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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
BERKELEY COUNTY COURT OF COMMON PLEAS
The Honorable Bentley D. Price, Circuit Court Judge

Appeal No.: 2022-000927

Shelby Trehus, Plaintiff,

v.

Santee Run Apartments, A South Carolina
Corporation, and Shelly Jean Colley, Defendants,

and

Kayden M, a Minor, By His Guardian
Ad Litem Shelby Trehus, Plaintiff,

v.

Santee Run Apartments, A South Carolina
Corporation, and Shelly Jean Colley, Defendants,

Of Whom

Shelby Trehus and Kayden M., A Minor,
By His Guardian Ad Litem Shelby Trehus, are the Appellants,

and

Santee Run Apartments, a South Carolina
Corporation, is the Respondent.

**MOTION TO STRIKE ITEMS FROM
APPELLANTS’ AMENDED DESIGNATION OF MATTER, CORRECT
RELATED REFERENCES IN THEIR AMENDED INITIAL BRIEF,
PURPORTED EXHIBITS TO THEIR AMENDED INITIAL BRIEF,
AND FOR SANCTIONS**

Pursuant to Rules 208, 209, 210, 240 and 269, SCACR, Respondent Santee Run Apartments, a South Carolina Corporation, moves this Court to strike items from Appellants’ Shelby Trehus and Kayden M.’s Amended Designation of Matter (“Designation”), related references to the non-record materials in their Amended Initial Brief of Appellants, and for sanctions. Appellants continue to both designate and rely on

Shelby Trehus' full deposition transcript, as well as Dr. Timothy Brewerton's full deposition transcript, only portions of which were made part of the record before the tribunal below. In addition, despite having been told it was inappropriate to do so, Appellants have again attempted to file "exhibits," including the above-referenced non-record material, with this Court as attachments to their Amended Initial Brief.

Appellants filed their Initial Brief of Appellants and their Designation of Matter on August 29, 2022. At the same time, they purported to file "exhibits" to their Initial Brief, including the full deposition transcripts of Shelby Trehus and Dr. Brewerton. This Court returned the purported exhibits to Appellants on September 1, 2022 instructing Appellants it was inappropriate to file exhibits with the initial brief.

On August 31, 2022, Respondent moved to strike the non-record items designated by Appellants and for an order requiring corresponding revisions to their Initial Brief. Appellants filed no Return to this Motion, which constitutes a consent to the arguments and relief sought in the Motion. *See* Rule 240(e), SCACR.

On November 1, 2022, this Court granted Respondent's Motion in part, ordering Appellants to include "[o]nly the portions of the depositions of Shelby Trehus and Dr. Brewerton which were presented below." On November 4, 2022, this Court issued an Order directing Appellants, in light of the November 1, 2022 Order, to file an amended initial brief and designation of matter.

Appellants have filed an Amended Initial Brief of Appellants and an Amended Designation of Matter. However, they continue to designate and substantively rely on the full deposition transcripts of Shelby Trehus and Dr. Brewerton, including those portions that were never submitted to the lower tribunal and which this Court ordered stricken.

Moreover, despite having been told it was inappropriate to do so, Appellants again have attempted to file “exhibits” with their Amended Initial Brief, including the full deposition transcripts of Shelby Trehus and Dr. Brewerton.

According to Rule 209(b), SCACR, “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].” Rule 210(c), SCACR, in turn, provides that “[t]he Record shall not ... include matter which was not presented to the lower court or tribunal.” *See also Elam v. South Carolina DOT*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 780 (2004) (the “record on appeal shall not include matter which was not presented to lower court”).

As explained in the prior Motion, which was not opposed by Appellants, although the Deposition of Shelby Trehus, taken June 22, 2020 was was *referenced* during cross-examination during the hearing, (Exh. A, Tr. pp. 66-69, referencing pages 43 and 44 of Shelby Trehus’ deposition transcript), the entire deposition transcript was not submitted by Respondent as an exhibit nor presented to the jury. As a result, the full deposition transcript may not be included in the Record on Appeal and must be stricken from Appellants’ Amended Designation. Only pages 43 and 44 of that deposition may be included in the Record.

