

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
DEADRA L. JEFFERSON, Circuit Court Judge

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

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**RECEIVED**

NOV 12 2019

**SC Court of Appeals**

Jim Washington,.....Appellant,

v.

Trident Medical Center, LLC.....Respondent.

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**REQUEST TO REPLY TO RESPONDENT RESPONSE IN OPPOSITION TO SUPERSEDEAS/STAY**

---

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## FACTS

On 6/22/18 Judge Dennis made a tentative decision that the Court of Appeals had affirmed his order dated 2/5/16 and that all post trial motions were concluded. Judge Dennis further advised Appellant to contact his law clerk for any further question concerning the matter. {petition for supersedeas/stay filed 10/28/19, pp. 80-82}. On 7/6/18 Appellant filed in the circuit court a motion to reconsider conclusion, See {petition for supersedeas/stay, filed 10/28/19, pp. 68-91} disputing/challenging the 6/22/18 order that all post trial motions were concluded under SCRCP Rule 60(b)(1) and (b)(3) in the circuit court order signed on 1/27/16 nor concluded on appeal citing Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018) as controlling authority that the Rule 60(b) motions were not concluded and requesting a show cause hearing on his 1/27/16 motions filed in the circuit court." Appellant, thereafter followed Judge Dennis instruction by contacting the clerk of court whom spoke with Caroline Leonard the hearing scheduling personnel and Judge Dennis law clerk by telephone on several occasions and was told on 10/20/18 at approximately 11:50 a.m. that all motions were conclude on appeal and that nothing else could be done. Appellant also discuss with Judge Dennis law clerk Rule 60(b)(1) and (b)(3) definitions that only Judge Dennis could decide at a hearing whereby the phone call ended. However, at approximately 12:19 p.m. on 10/20/18 Judge Dennis law clerk called Appellant per telephone and stated that a show cause hearing would be held on the pending motions filed on 1/27/16 and that he would be notified by mail what date a hearing would be held." {petition for supersedeas/stay, filed on 10/28/19, p. 199-p.204, line 12}. On 2/7/19 a hearing was held in the circuit court in which the Court stipulated on the record with Respondent consent that **"Appellant had a right to file motion to reconsider any legal arguments or points the court fail to rule on or otherwise contest any issue to Court's order."** { supersedeas/stay, filed 10/28/19 of the Transcript, p. 52, line 1-p. 62, line 24 and p. 64, line 9-p. 66, line 13}. The circuit court's order dated 3/18/19 did not rule on any portions of Judge Dennis 6/22/18 tentative decision to contact his law clerk that Appellant's brought to

the Courts' attention nor did the Court fully develop the records filed by Appellant which was also brought to the Courts' attention that the record also included a 7/6/18 motion to reconsider conclusion and a 2/4/19 memorandum of law in support of motion to vacate judgment and motion to amend the pleadings which needed to be ruled on. {petition for supersedeas/stay filed on 10/28/19, pp. 23-24 pp. 68-88; pp. 157-198; pp. 199-224}. On 11/7/19 Respondent filed its Response in Opposition. On 11/8/19 this Court denied Appellant petition for supersedeas/stay. {Court of Appeals order dated 11/8/19}.

### **ARGUMENTS**

I. This Courts' November 8, 2019 is **void** because it deprived Appellant of the 5 days to reply.

Appellant, request that that this court allow him his right to file and this Court to entertain this **Reply** for spersedeads/stay under SCACR Rules 240 (f) which states " the moving party shall have 5 days after service of the Return to file a reply." Respondent **HAND-DELIVERED** there Response in Opposition to Supersedeas on 11/7/19 and this Court issued its order on 11/8/19 denying the petition for supersedeas/stay. See {order denying spersedeads/stay, filed on 11/8/19; Respondent's Opposition to supersedeas, dated 11/7/19}. This Court order dated 11/8/19 issued only 1(one) day notice to Appellant after Respondent filing deprived Appellant of his right to the mandatory 5 days notice to reply to be accorded due process of law to be heard which renders the 11/8/19 judgment void. See Tobias v. Rice, 386 S.C. 306, 310-312, 688 S.E.2d 552(2010); See also The Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 551-552, 703 S.E.2d 499(2010){Same}{citations omitted}{quotations omitted} .

Accordingly, Appellant respectfully move for this Court to vacate its 11/8/19 order and accept this **reply to Respondent's Opposition to Supersedeas/Stay** as timely filed.

II. Appellant, in ground two respectfully move for this Court to stay the pending appeal and to **remand this matter back to the circuit court** to resolve two pending motions in the circuit court before this appeal is heard by this Court because the circuit court orders shows it abused its discretion in failing

to exercise its discretion to supplement the record. Contrary, to Respondent attempt to label Appellant's petition for **Supersedeas/Stay** as frivolous and should be denied, the records filed in the circuit court refutes Respondent's contention on all basis requesting denial for remand and stay the appeal.

