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Sep 12 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURGH COUNTY
Court of Common Pleas

Hon. George M. Mc Faddin, Jr.,
Circuit Court Judge

Case No. 2016-CP-45-00590, Circuit Court
Appeals Court Docket No. 2021-00849

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,
Defendants,

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

SUPPLEMENTAL RECORD ON APPEAL (RULE 211)

Bernard M. Alter, Esq.
ALTER & BARBARO, ESQS.
Attorneys for appellant, Cassandra Selph
26 Court Street, Suite 1812
Brooklyn, New York 11242-1118
(718) 237-0880

CURRY LAW FIRM, LLC
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North Charleston, SC 29418
Attorneys for appellant,
Cassandra Selph
Tel: (843) 767-5284

Gary W. Crawford, Esq.
P.O. Box 508
Florence, SC 29503
Tele: (843) 667-1073
Attorney for respondent,
Dwayne Selph

Boykin and Davis, LLC
220 Stoneridge Drive, Suite 100
Columbia, SC 29210
Tele: (803) 254-0707
Attorneys for respondent,
Margaret Daniels

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The deeds to the Plaintiff were prepared by her attorney, William M. O'Bryan, Jr., and sent to the respective attorneys of the Defendants, Margaret S. Daniels and Dwayne Selph, for execution. Margaret S. Daniels and Dwayne Selph executed their deeds to the Plaintiff in accordance with the Agreement, and the deeds were delivered to the Plaintiff's attorney, Mr. O'Bryan. The deeds to be executed by the Plaintiff were prepared by the attorneys for the Defendants and delivered to Mr. O'Bryan for execution by the Plaintiff. Mr. O'Bryan was to record all of the deeds after the Plaintiff came to his office and executed the deeds to Margaret S. Daniels and Dwayne Selph.

Margaret S. Daniels's attorney, Mr. Askins, was subsequently informed by the Plaintiff's attorney, Mr. O'Bryan, that the Plaintiff had come to his office to execute the deeds but she refused to execute the deeds and she refused to pay the payment due Margaret S. Daniels. Mr. Askins was further informed that Larry G. Reddeck, the Plaintiff's other attorney, would attempt to talk with the Plaintiff in a few days and persuade her to comply with the Settlement Agreement. Shortly thereafter, Mr. Askins was informed that the Plaintiff continued to refuse to comply with the Settlement Agreement. Soon after, Mr. Askins was served with a motion by Mr. O'Bryan and Mr. Reddeck to be relieved as counsel for the Plaintiff. A Motion to Compel Compliance with Settlement Agreement was filed on behalf of Margaret S. Daniels, Dwayne Selph and Eli Maurice Selph (who is no longer involved in the case).

Paragraph 11 of the Settlement Agreement expressly provides that "this Agreement shall be enforceable by the Court pursuant to Rule 43(k), SCRPC, and as a contract between the parties. If an action is necessary to enforce the Agreement, by motion or otherwise, the prevailing party shall be entitled to his or her attorney's fees and costs for the necessity of enforcing this Agreement."

Argument:

Mediation has been and continues to be a valuable tool in resolving civil disputes without a trial. The sanctity of the mediation process cannot be preserved without enforcing the Settlement Agreement

entered into by the parties and their attorneys at the mediation conference. The moving party, Margaret S. Daniels, has expended substantial time and money for the mediation conference itself, in preparation for the mediation conference, in complying with the terms of the Settlement Agreement, and, now, in enforcing the Settlement Agreement.

The Plaintiff, Cassandra Selph, should be compelled to execute the deeds and documents necessary to effect the terms of the Settlement Agreement and deliver the same to the attorney for Margaret S. Daniels. If she fails or refuses to do so within a reasonable deadline, the Williamsburg County Clerk of Court should be authorized to execute the deeds and appropriate documents in her behalf to effect the terms of the Settlement Agreement.