Correspondingly, the references to Shelby Trehus’ June 22, 2020 deposition transcript in the Amended Initial Brief of Appellants, other than pages 43 and 44, must be stricken. An appellate brief may only reference the Record on Appeal to support alleged facts, which is limited to those items “presented to the lower court or tribunal.” *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007); *see also* Rule 208(b)(4),

SCACR (an initial brief “shall contain references to the transcript, pleadings orders, exhibits, or other materials which may be properly included in the Record on Appeal”). This includes references to non-submitted pages of Shelby Trehus’ deposition on pages 3 and 4 of the Amended Initial Brief of Appellants.

In addition, Appellants again have designated the entire deposition transcript of Dr. Brewerton, taken February 18, 2022, of which only portions were played to the jury. (Exh. B, Tr. pp. 131-140, 175-181, containing arguments and discussions limiting Dr. Brewerton’s testimony, noting agreement between counsel as to which portions should be deleted). Only those portions of Dr. Brewerton’s deposition testimony that were presented to the jury may be included in the Record on Appeal, and the excluded portions, consisting of:

- Brewerton Dep. p. 37, line 7 – p. 41, line 15;
- Brewerton Dep. p. 92, line 11 – p. 94, line 13;
- Brewerton Dep. p. 98, line 14 – p. 110, line 14; and,
- Brewerton Dep. p. 155, line 21 – p. 156, line 3, must be stricken.

Correspondingly, any references to the stricken portions of Dr. Brewerton’s February 22, 2018 deposition testimony must be removed from the Amended Initial Brief of Appellants. *State v. White*, 372 S.C. at 387, 642 S.E.2d at 619; Rule 208(b)(4), SCACR.

As noted above, the Amended Initial Brief of Appellants purports to include Exhibits (A) – (G), which Appellants again are attempting to file along with their Amended Initial Brief. This Court previously advised Appellants that attempting to file them at this point is inappropriate. As such, the references to various Exhibits in

Appellants' Initial Brief should be stricken and instead, where appropriate, references should be made to the Record on Appeal in their Final Brief.

Finally, pursuant to Rule 269, SCACR, this Court may sanction a party for noncompliance with the Appellate Court Rules and orders. Given this Court's clear instruction and Appellants' blatant failure to abide by the prior Orders dated November 1, 2022 and November 4, 2022, and this Court's September 1, 2022 Letter, their attempt to present non-record materials to this Court for a second time appears to be more intentional and less inadvertent error. Such practices should be sanctioned to discourage like conduct in the future. At a very minimum, this Court should award the filing fee for this Motion, along with the attorney's fees incurred in reviewing the Amended Initial Brief of Appellants and their Amended Designation of Matter, and for preparing and filing this Motion, which clearly should not have been necessary.

CONCLUSION

Respondent requests an Order directing Appellants to revise their Amended Initial Brief and Amended Designation of Matter to remove references to non-record material as described above and for sanctions for requiring both Respondent and this Court to have to address this issue again. Respondent also requests that the briefing schedule, including the deadline for filing its Initial Brief and Designation of Matter, be stayed until the Court decides this Motion and, assuming it orders the relief sought herein, the above-referenced corrections are made.

December 5, 2022

Respectfully submitted,
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South Carolina Corporation*

1 Q. While you were walking -- while you were looking
2 through your apartment for a couple of minutes before
3 opening the front door, were you crawling around?

4 A. No, sir. I didn't know what was going on.

5 Q. Okay. So you're walking -- you were able to walk
6 around normally in your argument?

7 A. Yes.

8 Q. And when you went to go open the front door,
9 was it hot, the door handle?

10 A. No, sir.

11 Q. It didn't prevent you from opening it up with
12 your bare hands?

13 A. No, sir.

14 Q. Did you see -- when you opened the door to your
15 apartment, did you see fire trucks or firemen?

16 A. No, sir.

17 Q. When did you first see the firefighters on scene?

18 A. When I got out.

19 Q. How were you able to tell they were on scene
20 before?

21 A. I didn't. I didn't know what was happening.

22 Q. Do you remember providing deposition testimony
23 in this matter?

24 A. Yes.

25 Q. And do you remember testifying at that point

EXHIBIT

A

1 that you saw fire trucks outside when you opened the
2 door to your apartment?

