

RECEIVED

NOV 10 2008

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

POS 11/7
PM 11/4

GORDON G COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

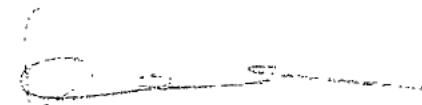
v.

Jeannette M. Benson and Thomas Lee Benson, Jr Appellant,

NOTICE OF APPEAL

Jeannette M. Benson and Thomas Lee Benson, Jr. hereby appeal the order of the Honorable Gordon G. Cooper dated October 28, 2008. Appellants received written notice of entry of this order on October 28, 2008

November 3, 2008


JESSICA SALVINI, ESQ.
Attorney for Appellants

SALVINI & BENNETT, LLC
101 W Park Ave.
Greenville, SC 29601
Telephone No.. (864) 232-5800
Facsimile No.. (864) 232-5888

Other Counsel of Record:
Edwin C Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D Pye
959 John B. White Sr Blvd.
Spartanburg, SC 29306

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

James Moore)

Plaintiff,)

v)

Jeannette M. Benson and Thomas Lee)
Benson, Jr.,)

Defendants.)

ORDER

Case Number: 2006-CP-42-3378

FILED
2008 OCT 28 AM 10:30
MARC KITCHENS

This matter is before this Court pursuant to the Order of Reference dated April 23, 2008 for the issuance of a Final Order in accordance with Rule 53 of the South Carolina Rules of Civil Procedure.

The final hearing was held on August 19, 2008, August 25, 2008 and October 21, 2008. The Plaintiff was represented by Chadwick D. Pye and Edwin C. Haskell, III and the Defendants were represented by Bradley Bennett.

After careful consideration of the facts, testimony, exhibits, and hearing argument of counsel for the parties, this Court finds as follows:

FINDINGS OF FACT

1) The Plaintiff, James Moore is 88 years of age and is the father of the Defendant, Jeannette M. Benson. The Defendants, Jeannette M. Benson and Thomas Lee Benson, Jr., are husband and wife.

2) As shown in the Decree of Divorce, Defendant's Exhibit 1, James Moore (the "Husband") married Allean Edwards Moore (the "Wife") in April of 1949. The Decree of Divorce is dated October 27, 2000. The parties had six children, one of whom was deceased at the time of the divorce. The Order on Defendant's Motion to Alter or Amend, Defendant's Exhibit 2, is dated January 3, 2001 (the "Order"). Paragraph 5 of the Order sets out a timeline within which the Husband was to either buy out the interest of the Wife in the real property that is the subject of this action or place the property up for sale. The Husband was to make the election within forty-five (45) days from the date of the January 2, 2001 Order if he desired to purchase the Wife's interest which was found by the Court to be \$52,851.00. If the Husband elected to purchase the Wife's interest, the purchase price was to be paid within ninety (90) days of the said Order. If he could not purchase the interest or elected not to purchase the interest, the subject property would be placed on the market for sale. If the property was not under contract for sale within six (6) months of the date of the Order, the Wife could petition the Court

#1 [Signature]

for a judicial sale. The value of the real property that is the subject matter of this litigation was found to be \$154,000.00 as shown in the Decree of Divorce, Defendant's Exhibit 1.

3) From the testimony at the final hearing the Plaintiff relied on his former wife, Allean Moore, to handle all of his business affairs and pay the bills of the household. The Plaintiff was retired from Mayfair Mills and completed "about" the fifth grade in school. His testimony and that of Allean Moore was that he could not read or understand. During the time of the divorce, the Plaintiff came to rely on the Defendant, Jeannette M. Benson to help him out by paying his bills and handling other financial matters for him. On January 16, 1999, James Moore executed a Durable Power of Attorney appointing Jeannette M. Benson as his attorney in fact, Plaintiff's Exhibit 1.

4) On January 14, 1999, the Plaintiff withdrew all of the funds from his retirement account which totaled \$29,433.46 as shown in Defendant's Exhibit 6. A cashier's check dated January 14, 1999 was issued to James Moore, Defendant's Exhibit 7, in the amount of \$29,433.46. On the same day, January 14, 1999, a certificate of deposit, account number 5822263471 opened at BB&T in the name of Jeannette M. Benson in the amount of \$29,433.46 as shown in Defendant's Exhibit 8. Further, as shown in Plaintiff's Exhibit 7, the account was opened as an individual account in the name of Jeannette M. Benson with her Social Security Number and her signature as the owner of the account. The testimony of Jeannette M. Benson was that the Plaintiff had given her these funds because she had taken care of him for so many years.

5) Pursuant to the Paragraph 5 of the Order, the timeline for James Moore to pay Allean Moore the \$52,851.00 was as follows:

Date of Order	January 1, 2001
Election to pay	on or about February 15, 2001
Payment date	on or about April 1, 2001
Property to be	
Under contract	on or about July 1, 2001 (6 months from date of Order)

6) From the testimony of the Defendant, Jeannette M. Benson, it was clear that the Plaintiff was not aware of the timeline for compliance with the Order and relied on Jeannette M. Benson to read and explain the Order to him. It is also clear from the testimony of Jeannette M. Benson that she either did not understand the timeline in the Order or misrepresented the timeline to the Plaintiff and created in his mind an artificial emergency. The representations made to the Plaintiff created in his mind the fear of being held in contempt of Court. Further, from the testimony of Jeannette M. Benson, she never explained to the Plaintiff what options, in the way of refinancing, or other types of financing that might be available to him so that he could comply with the Order. The Defendant, Jeannette M. Benson, testified that she had contacted all of her siblings in an attempt to marshal the funds required to payoff the debt due to Allean Moore. However, there was testimony that contact was not made to all of the siblings requesting such contribution.

