

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo

Appellate Case No. 2017-001726

RECEIVED
JUN 19 2018
SC Court of Appeals

Sisters of Charity Providence Hospitals,Respondent,

v.

Palmetto Health,Appellant.

REPLY TO RETURN TO
MOTION FOR EXTENSION OF TIME TO
SERVE AND FILE APPELLANT'S INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN APPEAL

Respondent opposes the requested extension, asserting that Appellant has failed to show extraordinary circumstances and essentially accusing counsel of dilatory delay tactics. In light of this accusation, undersigned counsel is compelled to reveal more details about recent health issues:

January 7, 2018: Undersigned counsel is found unconscious on the bathroom floor. When revived, he was disoriented, extremely dizzy with nausea, vomiting, etc., and pain in his right knee. He was transported by ambulance to the emergency room. Treatment initially focused on a suspected cardiac event. The knee pain was believed to be the result of a physical injury to the knee caused by a fall when counsel passed out.

January 9, 2018: Excruciating knee pain (despite heavy pain medications) and pronounced swelling lead to the knee being drained twice within four hours, which leads to the discovery of an infection inside the knee joint tissues.

January 10, 2018: Emergency surgery on the right knee to physically clean the knee joint and remove the infection. Commencement of six weeks of intravenous treatment with two powerful antibiotics.

January 10 – January 24, 2018: Counsel remains hospitalized to continue treatment by infectious disease physicians for the knee infection and to monitor the progress of the infection and treatment.

January 24, 2018: Counsel is discharged to home health care. Treatment with intravenous antibiotics through a “pic line” is continued at home for four weeks, together with in home rehabilitation of the knee.

January 24 – March 5, 2018: Counsel remains at home, under home health care, unable to work due to knee pain and treatment, including powerful prescription pain killers.

March 5, 2018: Counsel returns to work after nine weeks, having been able to stop the use of prescription pain killers to control the knee pain.

March 5 – May 24, 2018: Counsel endeavors to catch-up on the nine-week backlog of work while working from home and continuing in-home rehabilitation treatment on his knee. He also began working on the brief for this case during this time. Rehabilitation of the knee proved unsuccessful due to the damage caused by the infection. Counsel was unable to walk without a walker or cane and could not drive a car. He has not driven a car or been able to walk unassisted since January 7, 2018.

May 24, 2018: Counsel undergoes total knee replacement surgery due to the damage caused by the knee infection and the subsequent failure of rehabilitation treatments to regain mobility in and use of the knee. He is discharged on May 25 to home health care for rehabilitation treatment. He resumes the use of powerful prescription pain killers to treat pain.

June 12, 2018: Counsel returns to work (working at home) after being able to stop the use of prescription pain killers. In-home rehabilitation is progressing more rapidly and successfully than after the January knee surgery.

June 19, 2018 (Today): Counsel continues to receive successful, in-home rehabilitation treatment and continues to work at home (pain continues to be controlled with non-prescription pain killers). It is anticipated that he will begin out-patient rehabilitation treatment after his follow-up with the surgeon on Friday, June 22, 2018. Counsel remains unable to drive a car, and has not driven a car since January 7. Counsel remains unable to walk without a walker or cane except that in-home rehabilitation recently began to include unassisted walking as part of his treatment. It is anticipated that he will continue to need a cane for the near future. It is anticipated that rehabilitation will continue to be successful, and counsel will regain “complete” use of the knee. No further work interruptions are anticipated.

Against this backdrop, Appellant responds to Respondent’s specific arguments. This response, like Respondent’s arguments, will use dates with notations, including facts omitted by Respondent:

August 15, 2017: As correctly noted by Respondent, Appellant served and filed its initial notice of appeal. Respondent omits the fact that this Court ordered that appellate timelines be held in abeyance and remanded the case to the trial court for a hearing and order on Respondent's related request for an award of attorney's fees from the trial court in connection with the matters decided in the appealed order. (Rep. Letter/Ret. at p. 1).

November 20, 2017: Appellant receives order on attorney's fees. Appellant orders copy of hearing transcript on the same day.

November 28, 2017: Appellant serves and files Notice of Appeal from attorney's fee order.

March 5, 2018: Appellant receives attorney's fee hearing transcript, making Appellant's brief due on April 4, 2018.