3 A. No, sir.

4 MR. BEVANS: Bear with us, Your Honor.
5 One moment, Your Honor. We've got two depositions.
6 I'll be right there.

7 (Pause.)

8 BY MR. BEVANS:

9 Q. All right, Ms. Trehus, if you'll open that for
10 us, and if you'll go to Pages 43 and 44, and that is
11 a sealed transcript of the first deposition you provided
12 in this matter back on June 22nd, 2020, just about
13 a year after this fire.

14 MR. TISDALE: Your Honor, should we go out
15 to call the next witness?

16 THE COURT: Sure. No problem. Take your
17 time.

18 THE WITNESS: What page?

19 BY MR. BEVANS:

20 Q. Yeah, if you'll look at Page 43, and let me know
21 when you're there.

22 A. Okay. I'm at Page 43.

23 Q. Okay. If you'll just go ahead and read the
24 entire paragraph, starting at Line 16 and ending on
25 Page 44 at Line 3.

1 A. You want me to start at 16?

2 Q. I would because that's the whole paragraph,
3 that way you're not, you know, cutting what you were
4 saying off, tell the jury the whole entire paragraph
5 for context.

6 A. Okay. "Well, I was sleeping. I ended up waking
7 up to a very awful smell and sore throat ---

8 THE COURT: You have to slow down when
9 you're reading, okay?

10 THE WITNESS: Oh, I'm sorry.

11 MR. TISDALE: What line is she starting
12 from?

13 MR. BEVANS: 44 -- Page 43, Line 16 to
14 Page 44, Line 3.

15 MR. TISDALE: Got it. Thanks.

16 THE WITNESS: "Well, I was sleeping.
17 I ended up waking up to a very awful smell and sore
18 throat, nasty taste. Wasn't really sure what was going
19 on. I walked out of my bedroom, turned on my hallway
20 light, seen a bunch of smoke in my apartment, wasn't
21 really sure what was really going on, started looking
22 around to see if it was coming from my apartment. I had
23 opened up my front door. I had a bunch of smoke roll
24 into my apartment. I really couldn't see anything."

25 Q. Keep going. And that lines up with exactly

1 what you said so far, right, Shelby?

2 A. Yes, sir.

3 Q. Okay. Well, keep going and continue reading
4 the next three lines for us to finish that thought out.

5 A. "I had looked kind of around. It was really hard
6 to see. I had seen some of the fire trucks out there,
7 and I assumed something -- I assumed that we were on
8 fire."

9 Q. Okay. Thank you. So you testified in this case
10 back on June 22nd, 2020, and your testimony back on June
11 22nd, 2020, was identical to what you just said today,
12 with the exception of the one line about seeing fire
13 trucks outside, right?

14 A. Yes, sir.

15 Q. So were you lying then or now?

16 A. No, sir.

17 Q. Okay. Did you see fire trucks?

18 A. I do now remember seeing that faint fire truck
19 in the corner.

20 Q. Okay. So the fire trucks were on scene by the
21 time you opened up the door?

22 A. Yes, sir.

23 Q. Okay. Thank you. And your front door, does
24 it open up to the outside or is it an interior hallway?

25 A. It goes into my apartment.

1 MR. TISDALE: Suits us if it suits you,
2 Your Honor.

3 THE COURT: All right. Anything else that
4 we need to take up?

5 MR. BEVANS: I do think so. I hate to be
6 difficult and keep you, but we've got Dr. Brewerton,
7 the video. I've got a couple of motions in limine about
8 him, and that's only important because I've got to go
9 and give you my designations tonight of his video
10 deposition we took on Friday of last week. So, I would
11 kind of like to know your ruling on what he's allowed
12 to say, so I can, you know -- ahead of the video.

