

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

Appeal from Charleston County  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2017-CP-10-02758  
Appeal No. 2019-001716

---

**RECEIVED**  
**Jul 29 2020**  
**SC Court of Appeals**

Jeane Whitfield,

Appellant,

v.

Dennis K. Schimpf, M.D. and  
Sweetgrass Plastic Surgery, LLC,

and

Patrick O'Neill, M.D. and  
O'Neill Plastic Surgery, LLC,

Respondents.

---

**MOTION TO DISMISS APPEAL  
as to RESPONDENTS PATRICK O'NEILL, LLC, and  
O'NEILL PLASTIC SURGERY, LLC**

---

The Respondents Patrick O'Neill, M.D. and O'Neill Plastic Surgery, LLC move the Court to dismiss the appeal from the circuit court's Order Granting Non-Party O'Neill Plastic Surgery's Motion to Compel Compensation on the grounds that the Appellant Jeane Whitfield has abandoned her appeal from this order by failing to list any issue regarding this order in her Statement of the Issues on Appeal and by failing to present any argument regarding this order in the body of her brief.

This is a medical malpractice action commenced by the Plaintiff-Appellant against Defendants-Respondents Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC. The action proceeded to trial with a jury verdict rendered in favor of the Defendants. The Plaintiff served and filed a notice of appeal from the judgement on the jury verdict, and later filed another notice of appeal from the order granting the Defendants' Motion for Costs.

These Respondents were not a party to that action and no allegations of malpractice were ever lodged against these Respondents. Nonetheless, the Plaintiff expended much time and effort seeking information from Dr. O'Neill because he shared office space with Dr. Schimpf during a time while the Plaintiff was a patient of Dr. Schimpf. On motion, the trial court ordered the Plaintiff make compensation to these Respondents in the amount of \$1,436.90 for costs of producing records and for Dr. O'Neill's time for attending a deposition. [Order entered November 7, 2019.] The Plaintiff served a notice of appeal from that order on November 18, 2019.

The Plaintiff-Appellant served her initial brief, and thereafter served an amended initial brief on June 30, 2020. Neither of those briefs listed any issue challenging the order granting compensation to these Respondents. The three issues in the Statement of the Issues on Appeal address the merits of the judgment on the jury verdict, namely, two evidentiary rulings and the denial of her motion for a directed verdict. [Amd. Brief, p. iv.] The brief does contain a recitation of the facts that the trial court entered the order granting the motion to compel compensation and the Plaintiff served a notice of appeal from that order. [Amd. Brief, p. 2.] However, the Court will find no argument in the body of the brief raising any issue or making any argument about this order.

“In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal.” Langehans v. Smith, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct.App.2001). If an issue is not listed in the statement of the issues on appeal, it will not be considered. Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); Allen v. Pinnacle Healthcare Sys., LLC, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011).

Concomitantly, if an issue is listed in the statement of the issues on appeal, but no argument on that issue is made in the body of the brief, the issue will be deemed abandoned. State v. Lindsey, 394 S.C. 354, 364, 714 S.E.2d 554, 559 (Ct. App. 2011); Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 284 (Ct.App.1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.”). Further, merely mentioning the fact of a ruling without any argument in the appellate brief does not adequately present the issue for an appellate ruling. State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008)

By virtue of her failure to include any issue in her Statement of the Issues on Appeal and to make any argument in the body of her brief challenging the order awarding compensation to these Respondents, there is no issue for the Court to consider and her appeal from that order should be deemed abandoned and summarily dismissed. *See* State v. Crenshaw, 30 S.C. 607, 10 S.E. 390 (1888) (Court granted motion to dismiss appeal for failure to prosecute where no case was filed and no appearance at oral argument); Varn v. Williams, 30 S.C. 608, 10 S.E. 390 (1888) (Court granted motion to dismiss appeal for failure to prosecute); Bank of Marion v. Everett, 40 S.C. 549, 18 S.E. 891, 891 (1893) (Court granted motion to dismiss appeal for failing to file their argument and failure to appear).

