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Dec 30 2022

SC Court of Appeals

The State of South Carolina
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2020-001291

Julie Irving,

Respondent,

vs.

Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb,

Defendants.

Of whom Jeanne Poafpybitty, Personal Representative of the
Estate of Donald M. Rothgeb is the Appellant,

MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO COMPEL

Appellant, Jeanne Poafpybitty, by and through her undersigned counsel, hereby submits this Memorandum in Opposition to the Motion of Respondent, Julie Irving, to Compel Appellant's Compliance with SCACR Rule 262, filed in this matter. Rule 262 specifically states that "[a]ny document filed with the appellate court shall be accompanied by proof of service showing the document has been served on all parties."

It appears, in this instance, that Respondent Irving is demanding that Appellant produce to the Respondent a bound copy of the Supplemental Record on Appeal, which Respondent Irving herself filed with this Court. This seems an absurd result which should not be compelled under the Rules. In further responding to the pending Motion to Compel, the Appellant Jeanne Poafybitty would further note as follows:

1. Respondent Irving alleges in her motion that on or about August 10, 2022, Appellant “served and filed” a Supplemental Record on Appeal in this case. That assertion is incorrect. In accordance with the Court of Appeals’ letter dated August 2, 2022, Appellant submitted six (6) additional bound copies of the Supplemental Record on Appeal, per the Court’s request. For clarity, the Court instructed in its letter of August 2, 2022, for Appellant to file six (6) additional bound copies of a document (the Supplemental Record on Appeal), that had already been previously filed with the Court, by the Respondent Julie Irving, on or about March 11, 2022. Included in the Court’s same letter of August 2, 2022, was also a request that the Respondent submit six (6) additional bound copies of her Final Brief in this matter to the Court of Appeals.

As noted above, the original service and filing of the Supplemental Record was accomplished on March 11, 2022, when Respondent filed the same with the Court.

On or about November 18, 2022, Respondent filed a Motion to Compel production by the Appellant of the filed Supplemental Record on Appeal. However, counsel for Respondent was the party who filed the Supplemental Record on Appeal with the Court on March 11, 2022. No additional Supplemental Record on Appeal was

filed with the Court by the Appellant or any other party. While the Appellant does not believe that it is a requirement to produce a bound copy of a Party's own document back to the same Party, counsel for Appellant did provide an electronic copy of the Supplemental Record, as re-produced to the Court, to counsel for the Respondent.

At no time prior to, or since the Respondent filed the instant Motion to Compel, has there been any indication that Respondent submitted the six (6) additional bound copies of her Final Brief to the Court of Appeals. Respondent did not provide Appellant with a copy of this filing, nor did she provide any indication that the filing has been made.

2. Appellant does agree that Rule 262 of the South Carolina Appellate Court Rules obligates parties to serve opposing counsel with copies of records filed with the Court. However, the documents submitted to the Court on August 10, 2022 were not filings with the Court, but merely additional copies of a prior filing already made with the Court.

3. The Court's letter of August 2, 2022 also required that the Respondent submit six (6) additional bound copies of the final brief to the Court within ten (10) days of the date of the Court's letter. As noted above, counsel for the Appellant has not received a copy of this filing (but would also submit to the Court that receiving an additional bound copy of the Respondent's final brief should not be required, and is not being requested).

4. This case has been riddled with unnecessary filings by counsel for Respondent and the instant filing is an example of the wasteful expenses incurred in legal fees in this matter. The purpose of copying counsel for Respondent on Appellant's letter to the Court of August 10, 2022, was to simply notify counsel for Respondent that the required additional copies of the Supplemental Record on Appeal had been submitted to the Court as required in accordance with the Court's August 2, 2022 correspondence.

5. A copy of the Court's August 2, 2022, letter is attached hereto as Exhibit "A." As of this filing, it is unclear if counsel for Respondent ever responded to the Court's request of that date, for additional bound copies of Respondent's final brief. While counsel for Appellant has received a clocked copy of the letter sent to the court on August 10, 2022, a copy of which is attached hereto as Exhibit "B", no clocked copy of the Supplemental Record on Appeal has been received from the Court.

