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SC Court of Appeals

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

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

v.

Grand Strand Regional Medical Center, LLCRespondent.

**RESPONDENT GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S
REPLY TO APPELLANT'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S
MOTION TO STRIKE**

Respondent Grand Strand Regional Medical Center, LLC ("Grand Strand"), by and through its undersigned counsel, respectfully submits this Reply to Appellant Jeanne Beverly's Memorandum in Opposition to Respondent's Motion to Strike.

I. Beverly's citations to Grand Strand's and the South Carolina Department of Insurance's websites violate the South Carolina Appellate Court Rules.

Grand Strand moved the Court to order Beverly to strike all reference to Grand Strand's and the South Carolina Department of Insurance's websites, because these purported facts cited by Beverly in her Initial Reply Brief were not presented to the circuit court.

Briefs are required to cite to the Record on Appeal to support the facts alleged, and the South Carolina Appellate Court Rules state that matter that was not presented to the circuit court is not allowed in the Record on Appeal. Rule 208(b)(4), SCACR; Rule 210(c), SCACR.

Beverly's citations to facts that may not be included in the Record on Appeal violate the South Carolina Appellate Court Rules. Therefore, Beverly's citations to Grand Strand's and the South Carolina Department of Insurance's websites violate the South Carolina Appellate Court Rules. Accordingly, Grand Strand requests the Court strike all reference to Grand Strand's and the Department of Insurance's websites because they are not eligible to be included in the Record on Appeal and their inclusion would violate the South Carolina Appellate Court Rules.

II. Beverly's application of the Emergency Medical Act is not preserved for appellate review because it was raised for the first time in Beverly's Initial Reply Brief.

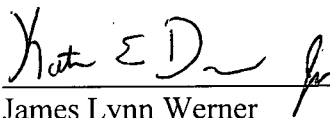
Grand Strand requests the Court order Beverly to strike her argument regarding the application of the Emergency Medical Act from her Initial Reply Brief. Beverly's Memorandum in Opposition to Respondent's Motion to Strike fails to recognize the distinction between an issue and an argument. Beverly previously raised the issue that the circuit court erred in finding she was not a third-party beneficiary to the Institutional Agreement. In support of that issue Beverly argued that the plain language of the third-party beneficiary disclaimer does not bar her from bringing a claim under the Institutional Agreement. Now, Beverly raises the same issue but asserts new grounds in support of her argument. For the first time in her Initial Reply Brief, Beverly argues that the circuit court erred in interpreting the third-party beneficiary disclaimer because the Emergency Medical Act renders certain phrases redundant. Beverly has never previously attempted to apply the Emergency Medical Act as a basis for interpreting the duties under the contract and reversing the circuit court's dismissal of her claims. Therefore, Beverly's application of the Emergency Medical Act is not preserved for appellate review, because Beverly may not assert new grounds in support of a previously raised issue for the first time in her Initial Reply Brief. *See Taylor v. Medenica*, 324 S.C. 200, 216, 479 S.E.2d 35, 43 (1996) (holding an issue is not preserved for appellate review if the grounds for reversing that issue were not previously asserted). Accordingly, Grand Strand requests the Court strike all reference to the

Emergency Medical Act from Beverly's Initial Reply Brief because she never argued that reversal was appropriate on the grounds that the Emergency Medical Act assists in interpreting certain language of the third-party beneficiary disclaimer.

CONCLUSION

WHEREFORE, having fully shown that the newly presented facts and the unpreserved argument 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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February 21, 2017

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PROOF OF SERVICE

The undersigned hereby certifies that on February 21, 2017, he served the foregoing **RESPONDENT GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S REPLY TO APPELLANT'S MEMORANDUM IN OPPOSITION TO RESPONDENT'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:

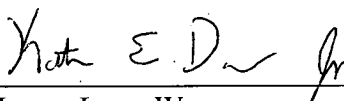
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February 21, 2017

Via Hand Delivery

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

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SC Court of Appeals

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's Reply to Appellant's Memorandum in Opposition to the Motion to Strike in the above-referenced matter, as well as the Proof of Service. Please file the originals and return a file-stamped copy to my courier.

By copy of this letter, I am today serving the Respondent's Reply to Appellant's Memorandum in Opposition to the Motion to Strike and 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,

A handwritten signature in cursive script that reads "Katon E. Dawson, Jr.".

Katon E. Dawson, Jr.

KED:bg
Enclosures

cc: John G. Felder, Jr.
Chad A. McGowan
Jordan C. Calloway
Roy Harmon
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