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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2019-000640

Jim Washington, Appellant.

v.

Trident Medical Center, LLC, Respondent.

Response in Opposition to Petition for Supersedeas

After consciously deciding to proceed with briefing the merits of his appeal and after receiving Respondent’s brief, Appellant now makes yet another attempt to lengthen and delay this matter by requesting that his appeal be stayed and/or dismissed and remanded back to circuit court. This is frivolous and should be denied.

The lengthy procedural history of this matter is set forth in great detail in Respondent’s merits brief, and Respondent respectfully directs the Court’s attention to that filing. Stated briefly, Appellant filed this matter in 2015 and Respondent moved to dismiss for failure to comply with the presuit requirements for a medical malpractice action. The circuit court granted this motion. Appellant appealed this order and fully briefed the merits to the Court of Appeals, which affirmed. Appellant filed a petition for a writ of certiorari, but the Supreme Court denied certiorari. After the remittitur issued, Appellant proceeded to file a “motion to reconsider conclusion” and “motion to vacate the judgment” in the circuit court. As Respondent argued, these filings were primarily an attempt to reargue the merits (in addition to asserting a number of other nonmeritorious

arguments). The circuit court denied the motions and Appellant appealed, bringing things to where they stand today.

On appeal, a central argument advanced by Appellant was that after the circuit court's initial order of dismissal, he filed a motion to reconsider which the circuit court never ruled on. As Respondent noted, however, the time to raise this issue was prior to proceeding with the merits of his original appeal. Appellant never requested that this Court refrain from considering and issuing a ruling in his initial appeal. In his most recent filing, Appellant appears to ask this Court to remand to permit a ruling on this now manifestly moot motion to reconsider.¹ This appears to be in response to the portion of Respondent's brief that detailed the proper mechanism by which Appellant *could have* received a ruling on that motion *at the appropriate time*—*i.e.*, prior to proceeding to brief and argue the merits of the initial appeal.

The proverbial ship has long since sailed for such relief and it is manifestly unwarranted in the present appeal. Quite simply, even if the Court were to remand, there would be nothing for the circuit court to rule on since all viable and pending motions were addressed by the circuit court.

Contrary to Appellant's unsupported claims, Respondent has consistently maintained the same position. Judge Dennis correctly found that Appellant failed to comply with the presuit requirements. Following the remittitur from his unsuccessful appeal, Appellant was not permitted to relitigate the merits, which Judge Jefferson properly found in denying the two motions filed post-remittitur. Furthermore, Judge Jefferson lacked jurisdiction to overrule or modify the order of Judge Dennis. Judge Jefferson fully and fairly considered the entirety of the arguments raised

¹ As Respondent detailed in its brief, the viability of this motion was questionable in its first place. However, assuming for the sake of argument that it was properly before the circuit court following the formal order of dismissal, Appellant knowingly proceeded with filing the notice of appeal and briefing the merits of his appeal.

in Appellant's post-remittitur motions and denied them *in toto*. Appellant has not met his burden of showing that Judge Jefferson abused her discretion.

Respondent's motion should be denied and this Court should affirm the circuit court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Blake T. Williams
C. Mitchell Brown
S.C. Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
Blake T. Williams
S.C. Bar No. 100794
E-Mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

BATTEN LEE, PLLC

David H. Batten
S.C. Bar No. 74531
E-Mail: dbatten@battenlee.com
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612
(919) 439-2223

Attorneys for Trident Medical Center

Columbia, South Carolina

November 7, 2019

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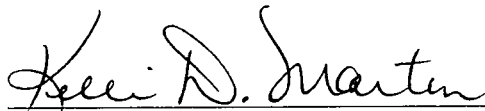
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Trident Medical Center, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

*Respondent's Response in Opposition to Petition for
Supersedeas*

Served:

Mr. Jim Washington
209 Signet Drive
Eutawville, SC 29048



Kelli Diamond Martin
Administrative Assistant

November 7th, 2019.