

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

ANTOINE BOSTIC, Individually and as)
Personal Representative of the Estate of)
BERTILA DELORA BOYD-BOSTIC,)
)
Plaintiff,)

CASE NO. 2017-CP-16-0400

vs.)

ORDER DENYING DEFENDANTS'
RULE 59(b) MOTION

Johnson & Johnson Consumer Inc., et al.,)
)
Defendants.)
)
)
)

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OCT 23 2018
SC Court of Appeals

In response to the Court's order of October 19, 2018 confirming the Court's ruling of October 8, 2018 announcing the retrial in this case would commence on November 5, 2018 and continuing on the week of November 12, 2018, Defendant, Johnson & Johnson, has filed a Rule 59 motion requesting that this order be vacated, altered and amended on the grounds that Defendants are being severely prejudiced in that one of their attorneys, Michael Brown Esq. of the Baltimore office of Nelson Mullins law firm, is not able to participate in a retrial on the dates assigned. Defendant further contends that the order for retrial violates Rule 40 of the South Carolina Rules of Civil Procedure.

The Court's order of October 19, 2018 fully explains the balancing of interests which led the Court to find the Defendant's fundamental right to an attorney of their choosing would not be violated by the inability of Mr. Brown to participate in the retrial of their case commencing on November 5, 2018. Johnson & Johnson was represented in the May trial of this matter by at least eight attorneys including two members of Mr. Brown's firm, Mitchell Brown Esq. and A. Mattison

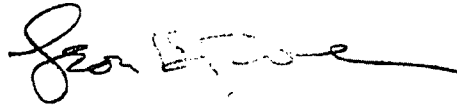
Bogan Esq., each of whom are highly experienced trial and appellate lawyers, as well as by other national counsel who have participated in numerous trials involving these same issues on behalf of Johnson & Johnson and participated in the trial of this matter in May 2018. Among the four attorneys who appeared for the Plaintiff were two members of the General Assembly, Gerald Malloy Esq., who participated in jury selection on behalf of Plaintiff, and Marlon Kimpson Esq., who actively participated in the entire trial on behalf of Plaintiff. The retrial is set for a time that will not conflict with these two attorneys' legislative duties or necessitate their asserting legislative immunity. With regard to the assertion that Rule 40 is somehow implicated in this matter, this is a retrial for a matter placed upon the docket in Darlington in March or April of 2018. It was set for a date certain and has been reset for a date certain, and as such there is no violation of any of the strictures of Rule 40.

The Defendant's Rule 59 motion denominates the Court's October 8, 2018 conference call/motion hearing with lawyers for the parties as an "unrecorded phone call." On October 8, 2018 the Court conducted a hearing on Plaintiff's motion to set the case for a retrial which had been requested for several months. This hearing was conducted by phone with no objection by the parties. The Court is not aware of any rule that requires this phone call to be recorded, and there certainly was not a court reporter available to do so. South Carolina has a crisis in court reporter availability. There was no requirement to conduct a hearing on this matter. The Court could have set this matter without any motion requesting the same or without any hearing on the motion that was filed by Plaintiff.

Finally, the Court received a letter dated October 22, 2018 from Louis Hems, lead counsel for Defendants, which accompanies Defendants' Rule 59 motion, for reconsideration of the Court's order of October 19, 2018. Mr. Hems in the letter objects to the Court's "adding some

points to [Plaintiff's] draft order" that were not contained in the Plaintiff's draft nor argued in the October 8th phone call. The Court's orders are its own and the Court is not constricted by what the parties place in front of it. The matters upon which the Court has ruled are all based on the facts in the record in the trial of this case. The motion is denied.

IT IS SO ORDERED



The Honorable Jean H. Toal, Acting Circuit Court Judge,
Retired Chief Justice of the S.C. Supreme Court

October 22, 2018
Columbia, South Carolina