

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case Number: 2012-CP-02-00392

Marsha Temples..... Appellant

v.

Neil O. Plush..... Respondent

**APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE
APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL AND CORRESPONDING PORTIONS OF
APPELLANT'S INITIAL BRIEF**

RECEIVED

JUN 25 2013

SC Court of Appeals

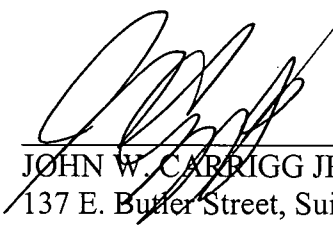
Respondent moves to strike the reference in Appellant's initial brief and in her designation of matter to be included in the record on appeal references to certain subpoenas that were issued during the course of this litigation. Rule 210 SCACR states that no matter should be included in the record on appeal which was not presented to the lower court or tribunal. In this case, Appellant is referring to several subpoenas which were issued by The Aiken County Court of Common Pleas under Respondent's attorney's signature in this litigation. Subpoenas are considered court documents. They are in fact issued by the court although under current practice they are allowed to be signed by attorneys. However, the fact remains that a subpoena is a matter of record and

is considered to be a document issued by the Court of Common Pleas where the action is pending. In fact, even under current practice if a non-attorney wishes to have a subpoena issued they must present the subpoena to the court to be signed and issued by the Clerk of Court. See: Rule 45 SCRC. In this case the court did not hear argument regarding subpoenas issued by Respondent at the initial hearing; however, in Appellant's motion for reconsideration which was filed on July 3, 2012 (attached as Exhibit A) and later denied by the court, Appellant states that her motion is based upon the record in the case. Therefore the subpoenas as part of the record in the case were in fact considered by the lower court. Based upon the fact that the subpoenas were considered by the lower court as part of the record in the case they are permissible as evidence of the argument made by counsel on the issue of estoppel. Furthermore, since Respondent's motion specifically refers to and states that "the motion is based upon the record of this case." Clearly the lower court would have considered all matters in the record in arriving at its conclusion to deny Appellants motion for reconsideration.

Further, Appellant would show that since the subpoenas in question are part of the record in the case they along with any other document in the court record may properly be presented to the Appellate Court in this appeal. Appellant is not attempting to argue new matter that was not presented to the lower court, to the contrary Appellant is merely pointing out and using documents that are part of the record in the case.

Appellant would submit that Respondent's motion to strike should be denied.

6-21, 2013



JOHN W. CARRIGG JR.
137 E. Butler Street, Suite 6
Lexington, South Carolina 29072
Telephone: (803) 785-5511
Attorney for Appellant

Other Counsel of Record:
Sonja R. Tate, Esquire
Fulcher Hagler, LLP
Post Office Box 1477
Augusta, Georgia 30903
Attorney for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 MARSHA TEMPLES)
)
 Plaintiff,)
)
 vs.)
)
 NEIL PLUSH)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CASE NO.: 12-CP-02-00392

MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

COPY
 ORIGINAL FILED
 JUL 03 2012
 Aiken County
 CLERK OF COURT

Plaintiff's Attorney: <u>John Carrigg, Bar No. 015239</u> Address: <u>137 E. Butler Street, #6, Lexington, SC 29072</u> Phone: <u>803-785-5511</u> Fax <u>803-785-5513</u> E-mail: <u>jcarrigg@carrigglaw.com</u> Other: _____	Defendant's Attorney: <u>Sonjya Tate, Bar No. _____</u> Address: <u>PO Box 1477, Augusta, GA 30903</u> Phone: <u>706-828-2625</u> Fax _____ E-mail: _____ Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
 Nature of Motion: Motion for Reconsideration
 Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.
 Signature of Attorney for Plaintiff / Defendant [Signature] Date submitted 7-2-12

SECTION III: Motion Fee
 PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason)
 Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____ JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION
 Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Marsha Temples,)
)
Plaintiff,)

Docket No.: 12-CP-02-00392

vs.)

MOTION FOR RECONSIDERATION

Neil Plush,)
)
Defendant.)

COPY
ORIGINAL FILED
JUL 03 2012
VJP
AIKEN COUNTY
CLERK OF COURT

TO: SONJY R. TATE, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure the Plaintiff, by and through her undersigned counsel, will move before the Court on the tenth day after service hereof, or at such time and place as the Court may set, for reconsideration of and amendment to the Court's decision and Order issued and filed on June 19, 2012 which was received by the Plaintiff on June 28, 2012. Specifically, Plaintiff seeks reconsideration of the Court's decision to grant the Defendant's Motion to Dismiss.