6. Counsel for Respondent did inquire, on August 28, 2022, regarding the documentation submitted to the Court of Appeals on August 10, 2022. A copy of the Court's original email with its August 2, 2022 correspondence, Clifford Tall's email of August 28, 2022 requesting a copy of the Appellant's submission to the Court, and the August 29, 2022 reply to same is attached hereto as Exhibit "C".

7. In an attempt to alleviate any concerns from counsel for Respondent, counsel for Appellant has created a [Box.com](https://www.box.com) shared folder in the "cloud," in which shared folder copies of all filings with the Court in this matter have been uploaded.

This shared folder gives Counsel for the Respondent ready access to all documents filed with the Court by the Appellant.

Rule 260 of the SC Appellate Court Rules allows for dismissal “[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules”. As Appellant has not violated Rule 262 of the SC Appellate Court Rules, the Respondent’s demand for dismissal is unwarranted.

Accordingly, Appellant requests that the Court deny Respondent’s Motion to Compel as the documents requested have been produced on a number of occasions, including through the shared internet folder on Box.com. Moreover, the document in question, the Supplemental Record on Appeal, is a document initially produced by the Respondent Irving to begin with, such that it would be an arbitrary and non-sensical result to force the Appellant to produce another bound copy of this record back to the Respondent.

For these reasons, the Appellant respectfully requests that the pending Motion to Compel be Denied.

Respectfully submitted,

s/ Reese R. Boyd, III

Reese R. Boyd, III (SC Bar# 7151)

Bret H. Davis

Davis & Boyd LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(843) 839-9801 (*fax*)

reese@davisboydlaw.com
bdavis@davisboydlaw.com

Thomas Rode.
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
(843) 937-8000
(843) 937-4200 (*fax*)

*Attorneys for the Defendant/Appellant,
Jeanne Poafpybitty*

December 29, 2022
Myrtle Beach, South Carolina



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 02, 2022

Mr. Clifford Heywood Tall, Esquire
4702 Oleander Dr.
Suite 100
Myrtle Beach SC 29577

Reese R. Boyd, III, Esquire
1110 London St.
Suite 201
Myrtle Beach SC 29577

Mr. Bret Harlan Davis, Esquire
PO Box 70517
Myrtle Beach SC 29572

Mr. Thomas J. Rode, Esquire
15 Mid Atlantic Wharf
Charleston SC 29401

Re: Julie Irving v. Jeanne Poafpybitty
Appellate Case No. 2020-001291

Dear Counsel:

The Supreme Court issued an order reducing the number of copies required in appellate matters. See Re: Reduced Number of Copies Required in Appellate Matters (S.C. Sup. Ct. Order dated August 25, 2021). As permitted by the order, the Court of Appeals has determined a need exists for six (6) additional bound

Exhibit "A"

copies of the Supplemental Record on Appeal and the Respondent's Final Brief. The additional copies must comply with any binding or cover color requirements specified by Rule 267 of the South Carolina Appellate Court Rules (SCACR).

We request large parcels such as bound copies of the record and briefs be sent directly to the Court via the street address: 1220 Senate Street, Columbia, S.C. 29201.

Accordingly, Appellant must file six (6) bound copies of the Supplemental Record on Appeal and Respondent must file six (6) bound copies of the final brief within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

DAVIS & BOYD, LLC

Attorneys & Counselors at Law

BRET H. DAVIS, JD*, CPA
JULIE A. OLIVER, JD, LL.M.