The lengthy procedural history of this matter has been cause by Respondent's misconduct in this Court in the prior appeal and its deliberate misconduct in the circuit court as the facts and the evidence unquestionably shows on page 2, line 1-page 17 of the 10/28/19 petition for supersedeas/stay which incorporate the record. See Staubes v. City of Folly Beach, 339 S.C. 406, 413-414, 529 S.E.2d 543(2000)(Same)(citations omitted)(quotations omitted). Respondent, contention is that the issues raised by Appellant in the petition for Supersedeas/Stay requesting this Court to remand the matter back to circuit court would be manifestly moot motion to reconsider. Respondent, arguments lacks merits because there are two motions not just a motion to reconsider but also Appellant's memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, filed in the circuit court on 2/4/19 and the motion to reconsider, filed on 7/6/18 which are critical to the determination of jurisdiction of Judge Dennis subsequent 6/22/18 decision after the remittitur to contact his law clerk which Appellant followed Judge Dennis instruction, and critical to the invalid contract consent agreement/ extrinsic fraud on the court issued raised in Appellant's 2/22/19 motion to reconsider/motion to vacate which are not moot issues and were preserved prior to the 2/14/19 and 3/18/19 orders of the circuit but have not been ruled on. {petition for spersedeas/stay, filed 10/28/19, p. 2, line 1-p.17; p. 201second paragraph, line 14-p. 207, line 30}. See Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted); See also The Linda Mc Company, Inc. v. Shore, 390 S.C. 543, 557-558, 703 S.E.2d 499(2010)(Same)(citations omitted)(quotations omitted); See also Wachesaw Plantation East Community Services Association, Inc. v. Alexander, 414 S.C. 355, 356-362,

778 S.E.2d 898(2015)(collecting cases)(citations omitted)(quotations omitted); See Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted).

The circuit court stated in its 3/18/19 order: "This Matter comes before this Court by way of Plaintiff's Motion to Reconsider and "Motion To Vacate" asking this Court to alter or amend its Order Denying Plaintiff's Motion to Vacate Judgment and Motion to Amend the Pleadings, filed February 14, 2019. Plaintiff served and filed its Motion to Reconsider/Vacate on February 22, 2019. The Defendant served its response in opposition to the Motion on March 7, 2019, and it was subsequently filed on March 8, 2019. Having considered the Plaintiff's Motion, as well as the various interests balanced by the Court at the time of ruling, the Defendants' Motion to Reconsider/Vacate is hereby denied" and cited in footnote 1 of the order "This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536(Ct. App. 1994)." {petition for supersedeas/stay, pp. 23-24; pp. 34-38; pp. 157-198; pp. 199-224}. The circuit court 3/18/19 order then made specific findings in its order for denying Appellant's 2/22/19 Motion to Reconsider/Vacate, referencing citation of authorities based on the issues raised concerning invalid contract consent agreement and ruled that it required a meeting of the mind but that the documents Appellant offered in the 10/25/18 motion to vacate judgment and motion to amend the pleadings did not show there was a meeting of the mind. The order further ruled the notice requirement to the Defendant were met but required a verified claim under oath and that Appellant did not proffer a verified claim under oath to benefit tolling the statute of limitation for mediation in the future for loss wages, and intent to harm was unconstitutional shifting of the burden of proof but the jury did not rely on that issue to convict. Thus, the circuit court order found the issues were untimely raised and stated therein: " A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not. Anderson Memorial Hospital, Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400(Ct. App. 1994)(citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268(1993)); See also Arnold

v. State, , 309 S.C. 157, 172-73, 420 S.E.2d 834, 842(1992).” Finally, the order stated “The Plaintiff presented no novel facts, or arguments, or theories in support of the Motion to Reconsider/Vacate the Judgment. The Defendants have not highlighted any portions of the record this Court may have misunderstood, failed to consider, or perhaps failed to rule on. Accordingly, the Motion to Alter/Amend Judgment is hereby Denied.” {petition for supersedeas/stay filed 10/28/19, pp. 23-24}.