This motion is respectfully based upon the following grounds;

1. The Court did not consider the issue of equitable tolling of the statute of limitations and whether the same would apply in this case. Specifically, Plaintiff does not seek a finding that the Defendant is not ultimately entitled to have judgment granted in their favor on the issue of statute of limitations, Plaintiff asserts that she is at least entitled to have the issues heard. By granting Defendants motion to dismiss the Court deprives the Plaintiff of having the issue heard before the Court. And further, deprives the Plaintiff of obtaining the factual support for said hearing.

2. The Court determined that under any scenario the statute of limitations had long since run on this case. That finding erroneously excludes the issue of the Defendants residence and the effect the same would have on the statute of limitations. Plaintiff's counsel had information prior to the case being dismissed under Rule 40(j) that the Defendant had moved out of the State of South Carolina. Plaintiff has never been able to confirm said information but if that is the case then the statute of limitations would have been tolled pursuant to S.C. Code Section 15-3-30. Plaintiff asserts that she should be entitled to at least raise the issue and have the matter determined. If the Court were to deny Defendants Motion to Dismiss and require that they amend and plead the statute of limitations then Plaintiff could assert the issue and discovery could be obtained so that the Court could determine the issue.

3. This motion may also be supported by such other and further grounds as may be submitted to the Court at the hearing on this matter.

Plaintiff's motion is further based upon the record of this case.

AND IT IS SO MOVED.

By: 

JOHN W. CARRIGG, JR.
137 E. Butler Street, Suite 6
Lexington, South Carolina 29072
S.C. Bar No.: 015239
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
7-2, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

FOR THE SECOND JUDICIAL
CIRCUIT

Marsha Temples,)

Docket No.: 2012-CP-02-00392

Plaintiff,)

vs.)

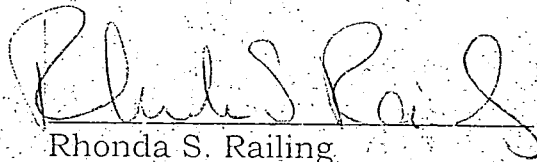
CERTIFICATE OF SERVICE

Neil Plush,)

Defendant.)

I, Rhonda S. Railing, a Paralegal of Carrigg Law Firm, hereby certify that I served a copy of the **Plaintiff's Motion for Reconsideration** in the above-captioned matter upon counsel for the Defendant and/or other parties listed below, by depositing a copy of the same in the U.S. Mail, with proper postage affixed thereto, this 2nd day of July, 2012, addressed as follows:

Fulcher Hagler, LLP
Sonja R. Tate, Attorney at Law
Post Office Box 1477
Augusta, Georgia 30903-1477


Rhonda S. Railing

Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case Number: 2012-CP-02-00392

Marsha Temples..... Appellant

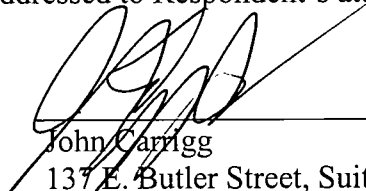
v.

Neil O. Plush..... Respondent

PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent's Motion To Strike Appellant's Designation of Matter To Be Included In The Record On Appeal And Corresponding Portions of Appellant's Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, on June 21, 2013, addressed to Respondent's attorney of record as detailed below.

June 21, 2013



John Carrigg
137 E. Butler Street, Suite 6
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Attorney for Appellant

Other Counsel of Record:

Sonya R. Tate, Esquire
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Post Office Box 1477
Augusta, Georgia 30903-1477
Attorney for Respondent

JOHN CARRIGG

ATTORNEY AT LAW

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LEXINGTON, SOUTH CAROLINA 29072

FAX: (803) 785-5513

JCARRIGG@CARRIGGLAW.COM

June 21, 2013

The Honorable Jenny A. Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Marsha Temples v. Neil O. Plush
Civil Action No.: 2012-CP-02-00392

Dear Ms. Kitchings:

Enclosed for filing, please find the original and six (6) copies of the Appellant's Return to Respondent's Motion To Strike Appellant's Designation of Matter To Be Included in the Record On Appeal and Corresponding Portions of Appellant's Initial Brief. Please file the original and return the clocked copies to our office in the self-addressed, postage prepaid envelope that I have provided for your convenience.

By copy of this letter I am serving same on the Respondent's counsel of record. Thank you for your assistance in this matter.

With highest regards, I remain

Very truly yours,


JOHN W. CARRIGG, JR.

JWC,jr./adr
Enclosure(s)

cc: Sonja R. Tate, Attorney at Law

RECEIVED

JUN 25 2013

SC Court of Appeals