THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Special Circuit Court Judge

Appellate Case No. 2019-000359
Case No. 2017-CP-46-0302

David Miller, ... Appellant,

v.

ENT & Face, P.A. and Brian Wilson, M.D., ... Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This is an appeal from a medical malpractice action. The Appellant David Miller filed this action against the Respondents Brian Wilson, M.D. and his medical practice, ENT & Face, P.A.

The Appellant alleges that Dr. Wilson, who is a board-certified otolaryngologist (also referred to an ENT physician), failed to diagnose cancer while he was a patient in March and April 2013. Dr. Wilson saw the Appellant for three visits on March 23, 2013; April 2, 2013; and April 23, 2013. (Pl. Ex. 1). The Appellant initially presented with a spot on the right posterior pharynx near the superior pole of the tonsil. During the course of his care, Dr. Wilson conducted physical exams, performed a flexible laryngoscopy, scheduled the Appellant for an MRI, and received the results of the MRI. (Pl. Ex 1). The Appellant's final visit was on April 23, 2013, on which date the notes reflect that "[h]is throat is feeling better" and "[h]e will follow-up p.r.n." (Pl. Ex. 1). The Appellant never returned. Later, in 2016, the Appellant was diagnosed with cancer and underwent treatment for that condition.

The case was tried beginning on January 28, 2019, before Circuit Court Judge Daniel D. Hall and a York County jury. The trial lasted five days. During the trial, at the close of the defense case-in-chief, the Appellant moved for a directed verdict and argued that he "is entitled to a verdict as matter of law as to liability and [he]

request[s] an instruction to the jury as to damages." (Tr. 428). The Appellant sought a directed verdict on the issue of liability and did not limit his motion to a breach of the standard of care.[1] Specifically, the Appellant argued that he was entitled to a direct verdict "as to negligence" in part because of "the failure to inform Mr. Miller that there was cancer in his differential diagnosis and that the MRI did not rule out cancer." (Tr. 428). In response, the Respondents countered that "at the very least, the dispute about what the standard of care is and whether or not Dr. Wilson met the standard of care, certainly, the dispute is sufficient to go to the jury." (Tr. 430). The Respondents also argued as follows: "Dr. Wilson can't set the standard of care one way or the other. The fact that he has testified to what I call black and white questions which do not include the facts of this case is not sufficient to direct a verdict against him on negligence." (Tr. 430). The trial judge agreed, and the Appellant's directed verdict motion was denied. (Tr. 431).

The case was then submitted to the jury with a special verdict form. The first question asked: "Was Dr. Wilson negligent in his treatment of David Miller by a preponderance of the evidence?" The jury responded "no" and terminated its

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[1] In his opening brief, the Appellant writes: "At the close of Respondents' case, Appellant's counsel moved for a directed verdict on the element of breach, arguing Respondent Wilson's admission of the standard of care and the breach of that standard by failing to inform Appellant of the differential diagnosis and the limitations of the MRI as a diagnostic tool satisfied the element of breach." *See*, Appellant's Opening Brief, p. 7. The Respondents disagree with the Appellant's reading of the trial record. The Appellant made a motion for a directed verdict on liability as a whole. The Appellant never asked the trial judge to grant a directed verdict on just the elements of standard of care and breach. (Tr. 428-431).

deliberations. (Verdict Form). The trial court entered judgment based on that verdict in favor of the Respondents. (R. ___).

Thereafter, on February 7, 2019, the Appellant filed a motion for judgment notwithstanding the verdict (JNOV) and a motion for a new trial absolute. (R. ___). The Respondents filed an opposition memorandum. (R. ___). Based thereon, on February 20, 2019, the trial judge issued a Form Order summarily denying the Appellant's JNOV motion. The Form Order makes no mention of the motion for new trial absolute. (Form Order).

The Appellant filed no Rule 59(e) motion for reconsideration or to alter or amend the judgment. Instead, on March 5, 2019, the Appellant filed a Notice of Appeal which appeals only from "an order of the Honorable Daniel D. Hall denying his post-trial motions." (R. ___). This appeal follows.

