

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED

Appellate Case No. 2016-001525
Trial Case No. 2014-CP-39-350

JAN 26 2017
SC Court of Appeals

Alliance Biomedical Research, LLC,

Appellant,

v.

Judith H. Parham, Personal Representative
of the Estate of David Michael Parham,
deceased and Parham & Smith, LLC,

Respondents.

APPELLANT'S RETURN TO MOTION IN RESPONSE TO
RESPONDENTS' MOTION TO EXCLUDE MATTER DESIGNATED
TO BE INCLUDED IN THE RECORD ON APPEAL

AND NOW COMES Appellant, Alliance Biomedical Research, LLC, and files the following Return to Motion in Response to Respondents' Motion to Exclude Matter Designated to be Included in the Record On Appeal. This appeal was taken from the lower court's grant of Respondents' Motion for Summary Judgment.

The parties have each hereto filed and served their Initial Briefs and Designation of Matter to be Included in the Record on Appeal. Appellant's Designation of Matter to be Included on Appeal lists twenty-seven separate items. In Respondents' Motion dated January 13, 2017, Respondents' took exception to the following items:

6. Deposition transcript of Steven Clemons taken on March 20, 2012, in *John L. Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
7. Letter from Michael Parham, Esq., to Ashby Davis, Esq., dated April 16, 2012 in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
13. Appellant's Responses to Interrogatories dated April 17, 2015
14. Appellant's Responses to Request for Production dated April 17, 2015
15. Deposition transcript of Gregory J. Feldman, M.D., taken on December 16, 2015
18. Appellant's Amended Responses to Respondents' Requests for Production dated March 9, 2016
27. Disc containing Appellant's bate-stamped documents ABR0001-ABR1282

Counsel for Respondents' emailed counsel for Appellant on December 20, 2016, a copy of which is attached to Respondents' Motion as Exhibit A, to notify the Appellant that Respondents' did not believe that the above-listed matters were presented to the lower court and should not be included in the Record on Appeal.

As counsel for Appellant stated in his January 9, 2017 email to counsel for Respondents', attached to Respondents' Motion as Exhibit C, Appellant argues that these items in dispute should be include in the Record on Appeal because Appellant's Designation of Matter listing these items was served on October 7, 2016. Respondents' did not make known their position to exclude these until two (2) months and thirteen (13) days later on December 20, 2016. The Record on Appeal was originally due to be filed with this Court on December 28, 2016, only eight (8) days after Respondents' objections were made known. *Gaither v. Gaither*, Opinion No.

2010-UP-214 (S.C. App. 3/15/2010) (S.C. App., 2010) “See Rule 210(c), SCACR (‘The Record on Appeal shall include all matter designated to be included by any party . . .’).”

During the eight (8) days between Respondents’ objection and the original due date for the Record on Appeal, there were four (4) days which were State holidays and weekends, December 23-26, 2016. Due to the close proximate of the original due date to the holidays, Appellant had the Record on Appeal to the printer, Legal Eagle, in a timely manner and the Record on Appeal had been scanned and numbered on December 16, 2016, and printed and bound by the time Appellant was notified on Respondents’ objections to the above-listed items on December 20, 2016. (See emails attached hereto as Exhibit A between counsel for Appellant and Legal Eagle) Respondents knew the timing of the Record on Appeal’s filing date and had the Designation of Matter listing all of the documents they now wish to exclude for Seventy-Four (74) days prior to any objection.

Additionally, Appellant did not wish to incur, unnecessary, additional, out-of-pocket expenses, for Respondents’ 11th hour objections. (See a copy of the invoice from Legal Eagle for scanning, numbering, printing, and binding the Record on Appeal attached hereto as Exhibit B) Appellant believes that the above-listed documents 6 & 7 with which Respondents’ raise an issue were presented to the lower court in the June 6, 2016 hearing, when counsel for Appellant stated, “All the documents are in the record from the underlying case”, a copy of which is attached to Respondents’ Motion as Exhibit E. Further, the above-listed items 6 & 7 were referenced in Plaintiff’s 2nd Amended Responses to Defendants’ Request for Production at paragraphs 16, 20, 22, and 26, attached as part of Exhibit C to Respondents’ Memorandum in Support of their Motion for Summary Judgment before the lower court.

