

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

Appellate Case No. 2016-000864
Op. No. 2016-UP-052
(S.C. Ct. App. filed February 3, 2016)

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JUN 21 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.

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

The Petitioners-Respondents Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C. (hereafter collectively referred to as "Dr. Bauerle"), have filed a motion requesting that this Court allow the filing of the Respondents' Brief of Petitioners-Respondents out of time. The Respondents-Petitioners ("Greens") have now filed a response opposing that motion.

Notably, in that response, the Greens cite absolutely no legal prejudice that would result from the filing of Dr. Bauerle's Respondent's Brief. Moreover, it bears repeating that the important issues raised in this appeal – which necessitated the granting of a writ of certiorari – would be best decided with the Court's consideration of the legal arguments from both sides. That is certainly consistent with a public policy that favor decisions on the merits.

The Greens complain that Dr. Bauerle would be granted an extension of 169 extra days to file his Respondent's Brief. That is not correct nor fair. Dr. Bauerle's brief was already written on December 20, 2017.¹ The lengthy delay was the result of the fact that this Court had Dr. Bauerle's Motion to File Supplemental Appendix, for Leave to Argue Judicial Estoppel, Waiver, and/or Release and to Hold Deadlines in Abeyance under advisement until May 24, 2018, not because of any delay by Dr. Bauerle's counsel. That is some indication that Dr. Bauerle's motion was not deemed meritless or frivolous or an improper attempt to delay the appeal; otherwise, the motion would have been quickly denied. With all due respect, Dr. Bauerle's counsel felt strongly that the post-judgment conduct of the Greens in partially satisfying the judgments, which was inconsistent with the

¹ As an officer of the court, the undersigned counsel has stated that the brief that was filed is the same brief as it existed on December 20, 2017, with the exception of the correction of several typographical errors, the change in counsel's address (which changed in January 2018), and the completion of the Table of Contents and Table of Authorities.

argument made on appeal, was worthy of the Court's consideration and that Dr. Bauerle followed what he believed based on past experience was the proper procedure to seek leave of court to raise that issue.²

The Greens also state that Dr. Bauerle's counsel took fourteen days to file his motion to accept the Respondent's Brief out of time. That is also not correct nor fair. The Court's order was issued on May 24, 2018, which was a Thursday, when it was mailed by U.S. Mail to counsel. Because of the Memorial Day weekend, the Order was not delivered until May 29, 2018, but the undersigned counsel was out of the office on that date. Upon receiving and reviewing the Order, the undersigned counsel had to consider how best to proceed. In all candor, this scenario had not occurred to him before in his years of appellate practice, and it took several days to determine what approach he thought was appropriate to take under the circumstances. Again, the fact that the motion was hand filed on June 7, 2018, has not resulted in any legal prejudice.

In sum, the undersigned counsel, on behalf of Dr. Bauerle, respectfully requests that this Court allow the filing of the Respondents' Brief of Petitioners-Respondents out of time.

² The Greens' counsel describes this as the undersigned counsel's "reliance on previous success in routinely circumventing appellate deadlines with such motions," which is also not a correct nor fair characterization. The Court is well aware that the undersigned counsel does not "routinely circumvent appellate deadlines" by filing frivolous motions. Moreover, the motion filed was unique and extraordinary and was intended to address and call the Court's attention to unique circumstances that occurred post-judgment.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY:



ANDREW F. LINDEMANN
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

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

Columbia, South Carolina

June 18, 2018

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JUN 21 2018

S.C. SUPREME COURT

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., attorneys for the Petitioners-Respondents, does hereby certify that service of the **Reply to Respondents-Petitioners' Memorandum in Opposition to Motion to File Brief Out of Time** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 18th day of June 2018:

O. Grady Query, Esquire
E. Brooke Hurt, Esquire
Query Sautter Forsythe, LLC
The Wappoo Centre
147 Wappoo Creek Drive - Suite 202
Charleston, South Carolina 29412

L. Morgan Martin, Esquire
Law Offices of L. Morgan Martin, P.A.
1121 Third Avenue
Conway, South Carolina 29526

Cristin A. Uricchio, Esquire
Uricchio Law Firm
147 Wappoo Creek Drive - Suite 205
Charleston, South Carolina 29412

John B. McCutcheon, Jr., Esquire
Lisa A. Thomas, Esquire
Thompson & Henry, P.A.
Post Office Box 1740
Conway, South Carolina 29528