13 THE COURT: All right. What's your motion?

14 MR. BEVANS: So, I've got two motions
15 related to Dr. Brewerton, Your Honor. The first would
16 be to exclude Dr. Brewerton's treatment of Shelby.
17 He was disclosed as an expert witness strictly to view
18 Kayden's records. He conducted a complete review
19 of Kayden's analysis, and I'm going to -- this is the
20 motion that's in the big binder clip, so I'm really
21 going to hit the high points and rely on the record
22 written down for appellate purposes, if any.

23 But, essentially, there's no methodology.
24 I mean, he met with Ms. Trehus for a couple of hours,
25 never looked at past records, never got a family

EXHIBIT

B

1 history, never got a mental health history from her.
2 It's just not an acceptable standard for being able
3 to perform an evaluation of a patient or a person's
4 psychiatric well-being based on such a limited sample
5 size. It doesn't meet the standard for expert
6 qualification review and reliability.

7 THE COURT: And he's going to be a video
8 deposition?

9 MR. BEVANS: Yes, sir. We took it on
10 Friday. He's not available, so we had to take it.
11 And I had to go into it with him, but I'm hoping
12 to cut out some, you know, hours of testimony,
13 if we can.

14 THE COURT: All right. Any objection?

15 MR. TISDALE: Your Honor, I think that the
16 value of his testimony and the quality of it is a matter
17 that will have to be determined when he testifies.
18 We don't think that he did anything improper or
19 inappropriate by giving an evaluation of Shelby Trehus
20 when he evaluated her son.

21 THE COURT: What did he do now?

22 MR. BEVANS: Exactly, evaluated her son.
23 That's exactly what I'm saying. He did a three-hour
24 Zoom call that's recorded.

25 THE COURT: Right.

1 MR. BEVANS: Ends up being two hours and 40
2 minutes once he gets past his I'm an expert you all
3 hired. I'm not a doctor.

4 THE COURT: Right.

5 MR. BEVANS: And then he gave Shelby some
6 questionnaires about Kayden, and in the process of it
7 he then, like, kind of overreaches and starts making
8 opinions about Shelby that he wasn't asked to do,
9 and that's why the retainer agreement is up there where
10 he's only testifying in the Kayden Trehus case before
11 these cases were consolidated.

12 MR. TISDALE: He's taken his deposition,
13 fully cross-examined him on the whole thing.

14 THE COURT: Did you cross-examine him as to
15 her care and treatment?

16 MR. BEVANS: Only because I had to get
17 it in the video because I did not want to not do it
18 and then you allow him to come in, and then, I'm like,
19 oh, man, now I missed my chance, he's not going to be
20 here. So, I had to do it preemptively, but I definitely
21 -- I mean, these motions were filed well in advance.

22 So, I didn't waive any of my arguments
23 against his testimony, but I had to preserve my right
24 to get the cross-exam in because again the way it kind
25 of happened last week, I didn't really pull the cord

1 to get an emergency ruling on the motion before we had
2 a video deposition that I had objected to, but
3 Plaintiff's counsel did properly notice ten days.

4 MR. TISDALE: Your Honor, the cases are
5 consolidated, and I would suggest that Your Honor take
6 a look at the testimony before making a ruling to
7 exclude his testimony. He's already testified and been
8 cross-examined.

9 THE COURT: Well, the problem is that you're
10 going to need time to redact the video.

11 MR. BEVANS: That's exactly it. That's why
12 I'm just asking to have the ruling today because again
13 it really ties into my next opinion as well. I mean,
14 I don't want to merge two motions, but they're both
15 related to Brewerton and his opinions.

16 THE COURT: Okay. Go ahead.

17 MR. BEVANS: So the next one relates
18 to specifically Kayden. Dr. Brewerton came up --
19 Dr. Brewerton pulled two numbers from a report that was
20 issued, and I have copies of the report. He is prepared
21 to testify, and he did testify during his video
22 deposition that Kayden will need a value of future costs
23 somewhere in the range of, I'm going to quote the round
24 number, \$200,000 and \$900,000 of future lifetime care.

25 Now what those numbers -- those numbers came

1 from two articles published years ago about the cost
2 of child maltreatment to society as a whole. So those
3 costs, those several hundred thousand dollar figures,
4 one, are adjusted for inflation. Dr. Brewerton tried
5 to do that himself even though he is not an economist,
6 so that's a whole other area where the statistics aren't
7 valuable, I think.

