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Apr 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge

Case No. 20-ALJ-07-0108-CC
Appellate Case No. 2020-001610

Lexington County Health Services
District Inc., d/b/a Lexington Medical Center, Petitioner/Respondent,

v.

South Carolina Department of Health and
Environmental Control, Prisma Health-
Midlands, Providence Hospital, LLC
d/b/a Providence Health, Providence Health
Northeast, Providence Health Fairfield,
and Kershaw Hospital, LLC d/b/a
Kershaw Health Medical Center, Respondents,

OF WHICH

Prisma Health-Midlands is the Appellant-Respondent,

and

Providence Hospital, LLC d/b/a Providence Health,
Providence Health Northeast, Providence Health
Fairfield, and Kershaw Hospital, LLC
d/b/a Kershaw Health Medical Center are the Respondents-Appellants.

REPLY TO RETURN TO
MOTION TO WITHDRAW APPEAL AND VACATE APPEALED ORDERS

Appellant Prisma Health-Midlands (PHM) respectfully submits this reply to the return filed
by Petitioner/Respondent Lexington Medical Center (LMC).

REPLY ARGUMENTS

LMC asserts that PHM “voluntarily” moved to withdraw this appeal and “is not being denied appellate review.” (Ret. at 4). LMC apparently believes that PHM should have kept quiet and allowed the appeal to proceed. PHM and its counsel, however, owe a duty of candor to this Court. As a matter of fact, and law, when LifePoint terminated the asset purchase agreement with PHM, the entire question of amending PHM’s COPA to include the to-be-purchased assets became moot. Thus, PHM had an ethical duty to advise this Court of the resulting mootness.¹

LMC repeatedly states that it does not oppose the motion to withdraw the appeal, but it argues this Court should not vacate the ALC order and DHEC decision. (Ret. at 1, 4, 10). LMC first argues that the termination of the asset purchase agreement does not moot the issues in this appeal. (Ret. at 5-7). LMC next argues that even if the matter is moot, the exceptions to the mootness doctrine apply and warrant the continuation of this appeal. (Ret. at 7-10). Certainly, PHM will continue this appeal if this Court agrees with either of LMC’s arguments.

Notably, LMC does not address two arguments made by PHM in its motion. First, LMC ignores the general rule announced by the Supreme Court in the *Byerly* case, to-wit: When an appeal “becomes moot through circumstances beyond the control of the appellant,” the court should vacate the appealed order, because it would be inequitable to deny the appellant any review of the order. (See Mot. At 3, 4).² Here, PHM had no control over LifePoint’s decision to exercise its contractual right to terminate the asset purchase agreement. Therefore, under *Byerly*, this Court should vacate the ALC order and DHEC decision.

¹ LMC correctly notes that the SCACR does not authorize the appellate courts to vacate appealed orders except in connection with settlements. (Ret. at 4). The appellate courts have inherent authority to vacate appealed orders and have exercised that authority in a wide array of situations involving matters becoming moot while on appeal. (See, e.g., cases cited in PHM Motion at 3-4 & n.5). LMC also claims it is unclear how this Court would vacate the ALC order and DHEC decision. (Ret. at 4, n.5). This Court can remand with instructions.

² *Byerly v. South Carolina Nat’l Bank Corp.*, 438 S.E.2d 233 (S.C. 1993), *aff’g* 427 S.E.2d 715 (S.C. App. 1993).

Second, PHM argued that if this Court does not vacate the ALC order and DHEC decision, then it should retain this appeal under *Byerly* and the mootness exception for situations where, like here, the appealed decision(s) “may affect future events, or have collateral consequences for the parties.” (Mot. at 4, quoting *Sloan v. Greenville County*, 670 S.E.2d 663 (S.C. App. 2009)). LMC never objects to PHM’s request that, if this Court does not vacate the ALC order and DHEC decision, it should retain this appeal. (Ret., *passim*).

CONCLUSION

PHM continues to believe that the termination of the asset purchase agreement moots the issues in this case at all levels. If, however, this Court agrees with LMC’s arguments, then it should deny PHM’s motion and retain this appeal. For the reasons set forth herein and in PHM’s motion, this Court should vacate the ALC order and the DHEC decision in conjunction with dismissing the instant appeal for mootness. If, however, this Court does not vacate the ALC order and DHEC decision, then it should retain this appeal under *Byerly* and *Sloan*, both *supra*.

Respectfully Submitted,



M. Elizabeth Crum, Esq., S.C. Bar No. 1486
lcrum@burr.com

Celeste T. Jones, Esq., S.C. Bar No. 3713
ctjones@burr.com

Pamela Baker, Esq., S.C. Bar No. 69413
pbaker@burr.com

Burr & Forman, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

April 23, 2021
Columbia, South Carolina

Attorneys for Appellant

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Hospital, LLC d/b/a Kershaw Health Medical Center are the
Respondents-Appellants.

PROOF OF SERVICE

I, Donna O’Daniel, an employee of Burr & Forman, LLP, hereby certify that a true
and correct copies of the **Appellant/Respondent Prisma Health-Midlands’ Return to Motion
to Withdraw Appeal and Vacate Appealed Orders** were served upon all counsel of record in
the above-captioned matter, via email at the email addresses listed below, this 23rd day of April,
2021, addressed as follows:

David B. Summer, Jr., Esq.
Faye A. Flowers, Esq.
Parker Poe Adams & Bernstein, LLP
1221 Main Street, Suite 1100
Columbia, SC 29201
davidssummer@parkerpoe.com
fayeflowers@parkerpoe.com
*Counsel for Respondents-Appellants
Providence Hospital, LLC d/b/a
Providence Health, Providence Health
Northeast, Providence Health Fairfield and
Kershaw Hospital, LLC d/b/a Kershaw
Health Medical Center*

Jennifer J. Hollingsworth, Esq.
Shannon V. Lipham, Esq.
Hamilton B. Barber, Esq.
Cheryl D. Shoun, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
jhollingsworth@nexsenpruet.com
svlipham@nexsenpruet.com
HBarber@nexsenpruet.com
CShoun@nexsenpruet.com
LSmith@nexsenpruet.com
*Counsel for Petitioner/Respondent Lexington
County Health Services District, Inc.,
d/b/a Lexington Medical Center*

Ashley C. Biggers, Esq.
Vito Wicevic, Esq.
Meredith W. Sella, Esq.
SCDHEC-Office of General Counsel
2600 Bull Street
Columbia, SC 29201
biggerac@dhec.sc.gov
wicevism@dhec.sc.gov
sellamw@dhec.sc.gov
decarlrd@dhec.sc.gov
*Counsel for Respondent SC Department of
Health and Environmental Control*

Kelly M. Jolley, Esq.
Ariail B. Kirk, Esq.
Jolley Law Group, LLC
810 Bellwood Road
Columbia, SC 29205
kjolley@jolleylawgroup.com
akirk@jolleylawgroup.com
*Counsel for Petitioner/Respondent Lexington
County Health Services District, Inc.,
d/b/a Lexington Medical Center*

Columbia, SC
April 23, 2021


Donna O'Daniel