

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-CP-26-0166  
Appellate Case No. 2016-001499

**RECEIVED**

FEB 03 2017

SC Court of Appeals

Jeanne Beverly, Individually and on behalf of others similarly situated,.....Appellant,

v.

Grand Strand Regional Medical Center, LLC .....Respondent.

**RESPONDENT GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S  
MOTION TO STRIKE**

Respondent Grand Strand Regional Medical Center, LLC ("Grand Strand"), by and through its undersigned counsel, hereby moves the Court, pursuant to Rules 208(b)(4), 210(h) and 260(a) of the South Carolina Appellate Court Rules, to strike selected portions of Appellant Jeanne Beverly's Initial Reply Brief for failure to comply with the South Carolina Appellate Court Rules.

"[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and th[e] Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

The Court shall not consider any fact which does not appear in the Record on Appeal, and the Record on Appeal shall not include matter which was not presented to the circuit court.

Rule 210, SCACR. Additionally, it is improper for the Court to consider legal arguments that are raised for the first time in an appellant's reply brief. *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989); *see also Divine v. Robbins*, 385 S.C. 23, 44 n. 4, 683 S.E.2d 286, 297 n. 4 (Ct. App. 2009) (declining to address an issue raised for the first time in a reply brief).

Beverly's Initial Reply Brief does not comply with the South Carolina Appellate Court Rules, because it contains numerous facts that were not presented to the circuit court and arguments that were neither raised to, nor ruled upon, by the circuit court. *See Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277, 437 S.E.2d 168, 171 (Ct. App. 1993) (“[A]n appellant cannot make new arguments for reversal in a reply brief.”).

The circuit court granted Grand Strand's Motion to Dismiss and issued its ruling entirely based upon the allegations in the Complaint and the incorporated contractual documents (the “Institutional Agreement”). Any fact outside of the Complaint and the Institutional Agreement is inappropriate for this Court to consider in determining whether the circuit court erred in granting Grand Strand's Motion to Dismiss. Specifically, the following factual allegations were not presented to the circuit court and should be stricken from Beverly's Initial Reply Brief:

(a) “There is no way to square Grand Strand's litigation stance with the representations it made to Ms. Beverly and the following representations it continues to make to the public to this day:

- “If you are insured, a claim will be sent to your insurance company.”
- “If you have insurance or other coverage, we will expect you to pay your copayment, coinsurance and/or deductible . . .” Beyond that, Grand Strand recognizes that “the insurance company pays us.”
- Grand Strand professes a commitment to “pricing transparency.”

“About Our Pricing Commitment,” Grand Strand Health, *available at* [http://grandstrandmed.com/patient-financial/?page\\_name=about](http://grandstrandmed.com/patient-financial/?page_name=about) (last visited Jan. 11, 2017). (Initial Reply Brief p. 1).

(b) See “About Our Pricing Commitment,” Grand Strand Health, *available at* [http://grandstrandmed.com/patient-financial/?page\\_name=about](http://grandstrandmed.com/patient-financial/?page_name=about) (last visited Jan. 11, 2017) (advertising to its insured patients that “[t]he prices for your services are based on the contract terms negotiated by your insurance company with the hospital”). (Initial Reply Brief p. 4).

(c) Blue Cross wrote nearly 44.7% of all accident and health insurance business in South Carolina for the year, 44.25% for 2014, and over 43.5% for 2015. No other insurer controls more than 9% of the South Carolina private health insurance market. “2013 Complete Market Share Report” at 41. South Carolina Department of Insurance, *available at* <http://doi.sc.gov/DocumentCenter/View/7800>. 2014 “Accident and Health (All Lines) Premiums” at 1. South Carolina Department of Insurance, *available at* <http://doi.sc.gov/documentcenter/view/8410>; “2015 Complete Market Share Report” at 41. South Carolina Department of Insurance, *available at* <http://doi.sc.gov/DocumentCenter/View/8853>. (Initial Reply Brief p. 16 n.3).

Additionally, the following argument was neither raised to, nor ruled upon by, the circuit court and is inappropriate for this Court to consider:

(a) “Grand Strand need not promise by contract to provide medical treatment to emergency room patients like Ms. Beverly because mandatory treatment of emergency room patients is already guaranteed by federal law. Pursuant to the Emergency Medical Treatment and Labor Act, Grand Strand ‘must provide’

medical treatment to ‘any individual [that] comes to the emergency department.’ 15 U.S.C. 1395dd(a).” (Initial Reply Brief p. 9). Beverly’s argument regarding the application of the Emergency Medical Act was not previously raised to the circuit court or in her Initial Brief and should be stricken from her Initial Reply Brief. In addition to the fact that Beverly has not previously raised an argument related to the Emergency Medical Act, Beverly’s application of the Act is erroneous. The Emergency Medical Act does not require Grand Strand to render medical treatment to every person who seeks medical treatment. The Emergency Medical Act only requires “necessary stabilizing treatment for emergency medical conditions” or for the transfer of the individual to another medical facility if the person has been stabilized. 15 U.S.C. § 1395(a)-(b). If a patient is in a stable condition, then Grand Strand is not required to provide treatment under the Emergency Medical Act. Accordingly, the Court should strike Beverly’s argument involving the Emergency Medical Act because it was not previously raised and is erroneous.