STANDARD OF REVIEW

"When reviewing a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court. On appeal from an order denying a directed verdict, an appellate court views the evidence and all reasonable inferences in a light most favorable to the non-moving party." *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486, 495-496 (Ct. App. 2006). "The appellate court must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor." 640 S.E.2d at 496. "This court will reverse the trial court's ruling on a directed verdict motion only if no evidence exists to support the ruling, or if the decision was controlled by an error of law." *Id.* "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.*

"When the evidence yields only one inference, a directed verdict in favor of the moving party is proper. On the other hand, the trial court must deny a motion for a directed verdict when the evidence yields more than one inference or its inference is in doubt." *Wright*, 640 S.E.2d at 499. "If more than one inference can be drawn from the evidence, a jury issue is created and the motion should be denied and the case must be submitted to the jury." *Id.* "The issue must be

submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence." *Id.*

ARGUMENTS

I. The Appellant failed to properly preserve and present any issue with respect to the trial court's ruling on his directed verdict motion.

This appeal presents several threshold jurisdictional and preservation issues. In particular, the Court will need to determine initially whether the rulings on appeal were appropriately raised, appealed, and preserved for appellate review.

As his sole issue for appeal, the Appellant argues that the trial court erred in denying his motion for directed verdict made after the defense rested. The statement of issue on appeal is phrased as follows: "The trial court erred in failing to grant a directed verdict as to breach." Rule 208(b)(1)(B), SCACR, requires the statement of issues on appeal to be "concise and direct." In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), the Supreme Court explained that "broad general statements of issues may be disregarded by this Court." 692 S.E.2d at 903. The Supreme Court reaffirmed the well-established rule of appellate law that "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." *Id.* Likewise, the Court reiterated that "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Id.* The statement of issues on appeal

proffered by the Appellant in this case is the type of general statement that the appellate courts typically disregard and refuse to address. The Appellant merely states that the lower court erred in granting a directed verdict without providing any specific basis for the error.[2]

In his Notice of Appeal, the Appellant appealed from the Form Order issued by the trial court denying his JNOV motion. Specifically, the Form Order states: "After consideration, the Court denies Plaintiff's Motion for a JNOV." (Form Order). The form order makes no mention of the Appellant's motion for a new trial, and no Rule 59(e) motion was filed. Yet, as the relief sought from this Court, the Appellant is requesting a reversal of the jury's verdict and a remand for a new trial.

Moreover, the Notice of Appeal makes no mention of an appeal from the directed verdict motion. Therefore, this Court should be limited to consideration of the denial of the JNOV motion. Yet, as explained above, the statement of issue

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[2] The Supreme Court as well as this Court have addressed this very preservation problem in many cases and have approved the dismissal of the appeal as the appropriate remedy. In *Smith v. South Carolina Department of Social Services*, 284 S.C. 469, 327 S.E.2d 348 (1985), the Supreme Court recognized that a broad and unspecific statement of the issue on appeal where the appellant simply expresses a general dissatisfaction with the decision below warrants dismissal. The Court explained that "[s]uch a predicament has often been deplored by our State's highest court and used by that tribunal as a basis for the dismissal of an appeal." 327 S.E.2d at 349. Similarly, in *Larry's Wheel and Rim, Inc. v. Citizens & Southern National Bank*, 271 S.C. 198, 246 S.E.2d 860 (1978), the Supreme Court dismissed an appeal on this same basis. *See also*, *Odom v. County of Florence*, 258 S.C. 480, 189 S.E.2d 293 (1972) (appeal dismissed); *Forest Dunes Associates v. Club Carib, Inc.*, 301 S.C. 87, 390 S.E.2d 368 (Ct. App. 1990) (appeal dismissed); *State v. Richardson*, 278 S.C. 262, 294 S.E.2d 422 (1982) (appeal dismissed).

on appeal makes no mention of the trial court's denial of the JNOV motion. In addition, and even more problematic for the Appellant from a preservation standpoint, there are distinct differences between the directed verdict motion and the JNOV motion. As discussed further below, the JNOV motion seeks different relief than the directed verdict motion. *See, RFT Management Co., LLC v. Tinsley & Adams, LLP*, 399 S.C. 322, 732 S.E.2d 166, 171 (2012) ("a motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict made at the close of all the evidence"). *See also, In re McCracken*, 346 S.C. 87, 551 S.E.2d 235, 238 (2001) ("only grounds raised in the directed verdict motion may properly be reasserted in the jnov motion").

