

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Kristi L. Harrington, Circuit Court Judge

C.A. No. 2014-CP-IO-01900
Appellate Case No. 2016-001223

RECEIVED

SEP 30 2016

SC Court of Appeals

Sheryll Washington, Individually, and as Next
Friend of Scarlett W., a minor,

Appellants,

v.

Medical University of South Carolina,

Respondent.

RETURN TO PETITION FOR REHEARING

In this medical malpractice action, the Plaintiffs/Appellants made a motion for a protective order to prevent Counsel of Record for Defendant/Respondent MUSC from consulting with and advising their employees who were Plaintiffs' treating healthcare providers prior to their depositions. The trial court denied the motion, and Appellants seek interlocutory review of the order by and through a notice of appeal. By order issued September 2, 2016, this Court dismissed the appeal as not immediately appealable under S.C. Code Ann. § 14-3-330. The Appellants have filed a petition for rehearing to which the Respondent submits this return urging the Court to deny the petition because it does not raise any points overlooked or misapprehended by this Court relevant its appellate jurisdiction ruling.

While the order on appeal was issued by the circuit court (not the family court), the scrivener's error in this Court's order of dismissal is irrelevant to the substantive basis for the Court's holding that the order is not immediately appealable under § 14-3-330. The Court of Appeals properly reviewed the nature of the circuit court order and correctly applied the statutory and case law on the limited scope of appellate jurisdiction over interlocutory orders as authorized under § 14-3-330.

The Appellants persistently argue that the order denying their motion for a protective order is not a discovery order, and they insist that the order falls under §14-3-330(2)(a), which provides appellate jurisdiction over: "(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." They contend that the motion for a protective order affects their substantial rights rising from the sanctity of the doctor-patient relationship and statutory privacy laws such as HIPAA and S.C Code §44-115-40.

Whatever may be the merits, or lack thereof, of their contentions about their rights to medical confidentiality and privacy in the context of litigation/discovery in connection with a medical malpractice such as this, the threshold issue before the Court is a narrow one of appellate jurisdiction. The Court correctly ruled that there is no jurisdiction under §14-3-330. More specifically, §330(2)(a) does not provide any basis for jurisdiction because the order denying their motion for protection does not discontinue their malpractice action or prevent a judgment from which an appeal may be taken. *See Oncology & Hematology Associates of S.C., LLC v. S. Carolina Dep't of Health & Env'tl. Control*, 387 S.C. 380, 381, 692 S.E.2d 920, 921 n.1 (2010) (notice of appeal from

discovery order dismissed); Ex parte Wilson, 367 S.C. 7, 625 S.E.2d 205, 208 (2005).

Respectfully submitted,



Barbara Wynne Showers (SC #65489)
Christina M. Dickinson (SC #75423)
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Attorneys for Respondent
Medical University of South Carolina

September 28th, 2016

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Kristi L. Harrington, Circuit Court Judge

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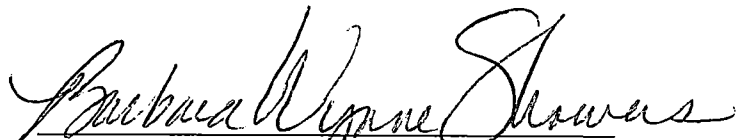
Medical University of South Carolina,

Respondent.

PROOF OF SERVICE

I hereby certify that one copy of the Return to Petition for Rehearing in the above-referenced matter was served by U.S. Mail, postage prepaid, on September __, 2016, addressed to the following counsel of record:

Edward L. Graham, Esquire
Diane M. Rodriguez, Esquire
Graham Law Firm, P.A.
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Attorneys for Appellant



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Attorneys for Respondent
Medical University of South Carolina

September , 2016

September 28, 2016

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

Re: Sheryll Washington, Individually, and as Next Friend of Scarlett W, a minor vs.
Medical University of South Carolina
C/A No. 2014-CP-10-01900, Charleston CP
Appellate Case No. 2016-001223
HLF File No. 1.206

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondent Medical University of South Carolina's Return to Petition for Rehearing of the above-referenced matter, along with a Proof of Service. Please return a clocked-in copy in the enclosed self-addressed stamped envelope.

By copy of this letter I am serving counsel for the Appellant.

Kind regards,

Yours truly,



Barbara Wynne Showers

BWS/mdh

Enclosure(s)

cc: Diane M. Rodriguez, Esquire

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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