

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge
Case No. 2016-CP-40-1651

RECEIVED
AUG 15 2017
SC Court of Appeals

Sisters of Charity Providence Hospitals, Respondents,

v.

Palmetto Health, Appellant.

MOTION FOR ABEYANCE AND LIMITED REMAND

Pursuant to Rules 205, 240 and 263(b), SCACR, the Appellant (Palmetto Health) respectfully moves to hold the appellate timelines in abeyance for the above-captioned appeal and to remand this matter to the circuit court for the purpose of holding a hearing and issuing an order on the amount of attorney's fees to be awarded under the circuit court's appealed order(s). This motion is based upon the grounds set forth below.

This appeal involves the interpretation and application of the South Carolina Freedom of Information Act (FOIA). By order filed July 12, 2017, the trial court held that Palmetto Health is subject to FOIA and therefore enjoined Palmetto Health to produce the requested documents to the Respondent (Plaintiff). The trial court also granted Plaintiff's request for attorney's fees under FOIA and directed Plaintiff to submit an affidavit of fees and costs.

Plaintiff submitted its affidavit of fees. Palmetto Health submitted its objections requested a hearing. The hearing has been set for August 30, 2017, at 2:00 p.m., in Florence, South Carolina.

On July 24, 2017, Palmetto Health timely made motions for reconsideration and for a stay of the order.¹ Palmetto Health requested a stay during the pendency of the motion for reconsideration and, if that motion was denied, for a stay during the pendency of any appeal of the order. The requested stays were based upon the following grounds: (1) The principal reason for granting a stay is to prevent a contested issue from becoming moot and to preserve the jurisdiction of the court²; (2) here, the contested issue is whether Palmetto Health must disclose the requested documents to Plaintiff; and (3) if this disclosure is made before the circuit court rules on the pending motion to reconsider, or before the appellate court rules on any appeal from the Order, the contested issue will become moot because: (a) the documents cannot be “unseen,” and (b) the respective courts will lose the ability to, and effectively lose the jurisdiction to, provide meaningful relief under the motion to reconsider or in any appeal.³

On August 1, 2017, the trial court granted the stay during the pendency of the motion to reconsider, agreeing that “a stay is necessary in this instance to prevent a contested issue – disclosure of requested documents – from becoming moot because ‘documents cannot be unseen,’” but the circuit court declined to “grant a stay during the pendency of any future appeal at this time.”

By orders filed on August 14, 2017, the trial court denied Palmetto Health’s motion to reconsider. On August 15, 2017, Palmetto Health appealed from the original order, the order denying reconsideration, and the amended order; and it filed the present motion with this Court. Also on August 15, 2017, pursuant to Rule 241(c),(d)(1), SCACR, and Rule 62(c), SCRCR, Palmetto Health filed a motion in the circuit court to stay the original order and amended order

¹ The order was entered on July 12, 2017. The tenth day thereafter was July 22, a Saturday, so the tenth day for moving to reconsider pushed to the following Monday, July 24, the date on which Appellant made its motion. See Rules 6(a), 52(b), and 59(e), SCRCR.

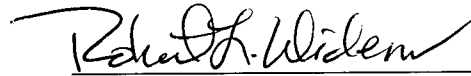
² See Rule 241(c)(2), SCACR.

³ See *Hollman v. Woolfson*, 683 S.E.2d 495, 498 (S.C. 2009) (granting extraordinary relief of certiorari directly to circuit court and immediately reviewing interlocutory discovery order because, absent immediate relief, issue would become moot and court would be unable to provide any meaningful relief in an appeal from final judgment).

during the pendency of the appeal. The grounds for this motion are the same grounds upon which the circuit court earlier granted a stay during the pendency of the motion to reconsider.

Palmetto Health will necessarily appeal from the award of any amount of attorney's fees, and that appeal will need to be consolidated with the current appeal so that all issues can be presented in a single set of briefs with a single Record on Appeal. Therefore, Palmetto Health respectfully requests the following: (1) that this matter be remanded to the circuit court for the purpose of holding the hearing on and issuing an order on the amount of fees and costs to be awarded to Plaintiffs as scheduled on August 30, 2017;⁴ and (2) that the appellate timelines for the current appeal be held in abeyance pending the outcome of the attorney's fees hearing, the issuance of an order as a result of the hearing, and the appeal from that order.

