4-23;
90. Trial Transcript, November 24-25, 2014 Tr. 150:9-19;
91. Trial Transcript, November 24-25, 2014 Tr. 153:23-154:3;
92. Trial Transcript, November 24-25, 2014 Tr. 161:3-9;
93. Trial Transcript, November 24-25, 2014 Tr. 193:3 – 11;
94. Trial Transcript, November 24-25, 2014 Tr. 194:2-18;
95. Trial Transcript, November 24-25, 2014 Tr. 199:23 – 200:17;
96. Trial Transcript, November 24-25, 2014 Tr. 204:21 -205:2;
97. Trial Transcript, November 24-25, 2014 Tr. 207:1-9;
98. Trial Transcript, November 24-25, 2014 Tr. 227:18 – 229:12;
99. Trial Transcript, November 24-25, 2014 Tr. 250:3-14;

100. Trial Transcript, November 24-25, 2014 Tr. 258:23-259:4;
101. Trial Transcript, November 24-25, 2014 Tr. 280:5-10;
102. Plaintiffs' Trial Exhibit Number 2: Employment Agreement of Dr. Dyce with Kershaw Ear, Nose & Throat and Facial Plastic Surgery, Inc. ("**2005 Employment Agreement**");
103. Plaintiffs' Trial Exhibit Number 3: Shareholders Agreement between Bob Puchalski and Orville Dyce dated August 31, 2007 ("**August 31, 2007 Shareholders' Agreement**");
104. Plaintiffs' Trial Exhibit Number 4: Stock Purchase Agreement between Bob Puchalski and Orville Dyce August 31, 2007 ("**August 31, 2007 Stock Purchase Agreement**");
105. Plaintiffs' Trial Exhibit Number 5: Email from Theresa Williams dated January 15, 2008 regarding Dyce's Buy-In ("**January 15, 2008 Buy-In Email**");
106. Plaintiffs' Trial Exhibit Number 6: Bill of Sale signed by Bob Puchalski Transferring 50,000 Shares to Orville Dyce dated August 31, 2007 ("**August 31, 2007 Bill of Sale**");
107. Plaintiffs' Trial Exhibit Number 7: Shareholders Agreement by and Among South Carolina ENT Allergy and Sleep Medicine PA and its Shareholders, dated July 16, 2008, between SCENT and Orville Dyce July 16, 2008 ("**July 16, 2008 Shareholders' Agreement**");

108. Plaintiff's Trial Exhibit Number 9: Stock Purchase Agreement between SCENT and Orville Dyce dated July 16, 2008 ("**July 16, 2008 Stock Purchase Agreement**");
109. Plaintiffs' Trial Exhibit Number 10: Orville Dyce's Employment Agreement with SCENT dated June 1, 2008 ("**June 1, 2008 Employment Agreement**");
110. Plaintiffs' Trial Exhibit Number 11: Draft Shareholders Agreement January 13, 2010 ("**January 2010 Shareholders' Agreement**");
111. Plaintiffs' Exhibit Number 12: Email from Ed White, Esquire, to Bruce Armin, Esquire, attaching the Draft 2010 Shareholders Agreement in redline form dated January 13, 2010 ("**January 13, 2010 Email to Bruce Arman**");
112. Plaintiffs' Trial Exhibit Number 16: Operating Agreement of SCENT Land Holdings LLC dated September 30, 2009 ("**2009 SCENT Land Operating Agreement**");
113. Plaintiffs' Trial Exhibit Number 17: SCENT Land Holdings Articles of Organization dated September 5, 2008 ("**2008 SCENT Land Articles of Organization**");
114. Plaintiffs' Trial Exhibit Number 18: March 3, 2010 Email from Dr. Dyce to Dr. Puchalski ("**March 3, 2010 Dr. Dyce Email**");
115. Plaintiffs' Trial Exhibit Number 19: March 3, 2010 Consent (the "**March 3, 2010 Consent**");
116. Plaintiffs' Trial Exhibit Number 22: March 30, 2010 Management Directive (the "**March 30, 2010 Management Directive**");

