

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

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Case No. 2010-CP-26-5964

William H. Bailey, Jr.,

Appellant,

v.

City of North Myrtle Beach,  
a South Carolina Municipal  
Corporation,

Respondent.

**RECEIVED**

JUN 27 2013

**SC Court of Appeals**

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**RESPONDENT'S REPLY IN SUPPORT OF MOTION TO STRIKE  
MATERIAL TO BE INCLUDED IN THE RECORD AND RETURN IN  
OPPOSITION TO MOTION TO ARGUE AGAINST PRECEDENT**

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## **REPLY IN SUPPORT OF MOTION TO STRIKE**

Appellant's sole argument in opposition to the City's motion to strike is that he could not offer the City's ordinances into evidence because the trial court did not allow him to amend his complaint. This argument makes no sense. Nothing prevented Appellant from offering the City's ordinances into evidence before the trial court and arguing to the court that those ordinances prevented the City from denying him a grievance hearing. That fact is that he simply did not do so.

The crux of the matter Appellant tried to the lower court was whether he was entitled to a grievance hearing. (Initial Brief of Appellant, p. 9 (“[Appellant] sought a Declaration that that the time of his demand for an employee grievance hearing at the commencement of this action, he was entitled to a hearing . . .”). If he believed that the City's ordinances that he now seeks to include in his Supplemental Designation were relevant to that claim, he was obliged to offer them into evidence and argue their applicability. He did neither. The fact that the lower court had previously denied a motion to amend the complaint to include other causes of action is simply irrelevant.

## **RETURN TO MOTION TO ARGUE AGAINST PRECEDENT**

Appellant moves in his return, apparently as alternative relief, to argue against the precedent that courts in this state will not take judicial notice of local ordinances. As an initial matter, even if Appellant were successful in his argument, it would make no difference. Appellant did not ask the trial court to take judicial notice of the City ordinances in question, nor did he even mention them at any point to the court below.

More importantly, it is not so much precedent against which Appellant seeks to argue, but the statutory law of the State. Specifically, the legislature has set forth the procedure for admitting local ordinances into evidence:

In all the courts held in this State the printed ordinances of the municipalities in the State, whether they be in pamphlet or book form, shall be admitted into evidence in such courts and shall constitute prima facie evidence of the genuineness of the same, *provided the clerk of such municipality certifies to the correctness of the same.*

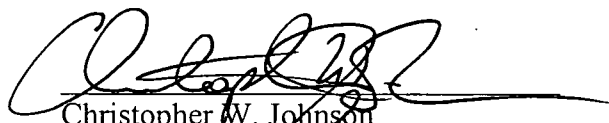
S.C. Code § 19-3-10 (emphasis added).

Appellant did not offer the trial court a certified copy of the ordinances in question. In fact, he did not offer the trial court the ordinances at all, or even mention them to the trial court. Accordingly, even if this Court were inclined to entertain Appellant's request to argue against precedent, it would serve no purpose.

### CONCLUSION

For the foregoing reasons and for the reasons set out in the City's motion to strike, the City ordinances Appellant purports to include in his Supplemental Designation should be stricken and not allowed into the record on appeal.

Respectfully submitted,



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June 27, 2013

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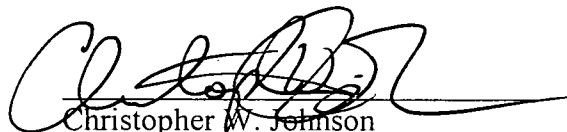
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PROOF OF SERVICE

I hereby certify that I have this day caused to be served a copy of the Respondent's Reply in Support Motion to Strike Material to be Included in Record and Return in Opposition to Motion to Argue Against Precedent on counsel of record by deposit in the United States mail, first-class postage prepaid, addressed to:

Kenneth R. Moss, Esq.  
Wright, Worley, Pope, Ekster & Moss, PLLC  
P.O. Box 250  
Little River, S.C. 29566



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June 27, 2013

**VIA HAND-DELIVERY**

The Honorable Jenny Abbot Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Re: *Bailey v. City of North Myrtle Beach*  
Appellate Case No. 2013-000195  
C/A No. 2010-CP-26-05964

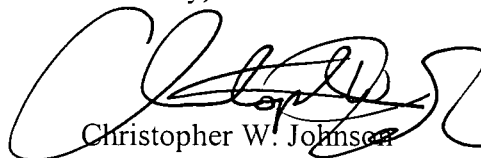
Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondent's Reply in Support of Motion to Strike Material to be Included in Record on And Return in Opposition to Motion to Argue Against Precedent and Proof of Service of the same. Please file the original and six copies and return one clocked copy to me by our courier.

Should you have any questions, please do not hesitate to contact us.

With highest regards,

Sincerely,



Christopher W. Johnson

CWJ/frw  
Enclosures  
ltr-ct-extn.docx/439.AJ

cc: Kenneth R. Moss, Esq., Counsel for Appellant (w/ encl.)(via U.S. Mail)

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