Upon information and belief, the money to have been paid by Cassandra Selph to Margaret S. Daniels for purchase of the Selph homeplace (\$40,848.30 by March 23, 2019) is being held in trust by Mr. O'Bryan, one of the attorneys for Cassandra Selph. Mr. O'Bryan should be directed to promptly pay over the money to the attorney for Margaret S. Daniels. Also, Cassandra Selph should be required to pay interest on said amount at the legal rate of 8.75% from March 23, 2019 until the date of payment. If any amount is not paid by or on behalf of Cassandra Selph within a reasonable deadline, in addition to her being subject to sanctions for contempt of court for failure to comply to the Court's order, the unpaid amount should be imposed as a lien or charge against the Selph homeplace. In such event the Selph homeplace should be sold at public sale by the Williamsburg County Clerk of Court at the option of Margaret S. Daniels or her attorney, with the proceeds applied: first, to the costs and expenses of the sale; second, to any amount due Margaret S. Daniels from Cassandra Selph; and third, any remaining funds to Cassandra Selph.

The Settlement Agreement expressly provides that in an action to enforce the agreement, the prevailing party is entitled to attorney's fees and costs. The attorney for Margaret S. Daniels has prepared and submitted herewith an affidavit in support of attorney's fees and costs, which should be awarded. Further, Ms. Daniels should have leave to move for additional fees and costs in the event the Plaintiff

fails or refuses to cooperate in bringing this matter to a conclusion in accordance with the Settlement Agreement.

Cassandra Selph's attorneys, Mr. O'Bryan and Mr. Reddeck, filed a motion to be relieved as her counsel on March 19, 2020. The Motion to Compel Compliance with the Settlement Agreement was filed on April 7, 2020. Ms. Selph had more than ample opportunity to consult counsel concerning the Motion to Compel and no attorney has appeared in her behalf. Mr. O'Bryan and Mr. Reddeck filed a Reply which essentially asserted their motion to be relieved as counsel. The failure of Ms. Selph to act should not be allowed to further delay enforcement of the Settlement Agreement.

Respectfully submitted

s/ Jerome P. Askins, III

Jerome P. Askins, III

Attorney for Defendant, Margaret S. Daniels

E mail from Lucius Bullock Esq. dated 6-30-21, page 6

RE: Cassandra Selph v. Joshua Selph & Dwayne Selph/Lynn Selph v. Cassandra Selph / Cassandra Selph v. Barbara Boatwright

McFaddin, George M. Law Clerk (Lucius Bullock) <gmcfaddinlc@sccourts.org>
Wed 6/30/2021 9:18 AM

To:

- BERNARD ALTER <mitchalter48@hotmail.com>;
- Tom Thompson <tom@jenkinsonlaw.com>

Cc:

- Billy Jenkinson <billy@jenkinsonlaw.com>;
- Jennifer Kellahan <jennifer@jenkinsonlaw.com>;
- Gregg Askins <askinsgregg@gmail.com>;
- Gary Crawford Crawford Law Firm <kitco@msn.com>;
- McFaddin, George M. Secretary (Andrea Morris) <GMcfaddinSC@sccourts.org>;
- Jerome Askins III <jpaiii.aca@gmail.com>

Good morning:

Judge McFaddin has reviewed the orders in the 00588 case. With the difference of opinion in the fee request for the settlement enforcement order and Mr. Alter's argument of Rule 6's application, Judge McFaddin asks that each side please send our office their positions in regard to the Rule 6 issue only.

Please keep your answers brief (no more than one page) and only address the issue of Mr. Alter's argument of insufficient notice for the motion and documents relating to it.

If you have any questions, please do not hesitate to reach out.

Thank you,
Lucius

--

Lucius H. Bullock

Law Clerk to The Honorable George M. McFaddin, Jr.

Circuit Court Judge

Third Judicial Circuit

Sumter County Judicial Center

215 N. Harvin St.

Sumter, SC 29150

W: (803) 774-2922

M: (803) 348-3434

F: (803) 774-6159


Email from Darlene Parsons on 6-30-21; pages 7-16
Selph vs. Margaret Daniels, et. al., Case No. 2016-CP-45-00590

Darlene Parsons <parsons.darlene@gmail.com>

Wed 6/30/2021 4:54 PM

To: gmcfaddinlc@sccourts.org <gmcfaddinlc@sccourts.org>

Cc: mitchalter48@hotmail.com <mitchalter48@hotmail.com>;tom@jenkinsonlaw.com
<tom@jenkinsonlaw.com>;billy@jenkinsonlaw.com <billy@jenkinsonlaw.com>;Jennifer Kellahan
<jennifer@jenkinsonlaw.com>;Gregg B Askins <askinsgregg@gmail.com>;kitco@msn.com
<kitco@msn.com>;gmcfaddinsc@sccourts.org <gmcfaddinsc@sccourts.org>

 1 attachments (3 MB)

JPAIII - Cassandra Selph vs. Margaret S. Daniels, et. al..pdf;

Sending attached for Jerome P. Askins, III.

