

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Jul 13 2022

SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

WILLIAMSBURG COUNTY

George M. McFaddin, Jr. Circuit Court Judge

Case No.: 2016-CP-45-00590, Circuit Court
Appeals Court Docket No.: 2021-000849

Cassandra Selph..... Appellant,

v.

Barbara Boatwright, Margaret S. Daniels, Individually
and as Personal Representative of The Estate of Eli Selph,
Eli Maurice Selph, and Dwayne Selph

Of whom Margaret S. Daniels, Individually and as Personal Representative of the Estate of Eli
Selph, and Dwayne Selph Respondents.

**RESPONDENT’S RESPONSE IN OPPOSITION TO APPELLANT’S NOTICE OF
MOTION AND MOTION TO STRIKE THE REQUEST OF RESPONDENT DANIELS
FOR INCLUSION OF ADDITIONAL MATERIAL IN RECORD ON APPEAL
PURSUANT TO SCAR RULE 210**

Respondent Margaret S. Daniels (“Respondent”), by and through counsel, hereby submits
this Response In Opposition to Appellant’s Notice of Motion and Motion To Strike The Request
Of Respondent Daniels For Inclusion Of Additional Material In Record On Appeal Pursuant To
SCAR Rule 210.

SCAR Rule 209(a) provides as follows:

At the same time a party serves his initial brief(s) under Rule 208, to include a reply
brief, he shall also serve on all parties to the appeal a Designation of Matter to be
Included in the Record on Appeal which shall set forth with specificity those parts
of the transcript, pleadings, orders, exhibits, or other materials which he proposes
to include in the record on appeal. One copy of this Designation with proof of
service shall immediately be filed with the clerk of the appellate court.

Appellant filed the initial brief on January 28, 2022. Instead of filing a Designation of Matter, Appellant filed a document entitled "Record on Appeal." Thereafter, Respondent filed the initial brief on April 22, 2022, along with the Designation of Matter, which included five additional items not included in the document filed by Appellant.

SCAR Rule 210 (c) provides as follows:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.

Despite the Designation of Matter by Respondent, Appellant filed a Record on Appeal on June 27, 2022, which excluded the properly filed Designation of Matter by Respondent. Instead, Appellant filed a Motion to Strike the documents on the ground that the documents were not a part of the lower court's online docket. However, Appellant's argument is misplaced because each of the five items was presented to the lower court as described below

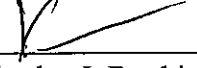
1. The Memorandum in Support of Motion to Compel Compliance with Settlement Agreement was filed in Circuit Court on June 26, 2020.
2. Affidavit of Jerome P. Askins, III was filed on June 26, 2020.
3. Email to counsel from Lucius H. Bullock, on behalf of the Honorable Judge George M. McFaddin, Jr., June 30, 2021.
4. Electronic communication from Darlene Parsons to Lucius Bullock with attached letter from Jerome P. Askins III, June 30, 2021.
5. Letter from Bernard Mitchell Alter to Judge McFadden[sic], July 2, 2021.

Items one and two are listed on the electronic docket provided by Appellant with his Motion. Items three through five are all communications between the parties and the court, thus these items were clearly presented to the lower court. There is no rule constraining the Record on Appeal to the electronic docket. Rather, the test is whether the documents were presented to the court below. Accordingly, Respondent respectfully requests that these items one through five be included in the Record on Appeal and that Appellant's Motion be denied.

[SIGNATURE NEXT PAGE]

Respectfully submitted

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Kenneth A. Davis (SC Bar #66416)
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July 13, 2022
Columbia, South Carolina

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and as Personal Representative of The Estate of Eli Selph,
Eli Maurice Selph, and Dwayne Selph

Of whom Margaret S. Daniels, Individually and as Personal Representative of the Estate of Eli
Selph, and Dwayne Selph Respondents.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT’S RESPONSE IN OPPOSITION TO APPELLANT’S NOTICE OF MOTION AND MOTION TO STRIKE THE REQUEST OF RESPONDENT DANIELS FOR INCLUSION OF ADDITIONAL MATERIAL IN RECORD ON APPEAL PURSUANT TO SCAR RULE 210** on Respondent’s attorney of record and on Appellant’s attorneys of record listed below, by depositing a copy of it in the United States Mail, postage prepaid, on July 13, 2022, addressed to:

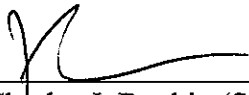
Bernard Mitchell Alter, Esq.
Alter And Barbaro
26 Court St., Ste. 1812
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For Appellant Cassandra Selph

Eduardo K . Curry, Esq.
Cindy R. Graham, Esq.
The Curry Law Firm, LLC
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P.O. Box 42270
North Charleston, SC 29423
For Appellant Cassandra Selph

Gary W. Crawford, Esq.
P.O. Box 508
Florence, SC 29503
For Respondent Dwayne Selph

[SIGNATURE ON NEXT PAGE]

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Kenneth A. Davis
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July 13, 2022

VIA ELECTRONIC MAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Cassandra Selph v. Barbara Boatwright, Margaret S. Daniels, Individually and as Personal Representative of The Estate of Eli Selph, Eli Maurice Selph, and Dwayne Selph Of whom Margaret S. Daniels, Individually and as Personal Representative of the Estate of Eli Selph, and Dwayne Selph are Respondents
Appeals Court Docket No.: 2021-000849


Dear Ms. Kitchings:

Enclosed for filing please find Respondent's Response in Opposition to Appellant's Notice of Motion and Motion to Strike the Request of Respondent Daniels for Inclusion of Additional Material in Record on Appeal Pursuant to Scar Rule 210 submitted to the Court via electronic mail in the above-referenced case.

By copy of this letter, we are serving all parties of record.

Thank you for your assistance in this matter.

Sincerely,



Kenneth A. Davis

/aeg

Enclosure

cc: Margarete S. Daniels (w/encl.)
Gary W. Crawford, Esq. (w/encl.)
Bernard Mitchell Alter, Esq. (w/encl.)
Eduardo K. Curry, Esq. (w/encl.)
Cindy R. Graham, Esq. (w/encl.)
Charles J. Boykin, Esq. (w/o encl.)
Tierney F. Goodwyn, Esq. (w/o encl.)

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