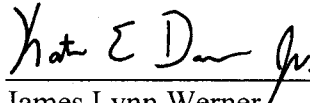
It is improper for the Court to consider either facts that are not in the record or arguments that were raised for the first time in an appellant’s reply brief. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001). Accordingly, the Court should strike the aforementioned facts and arguments from Beverly’s Initial Reply Brief.

### CONCLUSION

WHEREFORE, having fully shown that the newly presented facts and the unpreserved arguments raised by Beverly should be excluded from the Final Reply Brief, Respondent Grand Strand requests that the Court grant its Motion to Strike so that the Record will not be confused

by the numerous facts and arguments that would be improper for it to consider in resolving this action.

Respectfully submitted,



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*Attorneys for Respondent  
Grand Strand Regional Medical Center, LLC*

February 3, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM Horry COUNTY  
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**AFFIDAVIT OF JAMES LYNN WERNER, ESQUIRE**

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Personally appeared before me James Lynn Werner, Esquire, who after being duly sworn,  
deposes and testifies:

1. He is of sound mind and body and is competent to testify as to the matters herein set forth.
2. He is a partner in the law firm of Parker Poe Adams & Bernstein LLP and was retained by and served as counsel for Grand Strand Regional Medical Center, LLC ("Grand Strand") in the above-referenced matter.
3. He is authorized to make this affidavit on his own behalf and of his own knowledge.
4. He was present during the April 26, 2016 hearing on Grand Strand's Motion to Dismiss.

5. He has reviewed Appellant Jeanne Beverly's Complaint, Memorandum in Opposition to the Motion to Dismiss, and Motion to Alter or Amend the Court's Order Granting Grand Strand's Motion to Dismiss

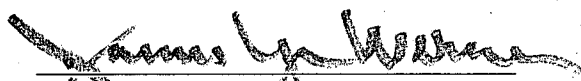
6. At no time during the hearing on the motion to dismiss or in Beverly's written submissions to the circuit court did she present the facts that the Motion to Strike requests be stricken from Beverly's Initial Reply Brief.

7. At no time during the hearing on Grand Strand's Motion to Dismiss or in Beverly's written submissions to the circuit court did Beverly introduce an argument related to the Emergency Medical Act, 15 U.S.C. § 1395.


8. This affidavit is submitted pursuant to Rule 240(c)(3), SCACR, because the Record on Appeal has not been filed and the facts cited in Beverly's Initial Reply Brief are not eligible to be included in the Record on Appeal.

AFFIANT SAYETH FURTHER NOT.

February 3, 2017

  
James Lynn Werner, Esquire

Sworn to and subscribed before me  
this the 3rd day of February 2017.

  
Notary Public for South Carolina  
My Commission Expires: August 30, 2026

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**PROOF OF SERVICE**

The undersigned hereby certifies that on February 3, 2017, he served the foregoing  
**RESPONDENT GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S MOTION  
TO STRIKE** on all counsel of record by placing a copy in the United States Mail, first class  
postage prepaid, addressed as follows:

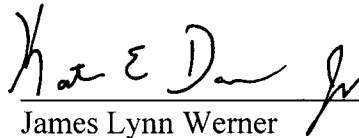
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2-3-17

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**SC Court of Appeals**

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

**Re: *Jeanne Beverly Individually and on behalf of other similarly situated v. Grand Strand Regional Medical Center, LLC; Civil Action No. 2016-CP-26-0116***

Dear Mrs. Kitchings:

Enclosed please find an original and six (6) copies of Respondent Grand Strand Regional Medical Center, LLC's Motion to Strike, an Affidavit of James Lynn Werner, the Proof of Service, and our firm check in the amount of \$25.00 in the above-referenced lawsuit. Please file the originals and return a file-stamped copy to my courier.

By copy of this letter, I am today serving the Respondent Grand Strand Regional Medical Center, LLC's Motion to Strike, Affidavit of James Lynn Werner, as well as the Proof of Service on counsel for the Appellant.

Thank you for your assistance and please do not hesitate to contact us if you require any further information.

Sincerely,

Katon E. Dawson, Jr.

KED:bg  
Enclosures

cc: John G. Felder, Jr.  
Chad A. McGowan  
Jordan C. Calloway  
Roy Harmon  
Sidney L. Major, Jr.  
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PPAB 3572134v1