Darlene C. Parsons
(for Jerome P. Askins, III)
Askins, Chandler & Askins, LLC
PO Box 10
Hemingway, SC 29554
(843) 558-2588

I am Jerome Askins and I represent Margaret S. Daniels in Case #2016-CP-45-00590. I was aware there was a Rule 6 notice issue as to attorney's fees in the case of Cassandra Selph vs. Joshua Selph, et. al., Case #2016-CP-45-00588, but I didn't think there was an issue in Cassandra Selph vs. Margaret S. Daniels, et. al., Case # 2016-CP-45-00590. There has been some confusion arising from the fact that the two cases have some of the same parties, they both involve Selph family property and the motions to compel were heard at the same time.

As to Case #2016-CP-45-00590, a Motion To Compel Compliance With Settlement Agreement was filed on April 7, 2020, on behalf of Margaret S. Daniels and all other Defendants. Included in the motion was a request for attorney's fees. A supporting memorandum and my affidavit regarding attorney's fees were filed on June 26, 2020. Considerable additional time was spent on this case thereafter, in part due to the motion of the Plaintiff's attorneys to be relieved as counsel for her, and the substitution of Mr. Alter as new counsel (who from the outset promised to work toward a speedy resolution!). I submitted for e-filing on January 4, 2021, an affidavit by Margaret S. Daniels and an affidavit by me in support of our motion and request for attorney's fees, the first pages of which are included herewith. See copy of confirmation of filing. We were notified the next day (January 5) that acceptance of our filing was only "partial" due to a missing "expiration date". I'm still not clear what this was. However, we later received confirmation that filing was completed on January 5. See copies of emails of January 5 and January 6. The hearing was on January 14. So, at worst, Mr. Alter had the affidavits nine days in advance of the hearing. Furthermore, Rule 6 allows "additional" affidavits in support of a motion to be filed no later than two days before the hearing.

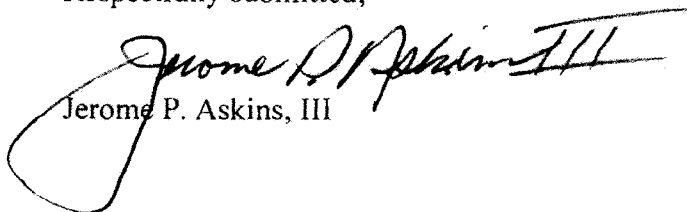
Had I known this was an issue in our case, I would have made a motion at the hearing to resubmit the affidavits with appropriate time for Mr. Alter to respond. He was in no way whatsoever prejudiced, surprised or disadvantaged by filing of the affidavits on January 5. He had more than adequate notice. All of the issues raised were addressed by Mr. Alter in his written response and during the hearing. The fact is there was no defense for his client's actions.

I believe the court could have awarded and set attorney's fees on its own even without the additional affidavits, or it could have awarded attorney's fees and given leave for additional evidence to be submitted after the hearing as to the amount of attorney's fees. Indeed, if the Court finds any validity in Mr. Alter's objection, I respectfully move for leave to resubmit affidavits as to attorney's fees.

I would like to add that my client will incur additional attorney's fees due to time expended dealing with Mr. Alter after the hearing, particularly when Mr. Alter accepted a proposed settlement based on a prompt conclusion of the entire matter, dragged the matter out for over three months, then rejected the settlement. Of course, we never attempted to enforce his agreement because our settlement offer was premised upon a speedy conclusion, which did not occur.

There is no merit to his claim. Is there no end to this?