These Respondents move for summary dismissal of the appeal lodged against them based on the totality of the circumstances in this appeal. While the Plaintiff-Appellant has stated and argued certain issues related to the judgment on the jury verdict in her brief, none of those issues directly or even indirectly relate to the order for compensation to these Respondents. Since these Respondents are not parties to the action and the Plaintiff-Appellant has failed to raise any issue challenging the relevant order, it would be unnecessary and unjust to compel these Respondents to continue to participate in this appeal.

It would be useless and burdensome for these Respondents to be forced to file a brief and continue to defend this appeal where there is nothing to which they can respond beyond the appellate preservation points raised herein, and there is no issue presented for this Court to rule upon in regards to the order or any other issue related to these nonparty Respondents. Accordingly, summary dismissal is appropriate to serve the interests of judicial economy and fairness to these nonparty Respondents.

The Respondents further move the Court to hold the briefing deadline for the Respondents' briefs in abeyance pending resolution of this motion on the merits. Rule 240(b), SCACR ("A motion to dismiss an appeal ... shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.")

[Signature Block Appears on the Following Page]

Respectfully submitted,

HOOD LAW FIRM, LLC

**/s/ John O. Radeck, Jr.**

John O. Radeck, Jr. (SC #77849)

Maryrose Lyle Pritchard (SC # 102804)

Deborah H. Sheffield, *Of Counsel* (SC #2757)

172 Meeting Street ~ P.O. Box 1508

Charleston, South Carolina 29402

Phone: (843) 577-4435

Facsimile: (843) 722-1630

**Attorneys for the Respondents**

**Patrick O'Neill, M.D., and O'Neill Plastic Surgery, LLC**

July 29, 2020

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

Appeal from Charleston County  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2017-CP-10-02758  
Appeal No. 2019-001716

---

**RECEIVED**

**Jul 29 2020**

**SC Court of Appeals**

Jeane Whitfield,

Appellant,

v.

Dennis K. Schimpf, M.D. and  
Sweetgrass Plastic Surgery, LLC,

and

Patrick O'Neill, M.D. and  
O'Neill Plastic Surgery, LLC,

Respondents.

---

**Certificate of Service**

---

The undersigned certifies that on this 29<sup>th</sup> day of July, 2020, a copy of the Motion to Dismiss and the Motion to Withdraw and Substitute Counsel on behalf of Respondents Patrick O'Neill, M.D. and O'Neill Plastic Surgery, LLC, was served on all Counsel by depositing a copy in the U.S. Mail, with sufficient first class postage, addressed to counsel at the addresses listed below:

Jesse Sanchez, Esquire  
THE LAW OFFICE OF JESSE SANCHEZ, LLC  
98 ½ Broad Street, Suite B  
Charleston, South Carolina 29401

and

Daniel S. Slotchiver, Esquire  
Andrew J. McCumber, Esquire  
SLOTCHIVER & SLOTCHIVER, LLP  
751 Johnnie Dodds Boulevard, Suite 100  
Mount Pleasant, SC 29464

and

Brent S. Halversen, Esquire  
BRENT SOUTHER HALVERSEN, LLC  
751 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29464

***Attorneys for the Appellant***

Todd W. Smyth, Esquire  
Smyth Whitley, LLC  
126 Seven Farms Drive, Ste. 150  
Charleston, SC 29492

***Attorney for the Respondents Dennis K. Schimpf, M.D. and  
Sweetgrass Plastic Surgery, LLC***

HOOD LAW FIRM, LLC

**/s/ John O. Radeck, Jr.**

John O. Radeck, Jr. (SC #77849)  
Maryrose Lyle Pritchard (SC # 102804)  
Deborah H. Sheffield, *Of Counsel* (SC #2757)  
172 Meeting Street ~ P.O. Box 1508  
Charleston, South Carolina 29402  
Phone: (843) 577-4435  
Facsimile: (843) 722-1630

**Attorneys for the Respondents  
Patrick O'Neill, M.D., and O'Neill Plastic  
Surgery, LLC**