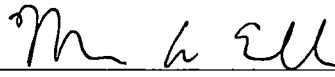
117. Plaintiffs' Trial Exhibit Number 80: Physician Employment Agreement between HMA and Dr. Dyce dated September 15, 2010 ("**September 15, 2010 HMA Employment Agreement**");
118. Plaintiffs' Trial Exhibit Number 108: Amended and Restated Articles of Incorporation for SCENT dated July 10, 2008 ("**July 10, 2008 SCENT Amended and Restated Articles of Incorporation**");
119. Plaintiffs' Trial Exhibit Number 111: August 31, 2010 Vidrine Shareholders Agreement ("**2010 Vidrine Shareholders Agreement**");
120. Plaintiffs' Trial Exhibit Number 113: Amended and Restated Operating Agreement of SCENT Land Holdings LLC dated August 30, 2010 ("**2010 Amended and Restated SCENT Land Operating Agreement**");
121. Plaintiffs' Trial Exhibit Number 124: Buy-in Schedule of March 2007 for Orville Dyce ("**Buy-in Schedule of March 2007**")
122. Plaintiffs' Trial Exhibit 125: Letter from Austin Sheheen to Bob Puchalski and Orville Dyce dated April 30, 2007 regarding the Buy-In ("**April 30, 2007 letter from Austin Sheheen**");
123. Plaintiffs' Trial Exhibit Number 127: Unanimous Written Consent in Lieu of a Meeting of the Shareholders of South Carolina ENT, Allergy and Sleep Medicine, P.A. dated July 16, 2008 ("**Written Consent**");
124. Plaintiffs' Trial Exhibit Number 162: May 8, 2010 Consent ("**May 8 Consent**");
125. Plaintiffs' Trial Exhibit Number 173: Email From Teresa Williams to Jamie Curley, Amy Puchalksi, copy to Bob Puchalski and Ed White forwarding

- Notice of Special Meeting dated March 11, 2009 (“**March 11, 2009 Theresa Williams email**”);
126. Plaintiffs’ Trial Exhibit Number 174: Notice of Special Meeting of the Board Members of SCENT Land Holdings, LLC, dated March 11, 2009 (“**Notice of Special Meeting**”);
127. Plaintiffs’ Trial Exhibit Number 176: Email From Teresa Williams to Bob Puchalski- notice of the mandatory two stage capital call to all the members dated March 17, 2009 (“**March 17, 2009 Theresa Williams email**”);
128. Plaintiffs’ Trial Exhibit Number 177: Decision of the Appeal Tribunal of the South Carolina Employment Security Commission dated August 20, 2010 (“**Decision of Appeal Tribunal**”);
129. Plaintiffs’ Trial Exhibit Number 248: SCENT General Ledger dated August 25, 2010 (“**SCENT General Ledger**”);
130. Plaintiff’s Trial Exhibit Number 250: SCENT Financial Records for 2009 and 2010 (“**SCENT Financial Records 2009 and 2010**”);
131. Plaintiff’s Trial Exhibit Number 253: 2008 Form 1120S, U.S. Income Tax Return for S Corporation for SCENT (“**2008 SCENT Tax Return**”);
132. Plaintiffs’ Trial Exhibit Number 261: Articles of Incorporation for Kershaw Ear Nose and Throat dated October 28, 2004 (“**October 28, 2004 Kershaw Ears Nose and Throat Articles of Incorporation**”);
133. Plaintiffs’ Trial Exhibit Number 283: Palmetto Bank records (“**FSB Loan Approval/Loan Summary Memorandum dated February 10, 2010**”);