Note: If, as Respondent implies, Appellant wanted to delay this appeal, then it could have done the following under the SCACR: (a) wait until December 20, 2017 to serve the notice of appeal; and (b) wait until December 30, 2017 to order the transcript. This would have resulted in receiving the attorney's fee hearing transcript in mid-April or later, making the first due date on the brief in mid-May or later.

March 15, 2018: Appellant requests its first extension for its initial appellant's brief, which was due on April 4, 2018. Undersigned counsel did not mention his knee, because he had returned to work on March 5, 2018, and was working on the nine-week backlog of work. The extension made the brief due on May 4, 2018.

May 2, 2018: Appellant requested a second extension due to the ongoing conflicts caused by counsel's nine-week absence from work. He did not mention his knee, because therapy was ongoing and not interfering with work. The extension made the brief due on June 4, 2018.

May 24, 2018: Due to the failure of therapy, counsel underwent his second knee surgery, a total knee replacement due to the damage and loss of use caused by the earlier knee infection.

June 4, 2018: Appellant requests a third extension due to the knee replacement surgery, particularly due to the need for using powerful prescription pain killers.

June 12, 2018: The knee replacement surgery went well as did the subsequent rehabilitation, and counsel returned to work. The brief in this case is one of two matters upon which counsel is currently focused, and counsel is confident the brief will be filed on or before the requested extension date of July 5, 2018.

Respondent makes several assertions. First, Respondent complains that undersigned counsel is not the only lawyer in the law firm on this case and, therefore, those other attorneys should have

written the brief. Undersigned counsel is and always has been the appellate counsel for this case. As noted earlier, he began working on this case after his return to work from the first knee surgery, together with catching up on the other work delayed during his nine-week absence. As is his practice in all appeals, he does all of the work, e.g., reading the transcript(s) and exhibits, doing his own research, and doing his own drafting and writing. This was interrupted when the first surgery and treatment failed, and that is the reason for the present extension request.

Second, Appellant claims prejudice from not having yet received the documents ordered produced by the trial court in this FOIA action. By consent order, the documents were collected and deposited with an independent vendor during the pendency of this appeal. None of these documents have anything to do with public funding, public money, or any public issues – all of these documents pertain solely to an ongoing business dispute between the parties, and this same dispute is the subject of a separate lawsuit currently pending in the circuit court.

Finally, opposing counsel asserts that undersigned counsel's recent knee surgery is not an extraordinary circumstance. Undersigned counsel sincerely hopes that respondent's counsel never has to find out how truly extraordinary his recent health issues have been.

For all of the foregoing reasons, Appellant respectfully requests that Appellant be granted an extension until July 5, 2018, to serve and file its initial appellant's brief and designation.

Respectfully Submitted,

Robert L. Widener, by
Robert L. Widener *Genevieve*
McNAIR LAW FIRM, P.A. *with*
Post Office Box 11390 *permission*
Columbia, South Carolina 29211
(803) 799-9800
Counsel for Appellant

June 19, 2018
Columbia, SC
1822160v1

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Sisters of Charity Providence Hospitals,Respondent,

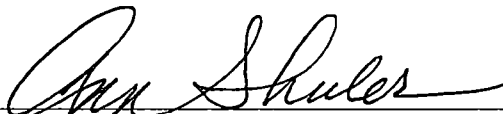
v.

Palmetto Health,Appellant.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of McNair Law Firm, P.A., hereby certify that a true and correct copy of the *Reply to Return to Motion for Extension of Time to Serve and File Appellant's Initial Brief and Designation of Matter to be Included in Appeal* was served upon counsel for the Respondent in the above-captioned matter, by causing a copy of same to be deposited in the United States Mail, first class postage prepaid, this 19 day of June, 2018, addressed as follows:

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


Ann Shuler

Columbia, South Carolina

June 19, 2018

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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

Re: Sisters of Charity Providence Hospitals -v- Palmetto Health
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Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the Appellant's Reply to Return to Motion for Extension of Time to Serve and File Appellant's Initial Brief and Designation of Matter to be Included in Appeal. Please file the Reply in your office, and return the file stamped copy to me via our courier.

By copy of this letter, we are serving counsel for the Respondent with a copy of the reply.

Thank you for your assistance in this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosures

cc: James G. Carpenter Esquire

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