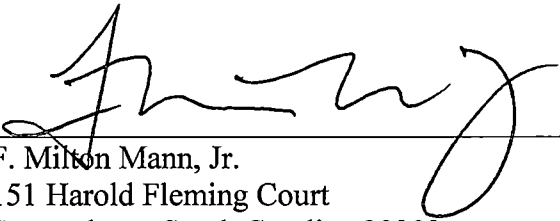
Appellant has the burden of providing the appellate court with a sufficient record by which to make an intelligent review. *Woodson v. DLI Props., LLC*, S.C. 517, S.E.2d 428 (S.C., 2014) *See, Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369; *See also, Anderson v. Williams*, Opinion No. 2008-UP-258 (S.C. App. 5/14/2008) (S.C. App., 2008) quoting *Helms v. Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005).

“[A]ppellate courts apply the same standard as the trial court under Rule 56(c), SCRPC”. *Woodson v. DLI Props., LLC*, S.C. 517, S.E.2d 428 (S.C., 2014). *See Quail Hill, L.L.C., v. Cnty. Of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010). “[A] decision on a motion for summary judgment is based on depositions, interrogatories, affidavits, and other evidentiary material provided by the parties.” *Id.* In order for the appellate court to make a meaningful review of the lower court granting of summary judgment and to meet Appellant’s burden of providing a sufficient record, Appellant provided evidence, when viewed in the “light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits” that shows there are genuine issues of material fact. *Id.*

In Respondents’ Designation of Matter for Inclusion in the Record, item 11 lists “Deposition of Gregory J. Feldman, M.D., taken on December 16, 2015” without any limitation as to specific page and/or line numbers. In fact, nowhere in Respondents’ Designation of Matter for Inclusion in the Record do Respondents’ limit themselves to the deposition page numbers listed in item 6 of the Affidavit of Jeffrey M. Bogdan, attached as Exhibit C to Respondents’ Motion to Exclude Matter Designated to be Included in the Record on Appeal nor any limitations to any of the documents listed in Respondents’ Designation of Matter. In addition, the Affidavit of Jeffrey M. Bogdan, item 6, does not reflect the pages and lines of the Deposition of Gregory J.

Feldman referenced by Appellant in its Memorandum in Opposition to Defendants' Motion for Summary Judgment.

Finally, all of the above-listed items at issue were produced at the request of Respondents and are central to the litigation, showing there are triable issues of fact. For the foregoing reasons, Appellant respectfully requests that the Court deny Respondents' Motion to Exclude Matter Designated to be Included in the Record on Appeal.



F. Milton Mann, Jr.
151 Harold Fleming Court
Spartanburg, South Carolina 29303
(864) 680-5079
Attorney for Appellant

January 24, 2017



Holly Mann <holly.jo.mann@gmail.com>

ABR - Parham - Record on Appeal

Holly Mann <holly.jo.mann@gmail.com>

Thu, Jan 5, 2017 at 3:18 PM

To: Stacy Davis <SDavis@legaleagleinc.com>

Cc: Milton Mann <milton.mann@gmail.com>, Greenville <Greenville@legaleagleinc.com>

Stacy -

Thank you! Do you mind confirming the date when this was essentially completed, please? I know it was before Christmas...

[Quoted text hidden]

EXHIBIT A



Holly Mann <holly.jo.mann@gmail.com>

ABR - Parham - Record on Appeal

Stacy Davis <SDavis@legaleagleinc.com>

Thu, Jan 5, 2017 at 3:21 PM

To: Holly Mann <holly.jo.mann@gmail.com>

Cc: Milton Mann <milton.mann@gmail.com>, Greenville <Greenville@legaleagleinc.com>

Holly,

The scanning and numbering was complete on 12/16 and it was printed and bound by 12/19 -12/20.

Thanks!

Stacy

From: Holly Mann <holly.jo.mann@gmail.com>**Sent:** Thursday, January 5, 2017 3:18 PM**To:** Stacy Davis**Cc:** Milton Mann; Greenville

[Quoted text hidden]

[Quoted text hidden]



Legal Eagle
 PO Box 5682
 Greenville, SC 29606
 (864) 467-1373
 www.legaleagleinc.com

BILL TO
 F. Milton Mann, Jr. Attorney at
 Law
 151 Harold Fleming Court
 Spartanburg, SC 29303