8 But more importantly, there's no
9 methodology saying that Kayden is going to need X number
10 of psychotherapy visits every month or every week
11 or bi-monthly, anything like that. There's no breakdown
12 of what the costs are; there's no breakdown what
13 prescriptions that Kayden might have to have, what ADHD
14 treatment Kayden might have to have. There's zero
15 mention at all about any treatment that Shelby would
16 have to have, whether it be weekly, bi-weekly, monthly,
17 you know, quarterly, anything like that.

18 All Dr. Brewerton did was look at two
19 citations, Your Honor, that again I could pull up that
20 talk about the nationwide costs to society as a whole
21 from overall child maltreatment.

22 Now Dr. Brewerton will admit that those
23 statistics encompass things like children who are
24 victims of sexual abuse from clergy members or teachers
25 or camp counselors or step-dads, you know. They'll get

1 into everything under the sun, every area of non-fatal
2 child maltreatment.

3 This is not a case of fatal child
4 maltreatment. This is one 30-second possible instance
5 were Kayden went out a second-floor window. This is not
6 Kayden being locked in a closet and repeatedly abused
7 year and year and year over and over again. And that's
8 how Dr. Brewerton is pulling out those figures.

9 And, frankly, Your Honor, I think if he's
10 able -- one, they're not based on any methodologies
11 specific to Kayden. And I think if Dr. Brewerton,
12 who is a doctor, I'll give you that he's qualified.
13 I mean, the man is educated, has authored several
14 papers, and things of those nature. I'm not discounting
15 his qualifications. I'm discounting his qualifications
16 when it comes to formulating these figures because
17 they're not pulled out to be reflective of Kayden.

18 And if he sits here and tells the jury it's
19 between \$200,000 to \$900,000 of lifetime future care,
20 that number, Your Honor, is based on the cost to society
21 as a whole. I mean, that factors in the cost of the
22 court having to deal with a delinquent running around.
23 That deals -- that doesn't just encompass medical costs
24 alone. That encompasses the cost of the public as
25 a whole, not the cost just to Ms. Trehus, not the cost

1 to Kayden. And I think for a jury to hear those numbers
2 is extremely prejudicial to my case.

3 THE COURT: All right. Yes, sir.

4 MR. TISDALE: Your Honor, Dr. Brewerton
5 is an expert witness, listed as an expert witness,
6 gave his report to the effect that he testified
7 what he's claiming about months ago. We gave it to
8 Mr. Bevans right away, and he's fully qualified to give
9 this opinion. He testified to the authorities, how he
10 formed it, and he's testified to it in great detail in
11 his deposition, was cross-examined about it, and there's
12 no reason that he's not qualified to do it based upon
13 his professional qualifications that are in the record.

14 THE COURT: What's he being qualified
15 as an expert in?

16 MR. BEVANS: That's a great question.

17 MR. TISDALE: He's -- the treatment of this
18 sort of injury sustained by this young man, and he's an
19 expert on that and an expert on the cost of treating
20 these conditions years after the victims' injuries
21 began. And it will be clear in his testimony that
22 he is such an expert.

23 THE COURT: But he's not a life care
24 planner?

25 MR. TISDALE: He's not a life care planner,

1 but he's -- there's complete authentic basis for his
2 testimony.

3 MR. BEVANS: I have no issues with
4 Dr. Brewerton's qualifications to say that Kayden --
5 I would disagree with him, but I have no issue with his
6 qualifications to say that Kayden may need future care.
7 What I do have a problem with is Dr. Brewerton saying
8 Kayden is going to need \$200,000 to \$900,000 of future
9 care.

10 MR. TISDALE: He ---

11 MR. BEVANS: It's not based on any
12 methodology. So it's not the qualifications;
13 it's the methodology. What he did was simply pull
14 it. He didn't come up with these numbers on his own.
15 He went and copied them from someone else and placed
16 it in his report.