* Licensed in SC and NC

1110 London Street, Suite 201
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 70517
Myrtle Beach, SC 29572

REESE R. BOYD, III, JD*
KELLY M. TUREK, JD, LL.M.**
*Certified Mediator and Arbitrator
**Licensed in SC and GA

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davisboydlaw.com

August 10, 2022

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Aug 10 2022

SC Court of Appeals

SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

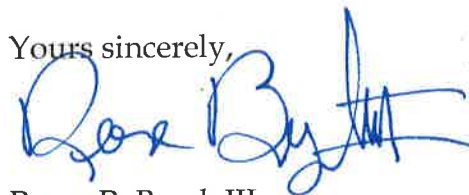
Re: Julie Irving v. Jeanne Poafpybitty
Appellate Case Number: 2020-001291
Our File Number: 016.017

Dear Sir/Madam:

Enclosed please find 6 bound copies of the Supplemental Record on Appeal which is being submitted in accordance with the Court's correspondence dated August 2, 2022.

Thank you for the Court's consideration in this matter.

Yours sincerely,



Reese R. Boyd, III

RRB/cmp
Encs.

cc: Clifford H. Tall, Esq. w/o enclosures
Mr. Matthew Rothgeb w/o enclosures
Mr. Steven Rothgeb w/o enclosures

Exhibit "B"

Julie Irving v. Jeanne Poafpybitty 2020-001291

13 messages

From: Cathy Plocinik <cathy@davisboydlaw.com>
To: ctallpa@sc.rr.com
Cc: reese@davisboydlaw.com, jelgaway@davisboydlaw.com, dawn@tktlawyers.com, thomas@tktlawyers.com, bdavis@davisboydlaw.com, Helluvaskinsfan Matt <mrhelluvaskinsfan@gmail.com>, Steve Rothgeb <strothgeb77@gmail.com>
Date: Monday, August 29, 2022 5:41:48 PM
Subject: Re: Julie Irving v. Jeanne Poafpybitty 2020-001291

Dear Mr. Tall,

Attached is the Supplemental Record on Appeal that was sent to the Court of Appeals on August 10, 2022. Did you send our office a copy of the brief that you sent to the Court? I do not see correspondence related to that request

Cathy M. Plocinik

Paralegal to Reese Boyd III
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (*fax*)

The information contained in this electronic message and any attachments is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please delete it from your computer and immediately notify the sender by telephone.

On Monday, August 29, 2022 at 10:45 AM, ctallpa@sc.rr.com wrote:

Dear Reese –

Attached please find a copy of my correspondence to you dated August 29, 2022.

Best regards,
Cliff

Clifford H. Tall, Esquire
4702 Oleander Drive
Myrtle Beach, SC 29577
Tel: (843) 497-9777
Fax: (843) 497-9779

IRS Circular 230 Notice: Intending that this office comply with Internal Revenue Service pronouncements, please be advised that any advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code and other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement or other matter addressed herein.

CONFIDENTIALITY NOTICE: This transmission contains confidential and/or legally privileged information from Clifford H. Tall, P.A. intended only for the use of the individual(s) named on the transmission. If you are not the intended recipient(s), you are hereby notified that any disclosure, copying or distribution of this information or the taking of any action in reliance on the contents of this facsimile transmission is strictly prohibited. If you have received this transmission in error, please notify us by telephone immediately, by collect call if necessary.

Attachments:

- Correspondence dated 8-29-2022.pdf

Exhibit "C"

From: ctallpa@sc.rr.com
To: reese@davisboydlaw.com
Cc: cathy@davisboydlaw.com, jelgaway@davisboydlaw.com, dawn@tktlawyers.com, thomas@tktlawyers.com, bdavis@davisboydlaw.com, Helluvaskinsfan Matt <mrhelluvaskinsfan@gmail.com>, Steve Rothgeb <strothgeb77@gmail.com>
Date: Monday, August 29, 2022 10:45:38 AM
Subject: RE: Julie Irving v. Jeanne Poafpybitty 2020-001291

Dear Reese –

Attached please find a copy of my correspondence to you dated August 29, 2022.