134. Plaintiffs' Trial Exhibit Number 286: Proposed Operating Agreement of SCENT Land Holdings LLC dated 2008 ("**2008 Proposed SCENT Land Operating Agreement**");
135. Plaintiffs' Trial Exhibit Number 296.: Richard Livingston Damages Calculation dated November 18, 2013 ("**Livingston Damages Calculation**");
136. Plaintiffs' Trial Exhibit 301: March 1, 2010 Unsigned loan documents that Dr. Puchalski sent to Dr. Dyce ("**March 1, 2010 Unsigned Loan Documents**");
137. Plaintiffs' Trial Exhibit Number 304: SCENT Payroll Journal dated June 11, 2008 ("**June 11, 2008 SCENT Payroll Journal**");
138. Plaintiffs' Trial Exhibit 320: Defendants' Answers to Plaintiffs' Second Set of Interrogatories dated November 15, 2011 ("**November 15, 2011 Answers to Plaintiffs' Second Interrogatories**");
139. Defendants' Trial Exhibit Number 10: Covenant Not to Compete by and between SCENT and Orville Dyce dated June 1, 2008 ("**2008 Covenant Not to Compete**");
140. Defendants' Trial Exhibit Number 37: February 17, 2010 email from Walter Long to Robert Puchalski ("**February 17, 2010 Walter Long Email**");
141. Defendants' Trial Exhibit Number 40: March 5, 2010 email from Dr. Dyce to Robert Puchalski ("**March 5, 2010 Dr. Dyce Email**");

142. Defendants' Trial Exhibit Number 43: March 2, 2010 email from Dr. Puchalski to Jamie Curley, et. al. ("**March 2, 2010 Dr. Puchalski Email**");
and
143. Defendants' Trial Exhibit Number 214: 60 Day Accounts Receivable Report ("**Accounts Receivable**").

Respectfully submitted,



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ATTORNEYS FOR
RESPONDENTS/APPELLANTS JAMIE
CURLEY AND DR. ORVILLE DYCE

September 13, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

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v.

South Carolina ENT, Allergy & Sleep Medicine, P.A., Amy Puchalski and Robert Puchalski,Defendants,

Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South Carolina ENT, Allergy & Sleep Medicine, P.A., are the Appellants/Respondents.

PROOF OF SERVICE

I do hereby certify that on the 13th day of September 2016, I served a copy of the within **BRIEF OF RESPONDENTS/APPELLANTS JAMIE CURLEY AND DR. ORVILLE DYCE** and **DESIGNATION OF MATTER OF**

RESPONDENTS/APPELLANTS' JAMIE CURLEY AND DR. ORVILLE DYCE

IN APPELLANTS/ RESPONDENTS' APPEAL in the within entitled matter by

sending a copy of the same via United States First Class Mail, proper postage affixed,

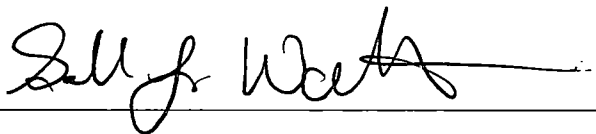
addressed to the person(s) hereinafter named, at the place(s) and address(es) stated

below, which is/are the last known address(es):

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Attorney for Appellants/ Respondents

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Attorney for Appellants/Respondents

WOMBLE CARLYLE SANDRIDGE & RICE,
LLP



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Diane Schafer Goodstein, Circuit Court Judge

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Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

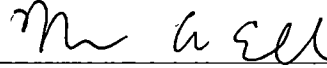
And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South Carolina ENT, Allergy & Sleep Medicine, P.A., are the Appellants/Respondents.

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to SCRAP 209(c), the attached **DESIGNATION OF MATTER OF RESPONDENTS/APPELLANTS JAMIE CURLEY AND DR. ORVILLE DYCE IN APPELLANTS/RESPONDENTS APPEAL** does not contain any matter irrelevant to this appeal.

WOMBLE CARLYLE SANDRIDGE & RICE,
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ATTORNEYS FOR
RESPONDENTS/APPELLANTS JAMIE
CURLEY AND DR. ORVILLE DYCE

September 13, 2016
Charleston, South Carolina