

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Steven H. John, Circuit Court Judge

Op. No. 2016-UP-052  
(S.C. Ct. App. Filed February 3, 2016)

**RECEIVED**

JUN 13 2018

**S.C. SUPREME COURT**

Randall M. Green and Ann Green, .....Respondents-Petitioners,

v.

Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C., .....Petitioners-Respondents.

**MEMORANDUM IN OPPOSITION TO MOTION TO  
FILE RESPONDENTS' BRIEF OUT OF TIME**

The Respondents-Petitioners, Randall and Ann Green (“the Greens”), respectfully request that this Court decline to grant Petitioners-Respondents’ (Dr. Bauerle’s) motion to file his Respondents’ Brief out of time. Pursuant to Rule 242 (i), this brief was due on December 20, 2017. Dr. Bauerle asserts that, prior to completing his brief on that same date, he discovered additional arguments which were unsupported by the existing Appendix. The additional arguments which Dr. Bauerle sought to raise have never been asserted and were not subject to the Court of Appeals decision which this Court granted certiorari to review pursuant to Rule 242 (a), SCACR. In lieu of filing a brief addressing the questions to be considered pursuant to this Court’s Order dated October 2, 2017 and Rule 242 (i), SCACR, Dr. Bauerle filed only a motion requesting leave to raise additional arguments, supplement the Appendix with materials not contained in the Record

On Appeal, and asking this Court to hold the briefing deadlines in abeyance. He also filed a memorandum briefing arguments as to why the Greens should not be able to make an argument in their brief which addressed a question for which this Court had granted certiorari.<sup>1</sup>

This Court denied his motion on May 24, 2018. Of note, Dr. Bauerle still took an additional fourteen (14) days *after* this Court denied his motion to seek to file his Respondents' brief and Motion to File Respondents' Brief Out Of Time. If this Court were to grant this Motion, this would provide an extraordinary extension of one hundred and sixty nine (169) additional days to file his Respondents' Brief. The July 2014 order of this Court establishes the following regarding extensions in cases filed under Rule 242, SCACR:

(1) Upon a showing of good cause, a party (or multiple parties if represented by the same counsel) may be granted extensions totaling no more than twenty (20) days during the proceedings before this Court. If multiple extensions are taken within the twenty (20) day cumulative limit, the minimum period that can be requested is five (5) days.

(2) Any extension beyond the twenty (20) days specified in (1) above will be granted only if extraordinary circumstances such as illness or other circumstances beyond the control of the movant warrant the granting of the extension. The parties are warned that the press of other business is not an extraordinary circumstance which will warrant the granting of an extension.

These extensions will generally be granted for no more than ten (10) days. (2014-07-16-01).

In the November 2, 2017 Order granting Dr. Bauerle an additional fifteen (15) days to complete his Petitioners' brief, this Court even directed his attention to the July 2014 Order, giving him ample warning of the consequences he now seeks to avoid. Neither his failure to "foresee that the Court would not hold the deadlines in abeyance" nor his prior experience that such motions

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<sup>1</sup> Bauerle sought to prevent the Greens from arguing that, if *any* allocation of their settlement was permissible under the facts, allocating it equally between the two Plaintiffs to whom it was paid would be more appropriate than the trial court's unilaterally applied formula which derived percentages from a comparison of the relative sizes of their separate verdicts.

“have routinely resulted in deadlines being held in abeyance by the appellate courts,” justify disregarding Rule 242, SCACR or this Court’s Orders of July 16, 2014, October 2, 2017, and November 2, 2017.

Even a good faith belief that this Court would grant his motion to hold the deadlines in abeyance cannot excuse the additional fourteen (14) days it has taken Dr. Bauerle to seek to file his brief following the denial of his motion. Furthermore, the desire to further develop additional arguments occurring to him the day his brief was due, particularly arguments which were unsupported by the Record on Appeal, does not constitute extraordinary circumstances sufficient to warrant the granting of an extension of additional time. This Court’s prior Order made clear that “[a]dditionally, the preparation of the appendix should take little time or effort since it is composed of documents that have already been filed with the Court of Appeals.” (2014-07-16-01 citing Rule 242(e), SCACR (content of appendix)).

This Court’s July 16, 2014 Order further sets forth the following rationale for strict adherence to the policies imposed therein:

Once again, the preparation of these briefs in most cases will merely involve a further refinement of the arguments already made in the petition, return, or reply.

In short, there should be very little reason for a party to need an extension of time to complete any of the steps required by Rule 242, SCACR. Unfortunately, in practice, this has not been the case, and parties have been routinely seeking multiple extensions. As a result, the final resolution of a case that has already gone through a lengthy appeal process at the Court of Appeals is further delayed. (2014-07-16-01).

This Court has given fair warning that it will strictly adhere to the time frames established by its Order as well as Rule 242, SCACR and has made clear that exceptions will be considered **only** when there are extraordinary circumstances which are **beyond the control of the movant**. Dr. Bauerle has admitted that his decision not file his brief on time was the result of intentional

“procedural decisions” well within his control. His reliance on previous success in routinely circumventing appellate deadlines with such motions only exemplifies the precise practice and unnecessary delays which this Court’s July 16, 2014 Order expressly sought to deter. Mandatory compliance with court rules and orders regarding timely filing requirements is necessary to promote judicial economy and protect the integrity of the judicial process. The Greens respectfully request that his Motion to File Respondents’ Brief Out Of Time be denied.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that I have served the Memorandum In Opposition to Motion to File Respondents' Brief Out Of Time on Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C. by depositing a true copy in the United States Mail, with first class postage prepaid, on June 12, 2018, addressed to his attorneys of record at the addresses below:

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