Respectfully Submitted,



Robert L. Widener
Celeste T. Jones
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Post Office Box 11390
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ATTORNEYS FOR APPELLANT

August 15, 2017
Columbia, SC

⁴ It is unclear whether a limited remand is necessary. The original order and the amended order are immediately appealable under S.C. Code Ann. § 14-3-330(1), (4) (Rev. 2017), because they affect the merits and are injunction orders that enjoin Palmetto Health to produce the requested documents. Under Rule 205, SCACR, this Court now has “exclusive jurisdiction over the appeal,” but the circuit may nevertheless “proceed[] with matters not affected by appeal.” (Emphasis added). Palmetto Health challenges the merits of the circuit court’s underlying ruling that is the basis upon which the circuit court awarded fees and costs to Plaintiff, *e.g.*, that Palmetto Health is subject to FOIA and the requested documents should be disclosed. This appeal therefore arguably “affects” (as envisioned by Rule 205, SCACR) the still pending question of how much Plaintiff should be awarded in fees and costs. Assuming this is true, Palmetto Health requests a limited remand to allow the circuit court to address and issue an order on that question, so that all issues and appeals can be consolidated and presented under a single set of Briefs and a single Record on Appeal.

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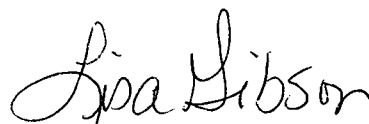
v.

Palmetto Health, Appellant.

CERTIFICATE OF SERVICE

I, Lisa Gibson, an employee of McNair Law Firm, P.A., hereby certify that a true and correct copy of the foregoing *Motion for Abeyance and Limited Remand* was served upon counsel for the Plaintiff in the above-captioned matter, by causing a copy of same to be deposited in the United States Mail, first class postage prepaid, this 15 day of August, 2017, addressed as follows:

James G. Carpenter, Esq.
The Carpenter Law Firm, P.C.
819 E. North Street
Greenville, SC 29601



Columbia, SC

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SC Court of Appeals

August 15, 2017

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Via Courier

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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Re: Sisters of Charity Providence Hospitals -v- Palmetto Health
Case Number: 2016-CP-40-1651

Dear Ms. Kitchings:

Enclosed for filing, please find the following documents related to the above referenced civil action:

1. Notice of Appeal with Certificate of Service
2. Motion for Abeyance and Limited Remand with Certificate of Service, and
3. Check for \$100 for filing Notice of Appeal and check for \$25 for filing motion

Please file the notice and motion in your office and return a file stamped copy of each to me via our courier. By copy of this letter we are serving counsel for the Respondent with a copy of each. The Notice of Appeal is being filed with the circuit court under separate cover.

Please Note: The Motion for Abeyance and Limited Remand is somewhat time sensitive as to the issue of remand. The circuit court has scheduled a hearing for August 30, 2017, to determine the amount of attorney's fees and costs that were awarded in the appealed order(s). To avoid any question of whether the circuit court has jurisdiction to hold this hearing and thereafter issue an order, the motion seeks a remand to the circuit court so that the circuit court may hold the hearing and issue an order.

Also please note: Appellant has already received the transcript of the hearing that led to the appealed orders, making Appellant's Initial Brief and Designation due to be served and filed on or before September 14, 2017. Appellant has moved to hold the appellate timelines in abeyance due to the above-noted hearing on the

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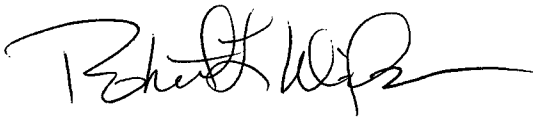
Honorable Jenny Abbott Kitchings
August 15, 2017
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MCNAIR
ATTORNEYS

award of attorney's fees and costs, and the anticipated appeal from an order setting the amount of fees and costs.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

Enclosures: as stated

cc: James G. Carpenter Esquire