

RECEIVED

Feb 21 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Common Pleas

J. Cordell Maddox, Circuit Court Judge

Case No. 2019-CP-04-01212
Appellate Case No.: 2022-001357

GLENN MECHANICAL.....Appellant,

v.

SIHIERH SMITHRespondent.

**RESPONDENT’S RETURN TO APPELLANT’S
MOTION TO STRIKE AND AMEND RESPONDENT’S INITIAL BRIEF AND,
IN THE ALTERNATIVE, RESPONDENT’S MOTION TO SUPPLEMENT
THE RECORD**

The attorney for the Appellant, Glenn Mechanical has recently filed a Motion to Strike and Amend the Initial Brief of the Respondent, Sihierh Smith, pursuant to Rule 240, SCACR. Respondent’s Return to said Motion, pursuant to Rule 240(e), SCACR, is contained herein.

A. The Appellant asserts that certain items contained in Respondent’s Initial Brief and Designation of Matter are not a part of the record on appeal. That statement is incorrect. There were several Motions filed during the pendency of this action and one of those Motions dealt with Appellant’s Motion for Miscellaneous Relief. At the Court’s request during the hearing on that Motion, Respondent’s attorney was asked by Judge

Maddox to forward to the Court a copy of the deposition transcripts of both John Glenn and Sihierh Smith. A copy of the transmittal email enclosing those transcripts is attached hereto as Exhibit 1, and shows a copy of that email likewise being forwarded to the Appellant's attorney. The Court thereafter issued and filed its Order on February 3, 2020, denying the Appellant's Motion based upon the requested documents, as well as the Memorandum and previous filings filed by the parties with the Court. Therefore, and in particular, the said depositions of John Glenn and Sihierh Smith, became a part of the record of this case (and, thus, the record on appeal) and were available for the Court's review during Judge Maddox's deliberations concerning the Respondent's Motion for Summary Judgment.

In addition, the Respondent's Motion for Summary Judgment incorporated, by reference, the pleadings, depositions, etc., affidavits, if any, as well as the "depositions taken that show that there is no genuine issue as to any material fact as to the Plaintiff's claims..." (emphasis added). The Appellant's Memorandum in Opposition also contained similar language.

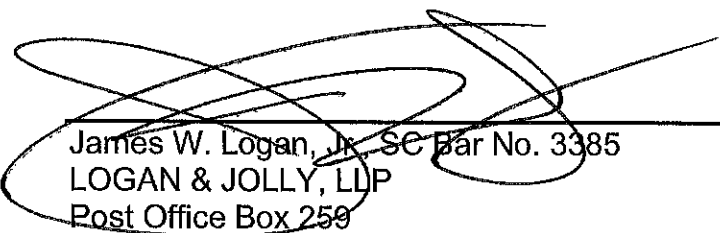
Accordingly, at the time of those statements contained in Respondent's Motion for Summary Judgment and Appellant's Memorandum in Opposition to said Motion, the depositions of John Glenn and Sihierh Smith were already a part of the record in this case as those depositions had previously been submitted to the Lower Court, at the Court's request, (Rule 216(c), SCACR, and were available for the Lower Court's review at any time regarding any and all subsequent issues raised/motions filed in this case in rendering a decision. While Appellant's attorney makes the statement in his Motion to Strike that the depositions of John Glenn and Sihierh Smith "were not considered by the trial court at any time in rendering a decision on Respondent's Motion for Summary Judgment" (emphasis added), he presents no evidence to support that statement. Further, he has

no way of knowing the extent of the record considered by the Court (unless he is clairvoyant), so the truthfulness of that statement is very much in question. What we do know is that those depositions were already a part of the record in this case, that the Court had those depositions available for review regarding any and all future motions, including the Motion for Summary Judgment, and that the trial Judge is a very capable and thorough jurist. Finally, items 14, 15, 16, 17, 18 and 19 came directly from the deposition of John Glenn and item 23 came directly from the deposition of Sihierh Smith. Therefore, those items are properly included in the Designation of Matter and the Record on Appeal.

B. In the alternative, Respondent, pursuant to Rule 212(b) of SCARC, moves to supplement the Record on Appeal to include the items that the Appellant's attorney contends in his Motion should be stricken from the Respondent's Designation of Matter for the same reasons cited above.

Respectfully Submitted,

Date: February ¹²20, 2023



James W. Logan, Jr. SC Bar No. 3385
LOGAN & JOLLY, LLP
Post Office Box 259
Anderson, SC 29622
(864)226-1910
Attorneys for Respondent

Kim Manley

From: Kim Manley
Sent: Monday, December 9, 2019 9:28 AM
To: Maddox, J. Cordell Secretary (Cynthia Hicks)
Cc: Jim Logan; Norman Epps; Brittney Powell
Subject: 2019CP0401212 - John Glenn v. Sihierh Smith
Attachments: Transcript of John Glenn.pdf; Transcript of Sihierh Smith.pdf

Cynthia:

There was a hearing in the above referenced matter on November 21, 2019 before Judge Maddox. Judge Maddox took the matter under advisement and requested a copy of the deposition transcripts of John Glenn and Sihierh Smith when we received them. Please find attached a copy of the requested deposition transcripts.

Please let me know if anything further is needed.

Thank you.

Kim Manley

Paralegal | Logan & Jolly, LLP
P.O. Box 259 | Anderson, SC 29622 | 864.226.1910



Please note that my email address has changed to manley@loganandjolly.com & update your contacts if necessary.

Confidentiality Notice: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

RECEIVED

Feb 21 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Common Pleas

J. Cordell Maddox, Circuit Court Judge

Case No. 2019-CP-04-01212
Appellate Case No.: 2022-001357

GLENN MECHANICAL.....Appellant,

v.

SIHIERH SMITHRespondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Respondent’s Return to Appellant’s Motion to Strike and Amend Initial Brief was served via electronic mail by first class mail, postage prepaid this 20th day of February, 2023, upon the following:

William Norman Epps, III
Post Office Box 2167
Anderson, South Carolina 29622



James W. Logan, Jr., SC Bar No. 3385
LOGAN & JOLLY, LLP
Post Office Box 259
Anderson, SC 29622
(864)226-1910
Attorneys for Respondent

Date: February 20, 2023