

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN - 7 2013

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

S.C. Supreme Court

Case No. 2009-CP-25-285

Gary Smart,.....Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III,..... Defendants,

of whom James Allen Grady is..... Petitioner,

and Randolph Murdaugh, III is..... Defendant/Respondent.

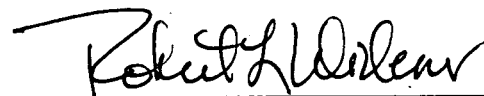
MOTION TO CORRECT CAPTION

This motion is filed contemporaneously with the Petitioner’s “Petition for a Writ of Certiorari to the Court of Appeals, or in the alternative, Petition for a Writ of Certiorari to the Court of Common Pleas.”

The notice of appeal filed in the Court of Appeals inadvertently failed to show Defendant Murdaugh as a respondent. Defendant Murdaugh was timely served with the notice of appeal and has been served with all filings in this Court and the Court of Appeals but has never made an appearance in either court. (See Tab A – Certificates of Service for appellate filings). Defendant Grady moved in the Court of Appeals to amend the caption to include Defendant Murdaugh as a

respondent – again, Defendant Murdaugh did not file a response. (See Tab B).¹ The Court of Appeals never ruled on this motion because the Court dismissed the appeal, thereby mooting the motion. Since Defendant Murdaugh did not appear at the hearing on the motion to change venue and presented no arguments on that issue to the trial court, it is questionable whether he has any standing to present any issues on appeal. In an abundance of caution, however, Defendant Grady hereby moves this Court to amend the caption and add Defendant Murdaugh as a respondent – his counsel of record has been served with this motion and the certiorari petition filed contemporaneously with this motion. In addition, the petition alternatively requests a writ of certiorari to the Court of Common Pleas, which is an original filing, and Defendant Murdaugh has been served with it as a respondent. This why the caption identifies Defendant Murdaguh as “Defendant/Respondent.”

Respectfully Submitted,



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Patrick M. Higgins
Jason Franklin Ward
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(803) 522-2400
Attorneys for Petitioner

June 7, 2013
Columbia, SC

¹ This motion also sought to consolidate Defendant Grady’s appeals in the personal injury action by Gary Smart and the consortium action by his wife. The appeal of the consortium action was dismissed and is not being pursued further.

A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-285

GARY SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Notice of Appeal upon all counsel of record by affixing same with proper postage
and placing same with the United States Postal Service on the 9th day of August,
2011 addressed to the following:

Mark B. Tinsley, Esquire
Gooding and Gooding, P.A.
Post Office Box 1000
Allendale, SC 29810
Attorney for Respondents Patrice and Gary Smart

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SC Court of Appeals

John H. Tiller, Esquire
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Attorney for Randolph Murdaugh, III

Erin D. Dean, Esquire
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Post Office Box 2055
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Attorney for Randolph Murdaugh, III

Duke R. Highfield, Esquire
Benjamin Traywick, Esquire
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Attorneys for Louis Daniel Moffett, Lynwood Brantley d/b/a Brantley Hauling

E. Mitchell Griffith, Esquire
Griffith, Sadler & Sharp, P.
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Beaufort, SC 29901-0570
Attorney for UIM carrier State Farm

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: 

Jason Franklin Ward, Esquire
Patrick M. Higgins, Esquire
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(843) 522-2400
Attorneys for Appellant James Allen Grady

Beaufort, South Carolina

August 9, 2011

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge
Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-284 and Case No. 2009-CP-25-285

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,
and Randolph Murdaugh, III, is Respondent.

AND

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,
and Randolph Murdaugh, III, is Respondent.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Motion to Certify Appeals from the Court of Appeals, Consolidate Appeals and Correct Caption, Determine Appealability and Exercise Pendent Jurisdiction, or in the Alternative, Petition for a Writ of Certiorari to the Court of Common Pleas by depositing copies in the United States Mail, postage prepaid, on December 5, 2011 addressed to the attorneys of record, as follows:

H. Woodrow Gooding
Mark B. Tinsley
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Beaufort, South Carolina 29901-2055



Ann Shuler

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2009-CP-25-284 and Case No. 2009-CP-25-285

Gary Smart, Respondent,
v.
James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,

AND

Patrice Smart, Respondent,
v.
James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Motion to Dismiss Appeal* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Robert L. Widener
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Post Office Box 11390
Columbia, South Carolina 29211

Patrick M. Higgins
Jason Franklin Ward
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Beaufort, South Carolina 29901

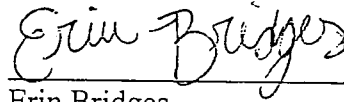
(Attorneys for Appellant-Petitioner, James Allen Grady)

John H. Tiller
HAYNSWORTH, SINKLER & BOYD, P.A.
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Charleston, South Carolina 29402

Erin D. Dean
TUPPER, GRIMSLEY & DEAN, P.A.
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Beaufort, South Carolina 29901-2055

(Attorneys Randolph Murdaugh, III)

April 26, 2012



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
Carmen T. Mullen, Circuit Court Judge

Case No. 2009-CP-25-284
Case No. 2009-CP-25-285

RECEIVED
JUN 11 2012
SC Court of Appeals

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant.

AND

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant.