17 THE COURT: That's what a life care planner
18 would have done.

19 MR. BEVANS: But they still have some kind
20 of mathematical ---

21 THE COURT: Well, that's what I'm saying.
22 There's no life care planner in this case, and there's
23 no mathematical deduction as to again, as you indicated,
24 how much a therapy visit is going to cost ---

25 MR. BEVANS: That's right.

1 THE COURT: --- how much ADHD medication is
2 going to cost in the future, how many times he's going
3 to have to take it, how long he's going to have to take
4 it.

5 MR. BEVANS: Now if those were present,
6 and those numbers added up to the figures, well, I would
7 be stuck with it. I would agree.

8 THE COURT: Sure.

9 MR. BEVANS: But when it's just pulled out
10 of a hat like that.

11 THE COURT: What is he saying where he gets
12 these numbers from?

13 MR. BEVANS: Two articles, just the two
14 articles that are written about nationwide childhood
15 maltreatment over the entire country, 50 states,
16 a huge pool of children, all different types of abuse.
17 And that's why I referenced these are kids that have,
18 I mean, legitimate, like, horrible clergy abuse,
19 you know.

20 MR. TISDALE: Your Honor, he is an expert
21 in child psychology.

22 THE COURT: I'm going to let him testify
23 about all of that, but I'm not going to let the numbers
24 come out. I agree that's way too prejudicial for this.
25 I mean, if it's just pulled out of this hat, again like

1 you say, I just don't see how -- without a life care
2 planner how you can get that in, so take it out.

3 MR. BEVANS: Thank you, sir.

4 THE COURT: All right. See y'all in the
5 morning, 10:00 a.m.

6 MR. TISDALE: Thank you, Your Honor.

7 THE COURT: Yes, sir. Absolutely.

8 Thank you all.

9 (End of Transcript of Record)

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1 MR. DAVI: Could we cut the lights,
2 Your Honor? Thank you.

3 (Video deposition of Dr. Timothy Brewerton played for
4 the jury.)

5 THE COURT: All right. We're going to go
6 to lunch. It's 12:06. We'll come back at about 1:10,
7 1:15. Fair enough. We'll see you then.

8 (Jury exits the courtroom at 12:06 p.m.)

9 (Recess taken.)

10 (Back on the record.)

11 THE COURT: All right. Thank you very
12 much. Please be seated. All right, everybody is back.
13 You can go ahead and bring them out.

14 MR. BEVANS: Your Honor, I'm not quite done
15 on our time designation on Dr. Brewerton's video.

16 THE COURT: Meaning what?

17 MR. BEVANS: That I still have a few time
18 designations to omit from the time stamps from the
19 testimony. We've got -- I went through it. We agreed
20 with Plaintiff's counsel on what sections need to come
21 out, but it's not time stamped. Now we've got to go
22 through it and find the sections on the video and put
23 the actual timing of it.

24 MR. TISDALE: Make sure you get through
25 it by Friday.

1 MR. BEVANS: I can get it done pretty
2 quickly.

3 (Jury enters the courtroom at 1:18 p.m.)

4 THE COURT: Yeah, but that's not for this
5 video.

6 MR. BEVANS: Yeah, it is. It's the video
7 we're playing now. It's part of the motion in limine
8 before trial started.

9 THE COURT: I thought you were going to
10 redact it last night.

11 MR. BEVANS: Well, I did the deposition,
12 but I didn't on the video until just now. I'm trying
13 to get the time stamp matched up with the redactions
14 on the transcript.

15 THE COURT: I'm confused. What are you
16 trying to accomplish?

17 MR. BEVANS: So there were a few pages that
18 Your Honor agreed to keep stuff out.

19 THE COURT: Right.

20 MR. BEVANS: And I went through, and
21 I identified those segments on the actual transcript,
22 but the transcript I had didn't have the time stamp to
23 match with the video. So, I have got to go in the video
24 and figure out where the time stamp is on the testimony
25 we're omitting. I've gotten about two-thirds of the way

1 through.