Furthermore, the Appellant's opening brief does not specifically address the trial court's ruling on the JNOV motion. In fact, as mentioned, there was no Rule 59(e) motion filed to attempt to obtain a detailed ruling on or any analysis of the JNOV motion to allow for appellate review.

In short, as threshold matters, this appeal presents significant jurisdictional and preservation issues. The Respondents submit that the appeal may be dismissed or at least affirmed on those preliminary issues, separate and apart from the merits as discussed below.

II. The trial court was correct in denying the Appellant's directed verdict and JNOV motions and in submitting all issues of negligence, including the breach of the standard care, to the jury.

In his opening brief, the Appellant focuses only on the denial of his directed verdict motion. There is no mention of the JNOV motion. The Appellant argues that the trial judge erred in denying his directed verdict motion only as to the breach of the standard of care. He claims that Dr. Wilson made certain admissions which warranted a directed verdict strictly as to the breach of the standard of care.

Initially, it is important to focus on the directed verdict motion as made by the Appellant to the trial judge. At trial, the Appellant argued that he "is entitled to a verdict as matter of law as to liability and [he] request[s] an instruction to the jury as to damages." (Tr. 428). The Appellant sought a directed verdict on the issue of liability and did not limit his motion to a breach of the standard of care. He, in fact, argued that "the damages suffered by the Plaintiff, including getting Stage 4 cancer, were a direct and proximate cause of the breach based on the testimony that's been presented as well as the evidence." (Tr. 429). The Appellant even sought a directed verdict that the evidence proved gross negligence and recklessness as a matter of law. (Tr. 429-430). That was the motion as presented. That was the motion that was denied. (Tr. 431). The Appellant thus did not ask the trial judge to grant a directed verdict strictly on the breach of the standard of care, which is the relief improperly sought for the first time in the JNOV motion

and now on appeal. In short, the Appellant is seeking a different directed verdict on appeal vis-à-vis what was requested initially at trial. Significantly, the Appellant does not argue on appeal that the trial court erred in denying the directed verdict motion as made at trial. There is, in fact, no argument in the JNOV motion or on appeal that he was entitled to a directed verdict on liability, including the issue of proximate cause.[3] Instead, the Appellant made a different motion at the JNOV stage pertaining only to the breach of the standard of care, and that is not proper. A JNOV motion is supposed to be nothing more that "a renewal of the directed verdict motion." *RFT Management*, 732 S.E.2d at 171. The Appellant's JNOV motion does not satisfy that requirement.

At any rate, even when considering the merits as to the breach of the standard of care alone and not liability as a whole, the Appellant was not entitled to a directed verdict as a matter of law. The evidence in the record, particularly when viewed in a light most favorable to the Respondents as the non-moving parties, supports the denial of a directed verdict on that limited issue.

On appeal, the Appellant argues that Dr. Wilson made admissions that he breached the applicable standard of care in two respects. The Appellant argues that Dr. Wilson admitted that the standard of care required an ENT to inform the

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[3] The Appellant now readily concedes that the jury "should have been left to consider the question of proximate cause and damages." *See*, Appellant's Opening Brief, p. 12.

patient when cancer is on the differential diagnosis and that an MRI does not rule out cancer.[4]

In evaluating the evidence to determine whether Dr. Wilson made such "admissions," it is important to recognize that Dr. Wilson readily conceded that he had no memory of the Appellant and the care provided to him. (Tr. 275). As a result, he was relying solely on his medical records in testifying. He had no independent recollection of the Appellant. In answering questions, Dr. Wilson repeatedly indicated that he could only testify what was stated in his records. (Tr. 310) ("I can only go by my records. I don't have any other independent recollection"); (Tr. 311) ("I have to go by my record"); (Tr. 313) ("I have to go with what the chart says"); (Tr. 316) ("I am going by the chart because I don't have an independent recollection of Mr. Miller's visit").

