

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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DEC 16 2019

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2019-001757

Case No. 2012-CP-43-2030

Win Myat, Appellant,

v.

Tuomey Regional Medical Center, Respondent,

PRISMA HEALTH, PRISMA HEALTH TUOMEY, AND
SOUTH CAROLINA HOSPITAL ASSOCIATION'S
REPLY IN SUPPORT OF
MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rules 213 and 240(f), SCACR, Prisma Health, Prisma Health Tuomey, and the South Carolina Hospital Association respectfully submit this reply in support of their motion for leave to file an *amici curiae* brief in support of Respondent Tuomey Regional Medical Center and in opposition to the petition for a writ of certiorari.

Argument

Myat objects to Prisma Health and Prisma Health Tuomey's request to file an *amici curiae* brief because, he says, Prisma Health Tuomey is the "successor in interest to assets" of Tuomey Regional, giving Prisma Health and Prisma Health Tuomey a "direct" interest in this case. This contention misconstrues the nature of the transaction between Tuomey Regional and Prisma Health Tuomey, and it overstates the interest that Prisma Health and Prisma Health Tuomey have in this case.

I. Myat mischaracterizes the transaction between Tuomey Regional and Prisma Health Tuomey.

Tuomey Regional and Prisma Health Tuomey are separate legal entities. Tuomey Regional sold substantially all of its assets to Palmetto Health Tuomey (now known as Prisma Health Tuomey) in 2016. Critically, that transaction was an asset purchase—not a merger. In other words, Tuomey Regional continues to exist after the transaction as a separate entity with its own assets and liabilities (which is why it remains as the named defendant in this case), and which is not controlled by Prisma Health Tuomey. In addition to purchasing assets from Tuomey Regional, Prisma Health Tuomey also assumed certain liabilities from Tuomey Regional. Prisma Health Tuomey did not, however, assume liability for Myat's judgment.

That Prisma Health Tuomey purchased any assets from Tuomey Regional is irrelevant here. What matters is that Tuomey Regional and Prisma Health Tuomey are distinct entities that are unrelated to each other as a matter of corporate law, and Tuomey Regional is now and has always been the entity responsible for Myat's judgment in this case. Thus, Tuomey Regional is the real party in interest here.

II. Prisma Health and Prisma Health Tuomey do not have a "direct" interest in this case.

The doctrine of standing provides a framework for analyzing the type of interest Prisma Health and Prisma Health Tuomey have here. Standing has three elements: (1) an injury in fact, (2) a causal connection between the injury and the conduct complained of, and (3) the likelihood that the injury will be redressed by a favorable decision. *Smiley v. S.C. Dep't of Health & Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (2007). A party does not have standing when its injury is contingent on something else taking place. *See Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 466, 790 S.E.2d 763, 779 (2016); *see also Wissman v. Pittsburgh Nat'l Bank*, 942 F.2d 867, 871 (4th Cir. 1991) ("In order to have standing to pursue an action, a plaintiff must have a present, substantial interest, as distinguished from a mere expectancy or future, contingent interest."). In other words, when a plaintiff cannot draw a direct line between the injury and redressability, the plaintiff does not have a case to bring.

Although standing applies to plaintiffs and Prisma Health and Prisma Health Tuomey are (according to Myat) on the other side of the caption, standing provides a useful analogy for Prisma Health and Prisma Health Tuomey's interest in this case. Any interest those two entities have here is contingent. Myat must not only prevail in

this case (both on his petition for a writ of certiorari and on the merits), but he also must prevail in the separate lawsuit against Prisma Health Tuomey before this case can have any effect on Prisma Health and Prisma Health Tuomey. Therefore, Prisma Health and Prisma Health Tuomey do not have a direct interest here. Without such an interest, they may properly seek leave under Rule 213 to file an *amici curiae* brief.

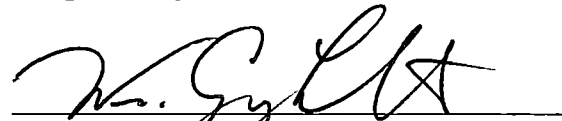
III. Prisma Health and Prisma Health Tuomey have no objection to Myat filing a response to the *amici curiae* brief.

Rule 213 expressly contemplates a party having the opportunity to respond to an *amicus curiae* brief. Prisma Health and Prisma Health Tuomey therefore have no objection to Myat's request.

Conclusion

The motion for leave to file an *amici curiae* brief should be granted.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

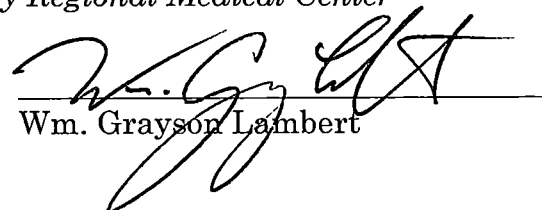
This Reply was served on all counsel of record via first class U.S. Mail, postage prepaid, on December 16, 2019:

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