

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry Hyman, Circuit Court Judge

Appellate Case No. 2019-001304

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Jun 05 2020

SC Court of Appeals

Phillippa Smalling, individually and as Next Friend for
Jahmerican M., a minor

Appellant,

v.

Lisa R. Maselli, M.D., both individually and
as agent/employee of Carolina OB-GYN,

Respondents.

**MOTION FOR LEAVE TO AMEND RECORD ON APPEAL AND TO SUSPEND
DEADLINES PENDING SERVICE THEREOF**

Come now Appellants, pursuant to Rule 240, SCACR, seeking leave to amend the
Record on Appeal (“ROA”) and to suspend final briefing deadlines pending service thereof.

The grounds for this motion are as follows:

- (1) Appellant’s counsel seeks leave to include in the ROA an edited transcript of a video deposition of Respondents’ expert witness, Michael Duchowny, M.D. The edited video played for the jury and the corresponding transcript included final edits based on court rulings made just before jury presentation. Respondents’ counsel marked this final edited version of the transcript as Defendants’ Exhibit 31, for identification only, then submitted it as a court exhibit for the trial record.

Respondents designated this exhibit for inclusion in the ROA. In proofreading the ROA shortly before the deadline for service, Appellants' counsel realized that his office had included a near final version of the edited transcript, but not the exact version which reflected the final edits. He further realized that he did not have in his possession the correct final edited version. It being too late to request a correct copy from Respondents and still meet the service deadline, counsel withdrew the incorrect version of the transcript and substituted an explanatory note as above. Counsel also denoted his plan to seek leave to amend the ROA after the correct version could be obtained for inclusion. The Certificate of Counsel also included this information. Respondents' counsel subsequently provided the correct version of the transcript, and Appellants' counsel stands ready to serve an Amended ROA if the Court grants leave to do so.

- (2) One additional minor correction should be made. Appellants misconstrued one of Respondents' designations regarding an exhibit. That misunderstanding has been corrected, and Appellants' counsel needs to correct this also.
- (3) To permit the final briefs to be prepared with accurate citations to the Amended ROA, all parties need sufficient time to do so after service of the Amended ROA. Counsel therefore moves for a new deadline for filing and serving final briefs, calculated from the date the Amended ROA is served.
- (4) Granting this motion promotes substantial justice and causes no prejudice.
- (5) Respondents' counsel has consented to this motion.

Appellants request that the Court dispense with the usual requirement to include a memorandum with citation of authorities in support of the motion. Appellants respectfully

submit that this would serve no beneficial purpose in this context, where the grounds are clearly set forth and there is consent from opposing counsel.

Respectfully submitted,

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June 5, 2020

WE CONSENT:

Deborah Sheffield w/ consent

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