On cross-examination, Dr. Wilson agreed that the standard of care typically requires an ENT to inform the patient that cancer is on the differential diagnosis. (Tr. 312-313). But contrary to the Appellant's reading of the trial testimony, Dr. Wilson did not make an admission that he breached the standard of care. The question on the standard of care, when initially posed, was not specifically limited to the facts presented in this case, nor did the question indicate *when* the patient

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[4] In his directed verdict motion at trial, the Appellant also argued that "the failure to perform a biopsy to rule out cancer was a clear violation of the standard of care." (Tr. 429). That basis for a directed verdict, while raised also in the JNOV motion, has now been abandoned on appeal.

should be informed that cancer is on the differential diagnosis. When Dr. Wilson was posed with the question in relation to the actual facts of the case, he vehemently denied that the standard of care was breached:

> Q. So based on the medical evidence we have in this trial, you would have deviated from the medical standard of care because you did not inform him that cancer was on the differential diagnosis, true?
>
> A. I disagree with that because at the end of -- when we finished -- this was what I would call an acute problem, acute meaning reversible. If I still thought that he had something there or if he still thought he had something there -- we both agreed that his throat was feeling better and there was nothing there that either of us could see or palpate. So I don't think you want to be scaring every patient that comes in, yes, you could have cancer. You want to do what I've described, take their history, do an exam, order tests judiciously, make an impression and plan, follow that. And if it goes away just as quick as it came, then I think the better plan is to have the patient follow up as the situation demands.
>
> Q. Based upon the medical evidence that we have in this trial, which is your chart, and based upon what you say the standard of care requires, we know that you did not meet the standard of care relative to Mr. Miller because you did not inform him that cancer was on the differential diagnosis, true?
>
> A. I disagree with that. ....

(Tr. 313-314). This testimony does not constitute an admission by Dr. Wilson that he breached the standard of care.

Thereafter, while still on cross-examination, Dr. Wilson was asked whether the standard of care required an ENT to inform his patient that an MRI does not rule out cancer. Dr. Wilson responded, "I'll say yes to that." (Tr. 315). Again, the question was posed in a general sense, was not specifically limited to the facts presented in this case, and did not indicate *when* the patient should be so informed. As with the previous alleged "admission," when Dr. Wilson was posed with the question in relation to the actual facts of the case, he vehemently denied that the standard of care was breached:

> Q. So based on the medical evidence we have in this trial in this case, in this day, you deviated, you fell below the standard of care because you did not inform him that the MRI did not rule out cancer, isn't that the case, Doctor?
>
> A. I would not agree with that statement. Again, the standard of care is what a reasonably trained physician would do with a similar patient under similar circumstances. And this lesion went away as quick as it came, in a period of weeks.

(Tr. 316). Accordingly, this testimony does not constitute an admission by Dr. Wilson that he breached the standard of care.

Importantly, with respect to both of the alleged "admissions," the testimony quoted in the Appellant's opening brief was incomplete. The specific testimony as cited above was not quoted, let alone even mentioned, by the Appellant in his brief. In both instances, when Dr. Wilson was asked regarding a breach of the standard

of care specifically with respect to the facts of this case, he clearly denied any such breach. Thus, the Appellant's attempt to characterize Dr. Wilson's testimony as admissions is misleading and inaccurate. Certainly, when such evidence -- including all of Dr. Wilson's testimony -- is considered, particularly in a light most favorable to the Respondents as the non-moving parties, that evidence does not allow for a directed verdict as any breach of the standard of care. The trial court did not err in denying the directed verdict and JNOV motions.