2 THE COURT: But it's for this video?

3 MR. BEVANS: Correct, yes, sir. I was
4 working on it over lunch and just didn't get a chance
5 to finish it.

6 THE COURT: All right. Ladies and
7 gentlemen, I'm not sure what he's talking about. So let
8 me just try to figure out what these lawyers are doing,
9 so give me about five minutes, okay?

10 MR. BEVANS: My apologies, Your Honor.

11 (Jury exits the courtroom at 1:19 p.m.)

12 THE COURT: What I'm asking is that you
13 wanted me to make a ruling yesterday so you can do that
14 over last night.

15 MR. BEVANS: Right. Well, I did with the
16 transcript. I identified the segments in the transcript
17 that needed to come out, and Plaintiffs have agreed to
18 those segments to comply with your ruling.

19 THE COURT: Right.

20 MR. BEVANS: What I didn't have at the time
21 was the synced-up video to be able to have Mr. Davi fast
22 forward and omit those portions, or fast forward those
23 portions of the video, and that's what I'm working on
24 now. I'll be finished, really, in no time. I've just
25 got one more section. I've got to identify the time

1 stamps.

2 So, I've already identified the segments.
3 Like, for example, this is, like, an eight-page segment.
4 It talks strictly about the costs that Your Honor agreed
5 to keep out. I just need to match up what pages of this
6 transcript match with the time stamp on the video so
7 that Mr. Davi can, you know, either mute it so the jury
8 doesn't hear it or whatever.

9 THE COURT: All right.

10 MR. BEVANS: You know, the other thing
11 we could do, if Your Honor wants to play what we have
12 so far, if you want to plan on taking a recess during
13 the middle of Dr. Brewerton's testimony, I can kind
14 of point out when the segment is about to come up,
15 you can take a recess then ---

16 MR. TISDALE: How long ---

17 MR. BEVANS: --- we could fast toward it.

18 MR. TISDALE: How long would it take you
19 right now?

20 MR. BEVANS: I wouldn't expect more than
21 five or ten minutes. I'm pretty much -- I'm working
22 on it right now. I could have it playing -- I could
23 do it with a headphone in, but I don't want the jury
24 to see me have headphones in, trying to comp a video
25 while they're in there.

1 THE COURT: Well, they don't care what
2 you're doing because it's a video.

3 MR. BEVANS: I'm fine with doing it with
4 headphones in if that works for the Court.

5 THE COURT: That's fine.

6 MR. BEVANS: I just don't want it to be
7 anything ---

8 THE COURT: Yeah, that's not a problem
9 whatsoever.

10 MR. BEVANS: Okay.

11 THE COURT: All right. Bring them back out.

12 MR. BEVANS: That works for me. I just
13 don't want to be rude and have them in, that's all.

14 THE COURT: Completely fine by me.

15 (Jury enters the courtroom at 1:21 p.m.)

16 THE COURT: All righty. Two things.
17 Number one, what -- basically, I now understand what
18 they were saying, is that I made a ruling because I am
19 the sole judge of the law in this case as to what gets
20 presented at the trial, correct? Y'all are the sole
21 judges of the facts in this case.

22 And so I have determined that certain
23 portions of his testimony will be removed, and so
24 they're trying to figure out how to get past that.
25 That is no concern of y'all whatsoever why I chose

1 to have that taken out. That's my decision, not
2 y'all's, but that's what they're going to have to do.
3 So if you see it fast forwarded or paused or muted,
4 that's why. All right. I just want y'all to know that.

5 Second thing is, is that I found -- I did
6 y'all's Mr. Hibachi, and so if I fall out or Amy falls
7 out, Val is just going to take over, okay? All right.
8 Hit play.

9 (Video of Dr. Timothy Brewerton continued to be played
10 for the jury.)

11 THE COURT: How much longer?

12 MR. BEVANS: Twelve minutes.

13 THE COURT: We're going to take a break.

14 All right. We've been at it for about two hours and
15 seven minutes, which is astonishing. So we're going
16 to go ahead and take about a 15-minute break, and we'll
17 get right back in, okay?

18 (Jury exits the courtroom at 3:01 p.m.)

19 (Recess taken.)

20 (Back on the record.)