Respectfully submitted,


Jerome P. Askins, III



Darlene Parsons <parsons.darlene@gmail.com>

Courtesy NEF RE: 2016CP4500590

1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>

Mon, Jan 4, 2021 at 3:50 PM

To: jpaill.aca@gmail.com

Cc: parsons.darlene@gmail.com

******* IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]**

A filing has been submitted to the court RE: 2016CP4500590

Official File Stamp:	01-04-2021 03:50:03 PM
Court:	CIRCUIT COURT Common Pleas Williamsburg
Case Caption:	Cassandra Selph VS Barbara Boatwright , defendant, et al
Document(s) Submitted:	Affidavit/Affidavit of Affidavit/Attorney
Filed by or on behalf of:	Jerome P. Askins, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

- Jerome P. Askins, III for Margaret S. Daniels
- Bernard Mitchell Alter for Cassandra Selph
- Karl A. Folkens
- Gregory B. Askins for Eli Maurice Selph

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

- Ind & As Pr, Est Of Eli Selph
- Dwayne Selph
- Barbara Boatwright

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Darlene Parsons <parsons.darlene@gmail.com>

Received Notice: Your filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was received

1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>

Mon, Jan 4, 2021 at 3:50 PM

To: jpaiii.aca@gmail.com

Cc: parsons.darlene@gmail.com

To: Jerome P. Askins, III jpaiii.aca@gmail.com
From: efiledonotreply@sccourts.org
Date: 2021-01-04 15:50:03.383
Subject: Your electronic filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was received by CIRCUIT COURT.

Case Number: 2016CP4500590

Case Type: (440) Partition

Document Type: Affidavit/Affidavit of

Document Type: Affidavit/Attorney

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE NO. 2016-CP-45-00590

Casandra Selph, )  
 )  
Plaintiff, )

vs. )

AFFIDAVIT OF  
MARGARET S. DANIELS

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

PERSONALLY appeared before me Margaret S. Daniels who first being duly sworn,  
deposes and says:

I am Margaret S. Daniels, one of the Defendants in the above captioned case. I reside at  
12587 County Line Road near Hemingway, in Williamsburg County, South Carolina. My home  
is located on the Selph property which is the subject of this partition action, and I have resided  
there for around 40 years.

On July 29, 2019, I attended a mediation conference in Florence, South Carolina which  
lasted all day. We eventually reached an agreement as to how to divide my family's property and  
everyone signed the Settlement Agreement. Sometime after the mediation, I was informed by my  
attorney that Casandra was trying to have changes made in the property sketch that we all signed  
off on at the mediation. I did not agree to the change. We were later told that the surveyor had  
determined that there was actually less acreage in the tract than had once been thought and there  
was a slight change in the property division because of that. Everybody's share was

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE NO. 2016-CP-45-00590

Casandra Selph, )  
 )  
Plaintiff, )

vs.

AFFIDAVIT OF JEROME P. ASKINS, III  
(AS TO ATTORNEY'S FEES, INTEREST,  
PROPERTY TAXES, COSTS)

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

PERSONALLY appeared before me Jerome P. Askins, III, who first being duly sworn,  
deposes and says:

I am Jerome P. Askins, III of Askins, Chandler and Askins in Hemingway, South Carolina.  
I have been engaged in the general practice of law since 1976. I have never been disciplined or  
sanctioned professionally. My practice has included real estate transactions and civil litigation.  
I represent Margaret S. Daniels, one of the Defendants in the above captioned case. This is a  
partition action and the parties are all family members.

The parties attended a day long mediation conference on January 29, 2019, which resulted  
in a Settlement Agreement signed by all parties and their attorneys. The Settlement Agreement  
incorporated a settlement sketch which had been prepared by a surveyor retained by Ms. Selph's  
attorneys. The sketch showed the subject property to contain 52.53 acres and it showed the  
manner in which the property was to be divided among the parties. The sketch also showed the  
dimensions of a lot located at the northeastern corner of the subject property, commonly referred  
to as the "store lot", in which my client had no ownership interest. Located on the subject property



Jerome Askins III <jpaili.aca@gmail.com>

**Partial Approval Notice: Your filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was partial**

1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>

Tue, Jan 5, 2021 at 3:50 PM

To: jpaili.aca@gmail.com

Cc: parsons.darlene@gmail.com

**To:** Jerome P. Askins, III jpaili.aca@gmail.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2021-01-04 15:50:03.383  
**Subject:** Your electronic filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was partial by CIRCUIT COURT.

