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Jun 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 19-CP-10-00949  
Appellate Case No. 2022-00141

Jacob Murdaugh, .....Appellant,

v.

Walmart Stores East, LP, Jan Lunsford, and John Doe, Defendants,

Of Whom Walmart Stores East, LP and Jan Lunsford are the, ..... Respondents,

**APPELLANT’S REPLY TO RESPONDENTS’ RESPONSE TO APPELLANT’S  
MOTION FOR LIMITED REMAND TO ALLOW THE LOWER COURT TO HEAR  
APPELLANT’S MOTION FOR RELIEF FROM JUDGMENT  
AND/OR CLARIFICATION**

Appellant replies to Respondents’ Response to Appellant’s Motion for Limited Remand to Allow the Lower Court to Hear Appellant’s Motion for Relief from Judgment and/or Clarification as follows:

First, while Respondents make a bald assertion that Appellant faces jurisdictional issues with his Motion for Relief from Judgment and/or Clarification, such is simply not the case. The time for Appellant’s motion is “within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment or order.” Rule 60(b), SCRCPP. Here, the motion was made within ten (10) days of Appellant’s counsel learning of his mistake, inadvertence, or excusable neglect. It was also within one year of the judgment that was initially entered December 3, 2021.

Appellant has acknowledged that the lower court does not have jurisdiction at this time, which is why Appellant requested this limited remand.

Second, Appellant is not “conceding that he did not include the deposition transcript of Sergeant Belanger into the record for the lower court’s consideration” as suggested by Respondents. Respondents’ assertion ignores the fact that Appellant’s lower court motion requests first that the lower court clarify whether it considered this deposition in making its decision. An answer in the affirmative would allow this Court to easily deny Respondents’ motion to strike.

Further, this case is different from other cases where information may have been omitted from the record on appeal. In his opening statement, Respondents’ counsel told the lower court: “Now, Mr. Nelson will surely . . . inform the Court that the arresting officer was recently deposed, and that arresting officer testified that Walmart identified Jacob Murdaugh as the white male shoplifter.” [Transcript of Hearing, Page 6, line 22 – Page 7, line 4] Along with the other citations to the deposition in the record, it seems the only conclusion is that both attorneys believed this deposition was in the record. This is a unique and perhaps novel case.

Even if this exact fact scenario has not previously existed in the context of a 60(b) motion, appellate courts have allowed remands to address the record on appeal in other contexts. See *Dept. of Mo. Veh. v. McCarson*, 391 S.C. 136, 142 (S.C. 2011) (allowing an Administrative Law Judge to remand a case for a new hearing on the merits when the record on appeal was “woefully inadequate.”); See also *State v. Ladson*, 373 S.C. 320, 324 (S.C. Ct. App. 2007) (citing to several cases recognizing a court's power to remand for a reconstruction hearing).

However, none of these cases address a situation where attorneys for both parties cite to a part of a record (i.e. Sgt. Belanger’s deposition) in the larger record (transcript of summary

judgment hearing). Regarding the request for clarification, such is very similar to a remand for reconstructing a record.

Judicial economy is best served by a limited remand. Without such, the parties will dispense with this appeal, and then after this Court issues its Remittitur, the lower court may hear the Appellant/Plaintiff's Motion for Relief from Judgment. Appellant submits that this appeal is best heard after the lower court hears Appellant's Motion for Relief from Judgment and/or Clarification.

It will be difficult to dispense with this appeal in its current state.

The lower court is in the best position to resolve this issue.

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/s/ Thomas C. Nelson

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Attorney for Appellant

Dated: June 22, 2022

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
In the Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Case No. 2019-CP-15-0949  
Appellant Case No.: 2022-000141

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Jacob Murdaugh,.....Appellant,

v.

Walmart Stores East, LP, Jan Lunsford, and John Doe, Defendants,

Of whom Walmart Stores East, LP and Jan Lunsford are the ..... Respondents.

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**PROOF OF SERVICE OF APPELLANT’S REPLY TO RESPONDENTS’ RESPONSE TO APPELLANT’S MOTION FOR LIMITED REMAND TO ALLOW THE LOWER COURT TO HEAR APPELLOANT’S MOTION FOR RELIEF FROM JUDGMENT AND/OR CLARIFICATION**

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I certify that I have served the Appellant’s Reply to Respondents’ Response to Appellant’s Motion for Limited Remand to Allow the Lower Court to Hear Appellant’s Motion for Relief from Judgment and/or Clarification, to Robert C.Blain, Esquire, by electronic mail at rblain@gaffneylewis.com on June 22, 2022.

FUTERAL & NELSON, LLC

/s/ Thomas C. Nelson

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June 22, 2022

South Carolina Court of Appeals  
Attn: Clerk of Court  
1220 Senate Street  
Columbia, South Carolina 29201

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**SC Court of Appeals**

**RE: Murdaugh v. Walmart Stores East, LP, Jan Lunsford, and John Doe**  
**Case No.: 2019-CP-15-00949**  
**Appellant Case No.: 2022-000141**

Dear Sir/Madam:

Please see attached the e-filed *Appellant's Reply to Respondents' Response to Appellant's Motion for Limited Remand to Allow the Lower Court to Hear Appellant's Motion for Relief from Judgment and/or Clarification, and Proof of Service* via email on June 22, 2022.

Thank you for your attention to this matter. If you have any questions or need any additional information, please feel free to contact our office.

Sincerely,

Michelle McManigal  
Paralegal to Thomas C. Nelson  
mmcmanigal@charlestonlaw.net

/mm  
Enclosures