

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2017-001064

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FEB 14 2019
SC Court of Appeals

Chris Katina McCord, Christopher McCord,
Janice Sherfield, and Jerry Sherfield,.....Appellants

v.

Laurens County Health Care System and Greenville Health System.....Respondents

**JOINT MOTION FOR A REQUEST FOR CERTIFICATION OF THIS APPEAL FOR
REVIEW BY THE SOUTH CAROLINA SUPREME COURT**

Pursuant to Rule 204(b), SCACR, Respondents, with the consent of Appellants¹, hereby move this Court for a request that this appeal be certified for review by the South Carolina Supreme Court, thereby transferring jurisdiction from this Court to the South Carolina Supreme Court. Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b) allow for certification between this Court and the Supreme Court in cases which involve an issue of significant public interest or a legal principle of major importance, or other cases where review is considered appropriate. *See Steinke v. South*

¹ Appellants are in agreement with the request for a transfer; however, it is Respondents' understanding that Appellants plan to file their own memorandum in support of the motion.

Carolina Dept. of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). The parties contend the legal issues in this case are novel in nature and have the potential to be of significant public interest.

The parties are moving before this Court rather than the Supreme Court, because the Record on Appeal and the final briefs in this matter are presently filed with this Court. In addition, the parties just recently received notice of possible oral argument dates in May.

ARGUMENT

This is an appeal from an order granting summary judgment in favor of Respondents. The issue on appeal is whether a hospital owes a legal duty to patients who have elected to undergo a surgical procedure by a physician not employed by the hospital to ensure the physician has adequate medical malpractice insurance to cover any potential claims the patient may ultimately bring against the physician. In granting summary judgment to Respondents, the trial court ruled that no such duty existed.

Appellants Chris Katina McCord and Janice Sherfield each underwent surgical procedures performed by Dr. Byron Brown at Laurens County Hospital between December 2008 and May 2009. In subsequent civil actions (*McCord v. Brown*, C.A. 11-CP-30-1141 and *Sherfield v. Brown*, C.A. No. 12-CP-30-753), both women alleged they suffered injuries as a result of Dr. Brown's alleged negligence during their surgeries. Neither of the Respondents were parties to either of those actions. While the actions were pending, Dr. Brown moved out of the country and stopped participating in the defense of the actions. Ultimately, the McCords and Sherfields were both able to obtain default judgments against Dr. Brown and his practice; however, Plaintiffs have been unable to collect those judgments due to the fact that Dr. Brown's insurance carriers denied coverage.

Shortly after obtaining the default judgments against Dr. Brown, Appellants filed suit against Respondents, essentially alleging it was Laurens County Hospital's fault that Appellants were unable to collect the judgments they received against Dr. Brown. Appellants alleged Laurens breached a contractual duty and/or an independent duty arising from the "special relationship" between the parties to ensure that Dr. Brown had medical malpractice insurance coverage for their claims against him.

Dr. Brown had surgical privileges at Laurens, and as a result, he was subject to the hospital's Medical Staff Bylaws. Under the Bylaws, Dr. Brown was required to maintain medical malpractice insurance. It is undisputed that at the time of the surgeries, Dr. Brown was in compliance with the Bylaws, as he had a claims-made medical malpractice liability insurance policy. However, a few months after the surgeries, Dr. Brown switched his claims-made policy to another carrier and refused to purchase "tail" or "prior bad acts" coverage. As a result, there was no coverage available for any previously unreported claims which had arisen prior to the switch in carriers, as was the case for both Mrs. McCord and Mrs. Sherfield.

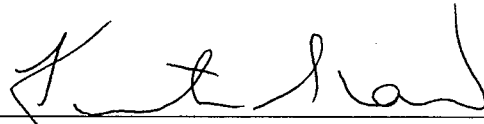
In essence, Appellants contend Laurens owed them a duty to make sure Dr. Brown maintained insurance coverage for their claims even months after those claims arose. Respondents obviously dispute that contention. All parties agree this case presents a novel issue of great public importance with respect to the way hospitals across the state conduct business. Additionally, Respondents' Final Brief argues the issues raised by Appellants present significant separation of powers concerns.

CONCLUSION

Based upon the foregoing authorities and arguments, Respondents respectfully move this Court to request the transfer of this appeal for review by the South Carolina Supreme Court.

Transfer would provide a speedy resolution for the parties, promote judicial economy, and could resolve a question of great public importance with respect to the way medical services are provided in South Carolina.

Respectfully submitted by,



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Attorney for Respondents

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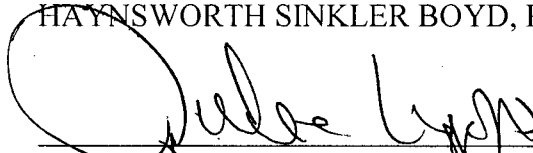
Laurens County Health Care System and Greenville
Health System..... Respondents

PROOF OF SERVICE

This is to certify that the foregoing JOINT MOTION FOR A REQUEST FOR
CERTIFICATION OF THIS APPEAL FOR REVIEW BY THE SOUTH CAROLINA
SUPREME COURT was served in the above-referenced case by placing a copy of said
document in the United States Mail on this the _____ day of February, 2019, addressed as
follows:

Joseph G. Wright, III, Esq.
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Post Office Drawer 1778
Anderson, SC 29622-1778

HAYNSWORTH SINKLER BOYD, P.A.



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February 11, 2019
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February 11, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Re: Chris Katina McCord, et al. v. Laurens County Health Care System, et al.
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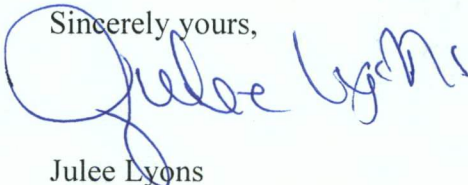
Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of a Joint Motion for a Request for Certification of this Appeal for Review by the South Carolina Supreme Court, together with our Certificate of Service of same and a check in the amount of \$50.00 representing the filing fee. After filing, please return a file-stamped copy to the undersigned in the self-addressed, postage paid envelope enclosed for your convenience.

By copy of this letter, I am serving a copy of same upon counsel for the Appellants, Joseph G. Wright, III, Esq.

Please feel free to contact me should you have any questions or concerns.

Sincerely yours,



Julee Lyons

enclosures

cc: Joseph G. Wright, III, Esq.

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