INVOICE 84186

DATE 01/05/2017 TERMS Net 15

DUE DATE 01/20/2017

PO:
 Holly / Milton Mann

CLIENT MATTER:
 ABR - Parham - Record on Appeal

DATE	QTY	ACTIVITY	RATE	AMOUNT
01/05/2017	514	B & W SCANS BASIC LEGAL EVIDENCE - GVL	0.10	51.40T
01/05/2017	30	IMAGE PROCESSING - GVL - inserting images from disc, etc	1.67	50.10T
01/05/2017	1	EMAIL TRANSFER FILES - GVL	7.00	7.00T
01/05/2017	1	DOCUMENT NUMBER SET UP - GVL	7.00	7.00T
01/05/2017	1,972	DOCUMENT NUMBER DIGITAL - GVL - # 1- 1972	0.05	98.60T
01/05/2017	23,664	B&W 8 1/2 X 11 BASIC LEGAL EVIDENCE - GVL	0.10	2,366.40 T
01/05/2017	120	INDEX COVERS WHITE - GVL	0.35	42.00T
01/05/2017	11	COMB BIND 1 INCH - GVL	2.50	27.50T
01/05/2017	33	COMB BIND 1 1/8 INCH - GVL	2.75	90.75T
01/05/2017	11	COMB BIND 3/8 INCH - GVL	1.75	19.25T

Thank you for your business!

SUBTOTAL 2,760.00
TAX (6%) 165.60
TOTAL 2,925.60

TOTAL DUE \$2,925.60

EXHIBIT B

Tax ID: 47-1414545

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APPEAL FROM PICKENS COUNTY
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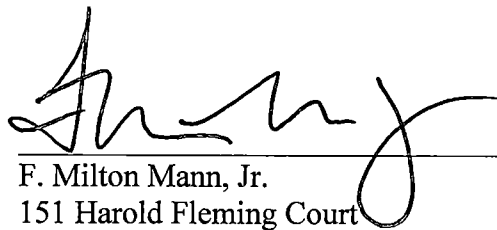
Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Return to Motion in Response to Respondents' Motion to Exclude Matter Designated to be Included in the Record On Appeal and Proof of Service, upon Respondents Judith H. Parham, Personal Representative of the Estate of David Michael Parham, deceased and Parham & Smith, LLC by email and depositing copies in the United States Mail, postage pre-paid; South Carolina Court of Appeals Clerk of Court, The Honorable Jenny Abbott Kitchings; by depositing copies in the United States Mail, postage pre-paid, on January 24, 2017, at the addresses listed below:

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

Jeffrey M. Bogdan, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402
Phone: (843) 577-7700
Attorney for Respondents

A handwritten signature in black ink, appearing to read "F. Mann, Jr.", written over a horizontal line.

F. Milton Mann, Jr.
151 Harold Fleming Court
Spartanburg, South Carolina 29303
(864) 680-5079
Attorney for Appellant

January 24, 2017

F. MILTON MANN, JR.

ATTORNEY AT LAW
LICENSED IN SC, GA & FL

January 24, 2017

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

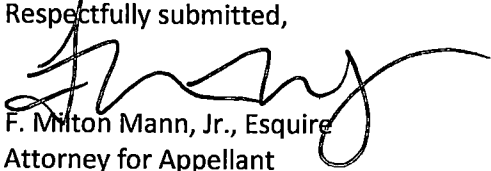
Re: Alliance Biomedical Research, LLC, Appellant,
v. Judith H. Parham, Personal Representative of the Estate of
David Michael Parham, deceased and Parham & Smith, LLC
Respondents – Appellate Case No. 2016-001525

Dear Ms. Kitchings:

Enclosed please find one (1) each original and six (6) copies of Appellant's Return to Motion in Response to Respondents' Motion to Exclude Matter Designated to be Included in the Record on Appeal and Proof of Service in the above-referenced case. Please file the original with the case file and return the clocked File Copy in the self-addressed, stamped envelope.

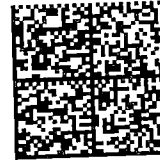
Thank you in advance for your assistance in this matter. If you should have any questions, please call me at 864/680-5079.

Respectfully submitted,


F. Milton Mann, Jr., Esquire
Attorney for Appellant
SC Bar #68250

cc: Jeffrey Michael Bogdan, Esquire

151 HAROLD FLEMING COURT • SPARTANBURG, SOUTH CAROLINA 29303
864-208-0359 • FAX 864-208-0233 • CELL 864-680-5079
EMAIL: MILTON.MANN@GMAIL.COM



UNITED STATES POSTAGE



PITNEY BOWES

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JAN 24 2017

MAILED FROM ZIP CODE 29303

F. MILTON MANN, JR., ESQ.
151 Harold Fleming Court
Spartanburg, SC 29303

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA, SC 29211

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