

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 No. 2012-212686

Marsha Temples,

v.

Neil O. Plush,

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Appellate
SC Court of Appeals

Respondent.

RESPONDENT'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE

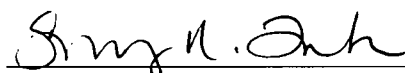
Respondent's Motion to Strike sought to strike Numbers 6 and 7 of Appellant's Designation of Matter to be Included in the Record on Appeal and corresponding portions of Appellant's Initial Brief. Number 6 of Appellant's Designation of Matter to be Included in the Record on Appeal concerns a "Letter dated February 26, 2009" and Number 7 pertains to "Cover letters to subpoenas." (Appellant's Designation of Matter to be Included in the Record on Appeal, Nos. 6 & 7.) In her Return to the Motion to Strike, Appellant tacitly acknowledges that these matters were not presented to the lower court, as required by Rule 208(b)(4) and Rule 210(c), SCACR.

Nonetheless, Appellant contends that the documents in question are properly included in the appellate court record. Appellant's position is grounded in her understanding that "[s]ubpoenas are considered court documents" which "are in fact

issued by the court” and thus are “matter[s] of record . . . where the action is pending.” (Appellant’s Return, pp. 1-2.) Appellant’s tautological reasoning does little to advance her position.

As an initial matter, regardless of whether *subpoenas* are “court documents” excepted from the mandate of Rule 210’s requirement that matter in the record on appeal *first* be presented to the lower court, the answer to this rubric has no bearing on the merits of the Motion to Strike. Simply put, Numbers 6 and 7 of Appellant’s Designation of Matter to be Included in the Record on Appeal do not list subpoenas, so Appellant’s reasoning as set out in her Return is of no assistance here. Further, Appellant cites no authority which lends even faint support for her claim that subpoenas are excepted from the plain requirements of Rule 210, SCACR. Laying reality aside for the sake of argument, even if the *correspondence* in issue could reasonably be equated with *subpoenas*, Rule 210(c), SCACR, states in plain and unequivocal terms that the appellate court record “**shall not**, however, include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR (emphasis supplied). The Rule permits no exceptions, and because the documents were not presented to the trial court, the analysis is straightforward. Finally, overlooking *arguendo* either of the above obstacles to Appellant’s position, Appellant glosses over the fact that the subpoenas she references in her Return were not issued in a *pending* action—because she failed to restore her action as required by Rule 40(j), SCRCP.

For the reasons stated above, and pursuant to the arguments set out in Respondent's motion, Respondent respectfully requests that the Court **GRANT** his Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and Corresponding Portions of Appellant's Brief.



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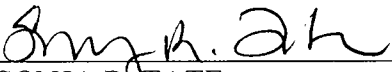
Neil O. Plush,

Respondent

PROOF OF SERVICE

I certify that I have served Respondent's Reply in Support of Its Motion to Strike by depositing a copy of it in the United States Mail, postage prepaid, and via facsimile, on June 27, 2013, addressed to her attorney of record, John W. Carrigg, 137 E. Butler Street, Suite 6, Lexington, South Carolina 29072.

June 27, 2013.



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June 27, 2013

**VIA FAX (803-734-1839)
AND U.S. MAIL**

Honorable Jenny Abbott Kitchings
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Columbia, SC 29211

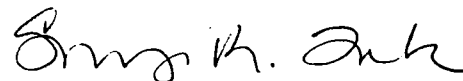
RE: Marsha L. Temples and Douglas Temples, Jr. v. Neal O. Plush
Appellate Case No. 2012-212686
Claim No: 0198296360101030
Our File No.: 47-676

Dear Ms. Kitchings:

Enclosed for filing in the above-entitled action are the original and seven copies of each of Respondent's Reply in Support of Its Motion to Strike and Proof of Service. Once the originals have been filed, please date stamp the copies and return them to me in the envelope provided.

Thank you for your assistance. If you have any questions or need anything further from me, please do not hesitate to contact me.

Sincerely,



Sonja R. Tate
For the Firm

SRT/gc
Enclosures
cc: John W. Carrigg, Jr. (w/encs.)
via U.S. Mail and
facsimile (803-785-5513)

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