

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

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FEB 12 2020
SC Court of Appeals

Case No. 2011-CP-26-7403
Appellate Case No. 2020-000046

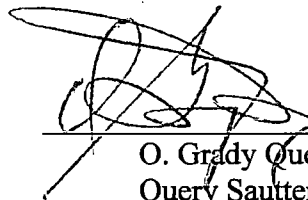
Mark Green, as Personal Representative of The Estate of Randall M. Green and Ann
Green,..... Respondents,

v.

Wayne B. Bauerle, M.D. and
Wayne B. Bauerle, M.D., P.C.,.....Appellants.

**MOTION TO CERTIFY THE ABOVE CAPTIONED APPEAL TO THE SOUTH
CAROLINA SUPREME COURT PURSUANT TO RULE 204(b) OF THE SCACR**

Respectfully submitted,



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MOTION

Pursuant to Rule 204(b), SCACR, Respondents Mark Green, as Personal Representative of The Estate of Randall M. Green and Ann Green, respectfully move for the South Carolina Supreme Court to certify this case for review by the South Carolina Supreme Court before the appeal is determined by the South Carolina Court of Appeals.

Rule 204(b), SCACR, authorizes the South Carolina Supreme Court to certify a case to the Supreme Court by motion of a party prior to a decision being issued by the lower court. The Supreme Court has previously utilized Rule 204(b) to deem itself the proper court to hear an appeal when appropriate. The procedural posture of *Ex parte S.C. HHS* is similar to the posture in this case. *Ex parte S.C. HHS*, 364 S.C. 527, 614 S.E.2d 609 (2005). The original lawsuit filed in *Ex parte S.C. HHS* was subsequently heard by the Court of Appeals and the Supreme Court before being remanded to trial court. *Id.* After the trial court made a decision on remand, the Supreme Court, under the authority granted by Rule 204(b), took the case directly after the trial court made a final decision. *Id.*

In this case, The South Carolina Supreme Court granted the petitions for writ of certiorari of both parties to determine whether the two separate jury verdicts for Respondents have was subject to be set off from settlements with Grand Strand Regional Medical Center, LLC (Grand Strand) and the computation of amounts to be set off from the two verdicts. On writ of Certiorari to the Court of Appeals, in Memorandum Opinion No. 2019-MO-026, filed May 29, 2019, the South Carolina Supreme Court Affirmed in Part, but Vacated in part the trial court's method of calculating the setoff from each verdict as arbitrary, since the determination was based solely upon the ratios the two verdicts bore to the whole. The allocation issue was remanded to the trial Court with instructions to "convene a hearing to consider all relevant circumstances" and to "issue an order setting forth the amounts to be set off from the two verdicts."

On remand, the parties submitted memorandums, The Honorable Judge Steven H. John, who was the presiding judge in the original trial, conducted a hearing on August 28, 2019. Judge John electronically filed his Order on the issues on October 22, 2019. In his October 22, 2019, Order Judge John properly acted on the instructions of this Honorable Court. Judge John

convened a hearing to consider all relevant circumstances and, as ordered by this Honorable Court, issued a nine page Order with a detailed analysis setting forth the amounts to be set off from the two verdicts based on all relevant circumstances. Appellants, in a motion for reconsideration argued that the settlement should once again be allocated based upon the same formula, relied on in the Trial Courts previous—overturned—ruling. On December 11, 2019, Judge John issued a second Order, denying appellant’s motion for reconsideration. Appellants filed their Notice of Appeal to the South Carolina Court of Appeals on both Orders on January 10, 2020.

Respondents move that this appeal be certified to the South Carolina Supreme Court both in the interest of judicial economy and because it was the South Carolina Supreme Court that instructed the trial court, on remand, to consider all relevant circumstances and allocate the settlements properly between the two parties, and this court can therefore best determine whether the trial court followed the Supreme Court’s direction. Respondents submit that, in his nine page Order of October 22, 2019, Judge John carefully considered the law as applied to the facts of the case as mandated by instructions on remand by the South Carolina Supreme Court. The practical effect of the present appeal proceeding, in the South Carolina Court of Appeals, is to have the Court of Appeals determine initially whether a reviewable question is presented, and then to determine whether the trial court complied with the directions of the South Carolina Supreme Court.

This case, including the original malpractice action brought by Respondents, has been ongoing for well over a decade. In that time, Randall Green has sadly passed away, and is survived by his widow, Ann Green. The last issue to be decided in this case is whether or not the Trial Court abused its discretion in deciding the amount to be set off from Respondent’s verdict

as directed by this Honorable Court. Certifying the appeal to the South Carolina Supreme Court will ensure consistency and finality in this extended litigation, as no court, other than the court which made the original decision, is better positioned to determine whether or not its order was properly executed on remand.

Further, if Respondent's motion is denied, it will not preclude this appeal from eventually working its way back to the Supreme Court as a petition for writ of certiorari, not only adding even more expense but also exhausting more judicial resources to an already protracted action. For finality, judicial economy, and consistency in the law, Respondents move that the above captioned appeal be certified to the South Carolina Supreme Court.

February 10, 2020

Respectfully submitted,



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Attorneys and Counselors at Law

February 10, 2020

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SC Court of Appeals

Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Randall M. Green and Ann Green v. Wayne B. Bauerle, M.D. and Wayne B. Bauerle,
M.D., P.C..
Civil Action No. 2011-CP-26-7403
Appellate Case No. 2014-000460

Dear Madam:

Enclosed for filing, please find one original and six (6) copies of the Motion to Certify the Above Captioned Appeal to the South Carolina Supreme Court Pursuant to Rule 204(b) of the SCACR with regard to the above-referenced matter, as well as a \$25 check for filing. Please file the original and return the clocked copy to me in the self-addressed, postage prepaid envelope enclosed for your convenience.

Your attention to this request is greatly appreciated. Should you have any questions, please do not hesitate to contact this office.

With kindest regards, I remain,

Very truly yours,

Amber Sautter
Assistant to O. Grady Query

Enclosures

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SC Court of Appeals

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South Carolina Court of Appeals Clerk of Court
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