Best regards,
Cliff

Clifford H. Tall, Esquire
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Myrtle Beach, SC 29577
Tel: (843) 497-9777
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CLIFFORD H. TALL, P.A.
ATTORNEY AT LAW
4702 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577
(843) 497-9777

CLIFFORD H. TALL
LICENSED IN SOUTH CAROLINA
AND FLORIDA

FAX
(843) 497-9779
E-MAIL
ctallpa@sc.rr.com

August 29, 2022

Reese R. Boyd, III, Esq.
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577

Re: Estate of Donald M. Rothgeb

Dear Reese:

During a Presidential debate, Ronald Reagan once said to his opponent, "There you go again", suggesting that the opponent had made an unfortunate misstep in taking a certain position. As I write this letter, I can imagine you folks being disappointed, again, to learn of my position.

I'm writing to ask that you follow Rule 262(b) of the SCACR, and forward to my office a copy of the actual record which your office forwarded to the Court of Appeals, with your letter of August 10, 2022. Your office forwarded to me, only, a copy of your August 10, 2022 letter, but did not forward a copy of the many record pages which you sent to the Court, in response to the Court's August 2, 2022 request.

My request asks that you follow the Rule, and if you can, take into account how, both with your appeal to Circuit Court and with your appeal to Court of Appeals, the prior actions of your office prompted corrective actions, so that all designated matters could actually be presented to the Court for review. I'm not able to merely trust that, given prior actions, your office has now complied with what should take place.

You folks may not agree, but I believe that I am correctly reading Rule 262(b).

Thanks for your response.

Regards,

CLIFFORD H. TALL, P.A.



Clifford H. Tall

CHT:ele

cc: Bret H. Davis, Esq.
Thomas J. Rode, Esq.
Donald Matthew Rothgeb
Steven Taylor Rothgeb

From: Clark, Tyler P. <tpclark@sccourts.org>
To: ctallpa@sc.rr.com <ctallpa@sc.rr.com>, reese@davisboydlaw.com <reese@davisboydlaw.com>, bdavis@davisboydlaw.com <bdavis@davisboydlaw.com>, thomas@tktlawyers.com <thomas@tktlawyers.com>
Cc: cathy@davisboydlaw.com <cathy@davisboydlaw.com>, jelgaway@davisboydlaw.com <jelgaway@davisboydlaw.com>, dawn@tktlawyers.com <dawn@tktlawyers.com>
Date: Tuesday, August 2, 2022 5:00:54 PM
Subject: Julie Irving v. Jeanne Poafpybitty 2020-001291

Dear Counsel,

Please find correspondence from the Court of Appeals.

Sincerely,

Tyler Clark

Appeals Specialist
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
Ph. (803) 734-1890
F. (803) 734-1839

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The South Carolina Court of Appeals

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V. CLAIRE ALLEN
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August 02, 2022

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4702 Oleander Dr.
Suite 100
Myrtle Beach SC 29577

Reese R. Boyd, III, Esquire
1110 London St.
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Accordingly, Appellant must file six (6) bound copies of the Supplemental Record on Appeal and Respondent must file six (6) bound copies of the final brief within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen

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Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb,

Defendants.

Of whom Jeanne Poafpybitty, Personal Representative of the
Estate of Donald M. Rothgeb is the Appellant,

PROOF OF SERVICE

I certify that on the 30th day of December, 2022, the Defendant-Appellant's Memorandum in Opposition to the Respondent's Motion to Compel was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

Clifford H. Tall, Esq.
4702 Oleander Drive
Myrtle Beach, SC 29577

Mr. Donald M. Rothgeb
722 Racewater Drive
Myrtle Beach, SC 29588

Mr. Steven Rothgeb
via email only to: strothgeb77@gmail.com

s/ Reese R. Boyd, III

Reese R. Boyd, III (SC Bar #: 7151)

Bret H. Davis

Davis & Boyd, LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(843) 839-9801 (fax)

reese@davisboydlaw.com

bdavis@davisboydlaw.com

Thomas Rode

Thurmond Kirchner & Timbes, P.A.

15 Middle Atlantic Wharf

Charleston, SC 29401

(843) 937-8000

(843) 937-4200 (fax)

Attorneys for Defendant/Appellant

Jeanne Poafpybitty