Case Number: 2016CP4500590  
Case Type: (440) Partition  
Document Type: Affidavit/Affidavit of  
Document Type: Affidavit/Attorney

Additional information: PartialApproval: expiration date missing

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Jerome Askins III <jpaiii.aca@gmail.com>

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1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>

Tue, Jan 5, 2021 at 4:23 PM

To: jpaiii.aca@gmail.com

Cc: parsons.darlene@gmail.com

To: Jerome P. Askins, III jpaiii.aca@gmail.com
From: efiledonotreply@sccourts.org
Date: 2021-01-05 16:23:39.927
Subject: Your electronic filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was received by CIRCUIT COURT.

Case Number: 2016CP4500590

Case Type: (440) Partition

Document Type: Affidavit/Affidavit of

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Jerome Askins III <jpaiii.aca@gmail.com>

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**Accepted Notice: Your filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was accepted**

1 message

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**efiledonotreply@sccourts.org** <efiledonotreply@sccourts.org>

Wed, Jan 6, 2021 at 11:33 AM

To: jpaiii.aca@gmail.com

Cc: parsons.darlene@gmail.com

**To:** Jerome P. Askins, III jpaiii.aca@gmail.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2021-01-05 16:23:39.927  
**Subject:** Your electronic filing, Re: 2016CP4500590 - (440) Partition - Affidavit/Affidavit of, was accepted by CIRCUIT COURT.

Case Number: 2016CP4500590

Case Type: (440) Partition

Document Type: Affidavit/Affidavit of

Reason(s) : (none provided)

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ALTER & BARBARO

Attorneys and Counselors at Law

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NJ Office: 590 Palisade Avenue, Jersey City, New Jersey 07307 Tele: (201) 920-3462; Fax: (201) 763-7675
Florida Office: 1234 E. Concord Street, Orlando, Florida 32803 Tele: (407) 897-0880; Fax: (407) 897-8558

Bernard Mitchell Alter, Member of the New York, New Jersey, Pennsylvania, Florida, Georgia, Colorado, South Carolina, Connecticut, Massachusetts, District of Columbia, North Carolina, Virginia, and Maryland Bars

Stephen Vincent Barbaro, Member of the New York Bar

Troy J. Lambert, Member of the Florida, New Jersey, Georgia, and New York Bars

Do K. Lee, Member of the New York and New Jersey Bars

Nichole Bishop Castillo, Member of the New York and New Jersey Bars

July 2, 2021

Hon. George M. McFadden, Circuit Judge
3rd Judicial Circuit
Sumter, SC (By e-mail)

Re: Selph v. Boastwright, Docket Ending in 0090

Dear Judge McFadden:

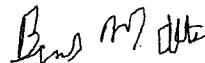
As I indicated in my previous presentation, Rule 6 bars the court from considering the materials Mr. Askins put before the Court less than 10 days prior to hearing.

These materials were new matters dealing with various items that were even properly before the Court. My previous submissions pointed that out.

As a result of the foregoing, any items that Mr. Askins put before the Court less than ten (10) days prior to the court, a point Mr. Askins now concedes, cannot be considered.

Very truly yours,

ALTER and BARBARO, ESQS.



BERNARD MITCHELL ALTER

Cc: All Counsel by e-mail

CERTIFICATION OF APPELLANT'S COUNSEL
(Page 17)

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material. This supplemental record is being filed pursuant to Rule 211 after receipt of documents respondent be included in the record on appeal. The respondent had no objection to the documents that I had in appellant's record on appeal.

September 12, 2022

RECEIVED
Sep 12 2022
SC Court of Appeals

/s/ Bernard M. Alter
ALTER & BARBARO, ESQS.
Attorneys for Plaintiff-appellant
26 Court Street, Suite 1812
Brooklyn, New York 11242-1118
Tel: (718) 237-0880