CERTIFICATE OF SERVICE


I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellant's Return to Motion to Dismiss and Appendix In Support of Appellant's Return to Motion to Dismiss by depositing copies in the United States Mail, postage prepaid, on June 11, 2012 addressed to the attorneys of record, as follows:

John S. Nichols
Bluestein, Nichols, Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29810

Mark B. Tinsley
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Ann Shuler

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2009-CP-25-284 and Case No. 2009-CP-25-285

Gary Smart, Respondent,
v.
James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,

AND

Patrice Smart, Respondent,
v.
James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom James Allen Grady is Appellant-Petitioner,

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Motion for the Court to Accept the Respondent's Reply to Return to Motion to Dismiss Appeal Out of Time* and the conditionally filed *Reply to Return to Motion to Dismiss Appeal* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Robert L. Widener
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Patrick M. Higgins
Jason Franklin Ward
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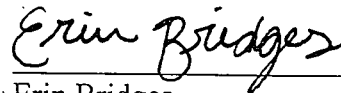
(Attorneys for Appellant-Petitioner, James Allen Grady)

John H. Tiller
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Erin D. Dean
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(Attorneys Randolph Murdaugh, III)

June 19, 2012



Erin Bridges

Paralegal

BLUESTEIN, NICHOLS, THOMPSON
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2009-CP-25-285

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant.

CERTIFICATE OF SERVICE

I, Sherrad T. McLean an employee of the McNair Law Firm, certify that I have served the Petition for Rehearing by depositing copies in the United States Mail, postage prepaid, on October 23rd, 2012 addressed to the attorneys of record, as follows:

Mark B. Tinsley
Gooding and Gooding, P.A.
Post Office Box 1000
Allendale, South Carolina 29810

John H. Tiller
Haynsworth, Sinkler & Boyd, P.A.
Post Office Box 340
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SC Court of Appeals

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Beaufort, South Carolina 29901

Sheppard T. McGowan

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2009-CP-25-285

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom
James Allen Grady is Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Return to Petition for Rehearing* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Robert L. Widener
MCNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

Patrick M. Higgins
Jason Franklin Ward
HOSWELL, GIBSON & HUGHES, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

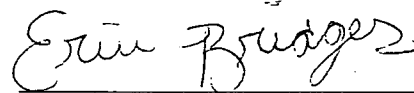
(Attorneys for Appellant-Petitioner, James Allen Grady)

John H. Tiller
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Erin D. Dean
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(Attorneys for Respondent, Randolph Murdaugh, III)

October 29, 2012
Columbia, South Carolina



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

Case No. 2009-CP-25-285

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Reply to Return to Petition for Rehearing and Reinstatement of Appeal by depositing copies in the United States Mail, postage prepaid, on November 5, 2012 addressed to the attorneys of record, as follows:


Mark B. Tinsley, Esq.
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Ann Shuler

B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge
Perry M. Buckner, Circuit Court Judge

RECEIVED
JUN 11 2012
SC Court of Appeals

Case No. 2009-CP-25-284 and Case No. 2009-CP-25-285

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant.

AND

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

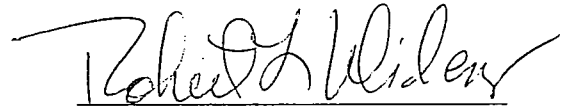
of whom James Allen Grady is Appellant.

MOTION TO CONSOLIDATE APPEALS AND CORRECT CAPTIONS

These appeals arise from an auto accident in Jasper County and present inter-related issues. Respondent Gary Smart sues for personal injuries arising from the accident. Respondent Patrice Smart is his wife and sues for loss of consortium based on Gary Smart's injuries. Accordingly, Appellant moves to consolidate these appeals pursuant to Rules 204(b) and 214, SCACR.

The notices of appeal inadvertently failed to show Defendant Murdaugh as a respondent in both appeals. Defendant Murdaugh was timely served with both notices of appeal and has been served with all filings in this Court and the Supreme Court. Accordingly, Appellant moves to correct the captions of the appeals to reflect that Defendant Murdaugh is a respondent in both appeals.

Respectfully Submitted,



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Patrick M. Higgins
Jason Franklin Ward
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June 11, 2012
Columbia, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
Carmen T. Mullen, Circuit Court Judge

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JUN 11 2012

SC Court of Appeals

Case No. 2009-CP-25-284
Case No. 2009-CP-25-285

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant.

AND

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant.

CERTIFICATE OF SERVICE

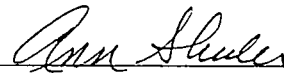
I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellant's Motion to Consolidate Appeals and Correct Caption by depositing copies in the United States Mail, postage prepaid, on June 11, 2012 addressed to the attorneys of record, as follows:

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Beaufort, South Carolina 29901-2055



Ann Shuler

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN - 7 2013

S.C. Supreme Court

APPEAL FROM HAMPTON COUNTY
In the Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2009-CP-25-285
Appellate Case No. 2013-00432

Gary Smart,Respondent,

v.

James Allen Grady, Louis Daniel Moffett,
Lynwood Brantley d/b/a Brantley Hauling,
Randolph Murdaugh, III, Defendants,

Of whom James Allen Grady is Petitioner.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Motion to Correct Caption by depositing copies in the United States Mail, postage prepaid, on June 7, 2013 addressed to the attorneys of record, as follows:


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Beaufort, South Carolina 29901


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