

IN THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2012-CP-43-2030

Appellate Case No. 2016-000774

RECEIVED

FEB 28 2017

SC Court of Appeals

Win Myat.....Appellant,

v.

Tuomey Healthcare System.....Respondent.

TUOMEY REPLY TO DR. MYAT'S OPPOSITION TO CITATIONS
TO UNDERLYING TRIAL AND APPELLATE DOCUMENTS IN LAZERSON

Tuomey respectfully submits the following reply to Dr. Myat's return to its motion to reference the underlying court documents of the *Lazerson v. Hilton Head Hospital*, 312 SC 211, 439 SE2d 836 (1994) decision. For the following reasons, these underlying court documents demonstrate that Myat is arguing **against** the precedent of *Lazerson*, that the *Lazerson* decision is precedential (as opposed to merely persuasive); and that Myat's appeal on that basis should be dismissed.

Tuomey respectfully submits that Myat has conflated two separate types of written legal opinions: memorandum opinions and unpublished opinions of an appellate court for which the

Court has chosen to assign no precedential value; and underlying trial court orders and the arguments of the parties upon which a **reported** appellate court decision is based and those opinions are incidentally not ‘published’ opinions as defined by Rule 220(a), *SCACR*. The distinction between the two types of opinions is this: Rule 220(a) opinions are, by definition, of no precedential value; and underlying trial court orders and documents that set for the propositions and the decisional path or paths of reasoning of the South Carolina Supreme Court are necessarily precedential and binding authority.

There are actually two appellate court rules in place: Rule 220, *SCACR*, provides: “Published opinions shall appear in the Official Reports of the Supreme Court and the Court of Appeals; memorandum opinions shall not be published in the official reports and shall be of no precedential value.” Rule 268(d)(2), *SCACR*, provides: “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” Tuomey does not seek to reference the type of unchallenged and un-scrutinized order contemplated by Rules 220(a) and 268(d)(2). See E.g. *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 526 S.E.2d 253, n. 3 (Ct. App. 2001), affirmed as modified 338 S.C. 343, 526 S.E.2d 253 (2002).

Tuomey’s reference to the underlying documents of *Lazerson* demonstrate the **holding** of the South Carolina Supreme Court. A “holding” consists of those propositions along the chosen decisional path or paths of reasoning that were actually decided in *Lazerson*, are based upon the facts of those cases, and which directly led to the reported *Lazerson* decision.

Myat, on the other hand, conflates an unpublished decision, or an un-appealed appellate court decision with the precedential reported decision of the South Carolina Supreme Court.

Tuomey is not seeking to reference a memorandum opinion or unpublished order. Rather Tuomey references the underlying facts of *Lazerson* to elucidate the language of the decision and to illustrate that Myat offers the same unsuccessful argument here. The underlying trial court orders and arguments of the parties, the propositions offered by the parties¹, and the decisional path or paths chosen by the Supreme Court are illustrative of the issues presented here on appeal. The underlying trial court orders and propositions of the parties are the *basis* of a reported decision; are part of the **holding**; and are therefore as binding as the reported decision itself. See *Brooker v Silverthorne*, 111 S.C. 553, 99 S.E.2d (1919)(“A judicial opinion must be construed with reference to the facts upon which it is based.”)

The ‘irrebuttable presumption’ language within *Lazerson* and as used in the underlying arguments and reasoning of the trial court (*albeit* over-ruled in the *Lazerson* decision) are essential to applying the appropriate legal principle to Myat’s arguments here. It is also the basis of Tuomey’s position that charitable status should be established by judicial notice under Rule 201 rather than by the presentation of evidence.

Tuomey respectfully requests, pursuant to Appellate Court Rule 240, permission to cite to Trial Court orders and other underlying Appellate Court documents filed in the South Carolina Supreme Court library for the decisions of *Lazerson v. Hilton Head Hospital*, 312 SC 211, 439


¹Myat takes exception to Tuomey not providing all the underlying appellate briefs and trial court orders in *Lazerson*. Myat’s question is a valid one. Tuomey’s counsel asserts that, upon information and belief, the South Carolina Supreme Court maintains the only available copy of these documents and the quality of the microfilm is very poor. The documents offered by Tuomey are the only legible documents available. Tuomey does not object to any additional documents from the *Lazerson* appeal that may be offered to the appellate court.

SE2d 836 (1994). The documents to which Tuomey seeks to reference were provided to opposing counsel with the initial motion.

RESPECTFULLY SUBMITTED,

LEE, ERTER, WILSON, HOLLER & SMITH, LLC

By:



DAVID C. HOLLER
Federal ID: 5608
ATTORNEY FOR RESPONDENT
126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151
(803) 778-2471

February 27, 2017

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Win Myat.....Appellant,

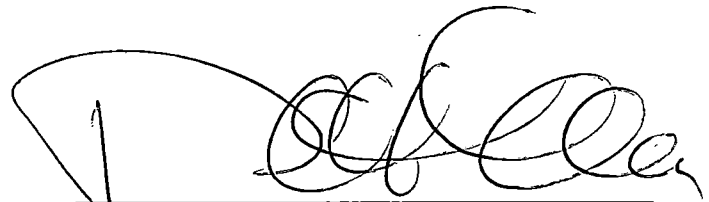
v.

Tuomey Healthcare System.....Respondent.

PROOF OF SERVICE

I hereby certify that I have served *Respondent's Reply to Appellant's Return to Motion for Appellate Court to Allow Citations to Underlying Trial and Appellate Documents in Lazerson* by depositing a copy of same in the United States Mail, postage prepaid, on February 27, 2017, addressed to his attorneys of record, William R. Padget and Francis M. Hinson, IV, as follows:

William R. Padget, Esquire
Francis M. Hinson, IV, Esquire
Finkel Law Firm, LLC
P. O. Box 1799
Columbia, SC 29202



David C. Holler (Federal ID No. 5608)

126 North Main Street

Post Office Box 580

Sumter, South Carolina 29151

803-778-2471

davidholler@leeandmoise.com

ATTORNEY FOR RESPONDENT TUOMEY

February 27, 2017

Lee, Erter, Wilson, Holler & Smith, L.L.C.

Jack W. Erter, Jr.
Harry C. Wilson, Jr.†
David C. Holler*‡
G. Murrell Smith, Jr.

Attorneys at Law

126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151

Robert W. Brown
Of Counsel

*Licensed in SC, NC & GA
†Certified Family Court Mediator
‡ Certified Circuit Court Mediator

February 27, 2017

Telephone: (803) 778-2471
Facsimile: (803) 778-1643
Email Address: davidholler@leeandmoise.com

Honorable Jenny Abbot Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Win Myat v. Tuomey Healthcare System
Appellate Case #: 2016-000774

Dear Ms. Kitchings:

Enclosed please find an original and six copies of Respondent's Reply to Appellant's Return to Motion for Appellate Court to Allow Citations to Underlying Trial and Appellate Documents in Lazerson along with our Proof of Service.

By copy of this letter to William R. Padget and Francis M. Hinson, IV, Attorneys for Appellant, I am serving them with a copy of this Reply.

Please accept this with my kindest regards.

Yours very truly,

LEE, ERTER, WILSON,
HOLLER & SMITH, LLC



David C. Holler

DCH:jsm
enclosure

cc: William R. Padget, Esquire
Francis M. Hinson, IV, Esquire



Lee, Erter, Wilson, Holler & Smith, LLC
Attorneys at Law
PO Box 580
Sumter, SC 29151



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