This is especially obvious when three additional points are considered in the analysis. As discussed above, this case is unique in that Dr. Wilson has no independent recollection of the Appellant, his care for the patient, and more importantly, his discussions with the patient. Dr. Wilson was only able to admit or deny what was actually written in his medical chart. Simply because Dr. Wilson acknowledged that a certain discussion with the Appellant was not described in his medical chart does not confirm as a matter of law that the discussion did not take place. The Appellant bore the burden of proof to show a breach of the standard of care. The jury could have easily concluded with its verdict that the Appellant did not sustain his burden of proof that no discussion of the differential diagnosis occurred or that an MRI will not rule out cancer. The Appellant's own testimony

was at best vague and inconclusive on these points.[5] The Appellant, in fact, testified that cancer was discussed at least during his third visit. (Tr. 167-168). Accordingly, there was not undisputed evidence that such discussions did or did not occur, thereby creating an issue of fact to be resolved by the jury.[6]

Second, in examining whether the evidence supports a directed verdict as to the breach of the standard of care, the expert medical testimony offered by Dr. Joshua Hornig cannot be disregarded. Dr. Hornig is a head and neck surgeon as well as an associate professor at the Medical University of South Carolina. (Tr. 332-334). He is board-certified in otolaryngology head and neck surgery. (Tr. 333). Dr. Hornig testified as follows:

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[5] In the "Statement of Facts" section of his opening brief, the Appellant writes as follows: "Respondent Wilson did not inform Appellant that an MRI would not rule out cancer and a biopsy was the only test that could. Nor did he instruct Appellant that a biopsy was needed, and cancer remained on his deferential [sic] diagnosis." *See*, Appellant's Opening Brief, p. 4. The Appellant cites only to page 170 of the Trial Transcript. (R ___). The testimony on page 170 does not support the Appellant's description of such.

[6] Even if the Appellant's testimony was clear and uncontradicted on what he was told by Dr. Wilson, as Appellant may be trying to suggest in the "Statement of Facts" section of his opening brief (see footnote 5 above), that still does not render such evidence to be undisputed. In *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991), this Court held that "[t]he fact that testimony is not contradicted does render it undisputed." 410 S.E.2d at 595, *citing Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952). This Court further explained that "[t]here remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the results of the litigation. If there is anything tending to create distrust in his or her truthfulness, the question must be left to the jury." *Id.* (Citation omitted). In the case at bar, there is certainly a basis for the jury to question the accuracy of the Appellant's testimony. In addition to him having a pecuniary interest in the litigation, the Appellant's memory of his three visits to Dr. Wilson and other aspects of his care were challenged several times in his testimony. (Tr. 201-205). Consequently, there is no basis in the record for the Court to treat any of the Appellant's testimony as undisputed.

Q. Do you have an opinion to a reasonable degree of medical certainty whether or not Dr. Wilson deviated from the appropriate standard of care in his care and treatment of Mr. Miller?

A. I think Dr. Wilson did everything that was required of him. He examined the patient multiple times. He took a history, followed up with prudent testing, followed up, saw the patient again. All those tests came back negative. And there's really nothing else for him to do except for tell him to come back and see him if there's any further problems in the future.

Q. Having given me that answer, do you have an opinion whether or not Dr. Wilson deviated from the appropriate standard of care?

A. Absolutely not.

(Tr. 387-388). Later, on cross examination, Dr. Hornig was questioned specifically about the standard of care relative to the two points raised on appeal. Dr. Hornig testified that the standard of care does *not* require an ENT to initially advise a patient of every part of a differential diagnosis, including cancer. Dr. Hornig also opined that the standard of care did *not* require an ENT to inform the patient that an MRI does not rule out cancer. (Tr. 416-419). Thus, the record includes substantial expert medical evidence that the standard of care was not breached by Dr. Wilson. At the very least, Dr. Hornig's testimony also

demonstrates an issue of fact in dispute as to what the standard of care required, which again was appropriate for the jury to determine.[7]

Third and finally, the Appellant has failed to address that there was an underlying issue of fact in dispute as to whether the Appellant even had cancer in his tonsil in March and April 2013, when he was seen by Dr. Wilson. The jury heard evidence from Dr. Hornig as follows:

> Q. Do you have an opinion to a reasonable degree of medical certainty that there's any relationship to