Therefore, Appellant argues that a supersedeas/stay would be the appropriate remedy to stay the appeal and for this court to remand the matter back to the circuit court’s because based upon the above facts and citations of authorities in the circuit court order pertaining to the record as a whole the 3/18/19 order nor the 2/14/19 order decided the issues in Appellant’s memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, filed on 2/4/19 and Appellant motion to reconsider conclusion, filed on 7/6/18 both filed prior to the 2/7/19 hearing and are not matters stayed in these orders pending appeal. {petition for supersedeas/stay, filed on 10/28/19, pp. 19-24; pp. 68-82; pp. 134-156; pp. 157-198; pp. 199-223}. See McClurg v. Deaton, 395 S.C. 85, 86-87, 716 S.E.2d 887(2011){Same}(citations omitted)(quotation omitted); See also Pye v. Estate of Fox, 369 S.C.555, 565-566, 633 S.E.2d 505(2006){Same}(citations omitted)(quotations omitted) See Contis v.Contis, 422 S.C. 74, 75-78, 810 S.E.2d 253(2017){Same}; See also Herron v. Century BMW, 395 S.C. 461, 465-470, 719 S.E.2d 640(2011){Same}(citations omitted)(quotations omitted); See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 533-539(2016){majority and, concurring opinion}{same}(citations omitted)(quotations omitted); See also Terry v. Terry, 400 S.C. 453, 455- 460 fn. 1, 2 & 5, 734 S.E.2d 646(2012){Same}(citation omitted)(quotations omitted); See Tillman v. Oakes, 398 S.C. 245, 254-257, 728 S.E.2d 45(Ct. App. 2012){same}(citations omitted)(quotations omitted); See also Anal v. Fraser, 371 S.C. 512, 517-523, 641 S.E.2d 419(2007){Same}(citations omitted)(quotations omitted); See Johnson v. Sonoco Products Company, 381 S.C. 172, 174-178, 672 S.E.2d 567(2009){Same}(citations omitted)(quotations omitted); See also Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 387-401,

759 S.E.2d 727(2014)( finding issue to compel arbitrate not waived. Remand to consider remaining arguments whether Respondent had authority to sign the agreement and whether there was a meeting of the minds between the parties prior to deciding to compel arbitration between the parties); See Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted). Accordingly, Appellant argues the circuit court had the discretion to supplement the record to include the 2/4/19 filed memorandum of law in support of the motion to vacate judgment and motion to amend the pleadings and the 7/6/18 filed motion to reconsider conclusion but ruled as a matter of law that " The plaintiff presented no novel facts, arguments, or theories in support of the Motion to Reconsider/Motion to Vacate the Judgment. The Defendants have not highlighted any portions of the record this Court ay have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Motion to Alter/Amend Judgment is DENIED." Thus, Appellant argues "when the circuit court is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred. Where a court is clothed with discretion, but rules as a matter of law, the appealing party is entitled to have the matter reconsidered and passed on as a discretionary matter." {supersedeas/stay, filed on 10/28/19, pp. 19-24; p. 201 second paragraph, line 14-p. 207, line 30}.See Fontaine v. Peitz, 291 S.C. 536, 537-539, 354 S.E.2d 565(1987)(Same)(citations omitted). Thus, the circuit court abused its discretion by failing to exercise its discretion to supplement the record.

#### CONCLUSION

Thus, this Court should vacate its 11/8/19 order to afford Appellant the opportunity to reply to Respondent's Opposition to Supersedeas/Stay. This Court should also stay the pending appeal and remand the matter back to the circuit court to conclude the two pending motions before the appeals heard.

Signature on following page

s/ Jim Wash

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## The South Carolina Court of Appeals

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November 08, 2019

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Re: Jim Washington v. Trident Medical Center (2)  
Appellate Case No. 2019-000640

Dear Counsel and Mr. Washington:

Enclosed is an order pertaining to the motion to supersedeas/stay. The record on appeal is due to be served, and proof of service filed with the Court, by December 2, 2019.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

# The South Carolina Court of Appeals

Jim Washington, Appellant,

v.

Trident Medical Center, LLC, Respondent.


Appellate Case No. 2019-000640

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## ORDER

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Appellant's petition for supersedeas/stay is denied.

  
FOR THE COURT

Columbia, South Carolina

cc:

Jim Washington

David H. Batten, Esquire

C. Mitchell Brown, Esquire

Blake Terence Williams, Esquire

FILED

November 8, 2019



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November 7, 2019

**VIA HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

RE: Jim Washington v. Trident Medical Center  
Case No. 2019-000640  
Our File No. 27979/01501

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of *Respondent's Response in Opposition to Petition for Supersedeas* in the above referenced matter. Please return a clocked copy to our firm's courier.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink that reads 'Blake T. Williams'.

Blake T. Williams

BTW:btw  
Enclosure  
cc: Mr. Jim Washington

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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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.

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**Response in Opposition to Petition for Supersedeas**

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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.<sup>1</sup> 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

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<sup>1</sup> 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

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November 7, 2019

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,

PROOF OF SERVICE

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.

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
DEADRA L. JEFFERSON, Circuit Court Judge

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

Jim Washington,.....Appellant,  
v.

Trident Medical Center, LLC.....Respondent

**RECEIVED**  
NOV 12 2019  
SC Court of Appeals

**PROOF OF SERVICE**

I, the undersigned, do hereby certify that I have served all counsel in this action with a copy of this request to reply to Respondent's Opposition to Supersedeas/Stay herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following addresses:

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