21 THE COURT: All right. Thank you very much.
22 Please be seated.

23 MR. TISDALE: Your Honor, can we speak to
24 you just a second?

25 THE COURT: Sure, absolutely.

1 (Off-the-record conversation held at sidebar.)

2 (Back on the record.)

3 (Jury enters the courtroom at 3:13 p.m.)

4 THE COURT: All right. Be seated. Ladies
5 and gentlemen of the jury, they have agreed or conceded
6 that the remaining balance of the video does not need to
7 be played, and so I'm just going to allow the Plaintiff
8 to call their next witness, all right.

9 MR. TISDALE: Your Honor, we don't have
10 anything further in terms of witnesses. We've got
11 one exhibit that we need to submit, but we don't have
12 to do it right now.

13 THE COURT: All right. So the Plaintiff
14 rests. So, ladies and gentlemen of the jury, this
15 is how we're going to proceed forward. At this point
16 in time, I'm going to have to take up some matters
17 of law. And what we'll then do is the defense has their
18 witnesses here today.

19 My understanding is they have two,
20 and so we'll bring you back out, and I'll allow him
21 to call his two witnesses, and hopefully we'll get
22 finished with those witnesses by the end of the day,
23 all right. So if you'll excuse us for about five
24 minutes, I'll bring you right back out.

25 (Jury exits the courtroom at 3:14 p.m.)

RECEIVED

Dec 05 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
BERKELEY COUNTY COURT OF COMMON PLEAS
The Honorable Bentley D. Price, Circuit Court Judge

Appeal No.: 2022-000927

Shelby Trehus, Plaintiff,

v.

Santee Run Apartments, A South Carolina
Corporation, and Shelly Jean Colley, Defendants,

and

Kayden M, a Minor, By His Guardian
Ad Litem Shelby Trehus, Plaintiff,

v.

Santee Run Apartments, A South Carolina
Corporation, and Shelly Jean Colley, Defendants,

Of Whom

Shelby Trehus and Kayden M., A Minor,
By His Guardian Ad Litem Shelby Trehus, are the Appellants,
and

Santee Run Apartments, a South Carolina
Corporation, is the Respondent.

PROOF OF SERVICE

I certify that on the 5th day of December 2022, I served Respondent Santee Run Apartments, a South Carolina Corporation’s **Motion to Strike Items from Appellants’ Amended Designation of Matter, Correct Related References in their Amended Initial Brief, Purported Exhibits to their Amended Initial Brief, and for Sanctions** on Shelby Trehus, and Kayden M., a Minor, by his Guardian Ad Litem, Shelby Trehus by emailing a copy of it to their counsel of record as follows:

Thomas S. Tisdale, Esq.
LAW OFFICES OF THOMAS S. TISDALE, LLC
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Charleston, South Carolina 29401
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*Counsel for Appellants Shelby
Trehus, and Kayden M., a Minor, by his
Guardian Ad Litem, Shelby Trehus*

s/Helen F. Hiser

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*Attorneys for Respondent Santee Run
Apartments, a South Carolina Corporation*



Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
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December 5, 2022

Via S.C. Courts E-Filing & U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Shelby Trehus v. Santee Run Apartments, a South Carolina Corporation, and Shelby Jean Colley
Civil Action No.: 2019CP0802808 (Berkeley)
Date of Incident: May 29, 2019
Carrier Claim No.: 847442-GL
MGC File No.: 20302.19242
Appeal No.: 2022-000927

Dear Ms. Kitchings:

Enclosed please find the original of Respondent's Motion to Strike Items from Appellants' Amended Designation of Matter, Related References in their Amended Initial Brief, Purported Exhibits to their Amended Initial Brief, and for Sanctions, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email only. We will send our firm's check in the amount of \$50 for filing the motion via U.S. Mail with a copy of this letter.

Please do not hesitate to contact the undersigned if the Court requires additional copies and/or if you have any questions.

Yours truly,

McAngus Goudelock & Courie, LLC

A handwritten signature in black ink, appearing to read 'H. Hiser', with a horizontal line extending to the right.

Helen F. Hiser

Enclosures

cc: Thomas S. Tisdale, Esquire (via email only)