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[7] The Appellant's reliance on the case of *Sims v. Hall*, 357 S.C. 288, 592 S.E.2d 315 (Ct. App. 2003), is misplaced. In *Sims*, which is a legal malpractice case, this Court determined that expert testimony as to the applicable standard of care was not needed where the defendant attorney admitted to the standard of care in a legal memorandum filed with the court. In the present case, unlike in *Sims*, the issue of the standard of care was addressed by expert witnesses and was clearly in dispute given all of the evidence in the record. As mentioned, Dr. Hornig testified that the standard of care does not require an ENT to initially advise a patient of every part of a differential diagnosis, including cancer, or that an MRI does not rule out cancer. (Tr. 416-419). Dr. Wilson's testimony as to the standard of care was stated in general terms and without specific consideration of the facts of this case as well as when certain information needs to be conveyed to the patient. At any rate, the Appellant's counsel clearly did not consider Dr. Wilson's testimony as to the standard of care to be admissions at trial. Otherwise, his own counsel would not have raised the issues on cross-examination with Dr. Hornig. In other words, it was the Appellant's own counsel who, through his cross-examination, admitted the opinions of Dr. Hornig that the standard of care does not require an ENT to initially advise a patient of every part of a differential diagnosis or that an MRI does not rule out cancer. Dr. Hornig had not specifically addressed those points in his direct examination. So, if the Appellant really considered Dr. Wilson's testimony to be admissions, it makes no sense for his able counsel to have asked Dr. Honig his opinions as to what the standard of care required and, in essence, create an issue of fact in dispute.

Additionally, along those same lines, it is worth noting that none of the Appellant's own medical expert witnesses addressed the alleged deviations of the standard of care (as raised on appeal) in his case-in-chief. The Appellant's focus at trial was an alleged breach of the standard of care by Dr. Wilson's failure to order a biopsy. *See*, Appellant's Opening Brief, p. 2 (in "Statement of the Case," the Appellant describes the Complaint as "alleging his Stage IV Cancer developed as a result of Respondents' failure to order the necessary test to rule out cancer"). But that issue has now been abandoned on appeal.

that cancer and the spot that was observed by Dr. Wilson in 2013?

A. I think it's very unclear that they're related.

Q. And why is that?

A. Because the spot that Dr. Wilson looked at resolved over time. There's no MRI evidence that there was a mass or growth there. And then after that, there's multiple qualified personnel who looked at Mr. Miller and did not see anything there. So I think it's very unlikely that these two lesions are related.

(Tr. 371). Dr. Hornig later confirmed his opinion that "it's more likely than not [Appellant] did not have cancer in March of 2013." (Tr. 387). Based on that testimony, it is very likely that the jury concluded that the Appellant did not have cancer when he was treated by Dr. Wilson in 2013, and on that basis, Dr. Wilson was not negligent in his treatment of the Appellant, as the jury states in its verdict.

In sum, the trial court was correct in submitting the question of liability, including the breach of the standard of care, to the jury. There is substantial evidence in the record to support the jury's verdict that Dr. Wilson was not negligent in his treatment of the Appellant. The trial court was therefore correct in denying the Appellant's directed verdict and JNOV motions. Those rulings should be affirmed on appeal.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents ENT & Face, P.A. and Brian Wilson, M.D. respectfully request that this Court affirm the rulings of Circuit Court Judge Daniel D. Hall on the directed verdict and JNOV motions and also affirm the jury's verdict in favor of the Respondents.

Respectfully submitted,

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January 2, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Special Circuit Court Judge

Appellate Case No. 2019-000359
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David Miller, ... Appellant,

v.

ENT & Face, P.A. and Brian Wilson, M.D.,..... Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondents, does hereby certify that service of the **Initial Brief of Respondents** and **Respondents' Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 2nd day of January 2020:

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January 2, 2020

The Honorable Jenny Abbott Kitchings
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RE: David Miller v. ENT & Face, P.A. and Brian Wilson, M.D.
Appellate Case Number: 2019-00359
Civil Action Number: 2017-CP-46-0302
Our File Number: 79.20150

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondents** and **Respondents' Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

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