- 7) On March 1, 2001, the Plaintiff as Seller and the Defendants as Purchaser, entered into a Purchase Contract, Plaintiff's Exhibit 2, (the "Contract"). Pursuant to the terms of the Contract, the purchase price to be paid by the Purchaser was \$56,294.41.
- 8) On March 8, 2001, the Defendant, Jeanette M. Benson withdrew all of the funds in account number 5822263471 in the amount of \$30,215.82 and incurred a penalty of \$122.53 for early withdrawal as shown in Plaintiff's Exhibit 6. The timing of this withdrawal clearly indicates that the funds that were originally the property of the Plaintiff were used as part of the gross amount due from Buyer as shown on line 120 of the HUD-1, Plaintiff's Exhibit 4. In other words the Plaintiff's own money was used as part of the funds required to purchase the subject from the Plaintiff by the Defendants on March 9, 2001. The testimony of the Defendants was that they added the additional funds required to close the transaction.
- 9) On March 9, 2001, a closing was held in the office of The Heckman Law Firm located in Greenville, South Carolina. The Plaintiff executed a Title to Real Estate, Plaintiff's Exhibit 3. The Plaintiff and the Defendants executed a HUD-1 Settlement Statement, Plaintiff's Exhibit 4, which showed that from the proceeds of the transaction, Allean Moore was paid \$52,851.00 and a mortgage in favor of Farmers Home in the amount of \$3,024.36 was paid in full. The remaining funds were for closing costs and fees. The Plaintiff did not receive any funds from the transaction. It is clear from the examination of the HUD-1, that the purchase price to be paid for the subject real property as set out in the Purchase Contract, Plaintiff's Exhibit 2, was determined by adding the amount due to Allean Moore, the payoff of the first mortgage plus the Purchaser's attorney's fees and costs. The only amount not anticipated was the cost to be paid by the Seller in the amount of \$489.50. The total purchase price to be paid by Purchaser as shown on line 120 of the HUD-1 is \$56,783.91.
- 10) As to the actual closing, there was conflicting testimony as to how the transaction occurred, what the Plaintiff actually knew about transaction and who was in the room during the closing process.
- 11) The address of the Grantee as shown on the Title to Real Estate, Plaintiff's Exhibit 3, was 95 Montgomery Road, Lyman, SC 29365 which is the address of the Defendants' residence. No documents or tax bills after the closing would have been sent to the subject property which was still occupied by the Plaintiff. Up to the closing date, Allean Moore or Jeannette M. Benson had paid all of the household bills including the tax bills, so the Plaintiff had no knowledge of the bills and if they were in fact paid. He totally relied on either Allean Moore or Jeannett M. Benson to pay the bills and to explain to him all documents that may have been received.
- 12) After the closing date of March 23, 2001, the Plaintiff continued to live on the subject property believing that he still owned the property as always. It was not until December, 2005 that the Plaintiff became aware that there may be something going on with the property. The Plaintiff testified that he and the Defendant, Thomas Lee Benson, Jr., were riding in the same car on the way to dinner and a comment was made

by Thomas Lee Benson, Jr., that aroused the Plaintiff's suspicions that something was not right as to property. After that date, the Plaintiff contacted his grandson, Marcus Moore to help him find out if anything was going on. This Court found and has ruled that based on the Plaintiff's inability to read and understand documents, that it was not until 2005 that the Plaintiff became aware of the transfer of his property to the Defendants. The testimony and exhibits are consistent with this finding and the Statute of Limitations did not begin to run until December, 2005.

13) On October 13, 2006, the Plaintiff filed this action against the Defendants seeking the re-conveyance of the subject from the Defendants to him, actual damages and punitive damages.

CONCLUSIONS OF LAW

- 1) The Court has jurisdiction over the parties, property, and subject matter in this action
- 2) This Court finds that on January 14, 1999, the Defendant Jeannette M. Benson converted the funds of the Plaintiff in the amount of \$29,433.46 to her own use. Conversion being defined as "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Moseley v Oswald 376 S.C. 251, 656 S.E. 2d 380. There is no question that the funds from the Plaintiff's personal retirement account were placed in an individual account of the Defendant Jeannette M. Benson. The Court is not swayed from this finding by the self-serving testimony of the Defendant Jeanette M. Benson that the Plaintiff had given her this money based on her taking care of him.
- 3) The Defendant Jeannette M. Benson owed a fiduciary duty to the Plaintiff, James Moore based on the Durable Power of Attorney. The Plaintiff relied on her to act in his best interests. She willfully breached her fiduciary duty owed to the Plaintiff by the way in which his funds were converted from him to her. The evidence and testimony produced at the final hearing clearly showed that the Defendant, Jeanette M. Benson created an artificial emergency situation relating to the Order and misrepresented the terms of the Order to the Plaintiff. The Defendant Jeannette M. Benson concocted a scheme whereby the Defendants could purchase the property of James Moore for \$56,294.41 which is approximately 37% of the value of the subject property which was shown in the Decree of Divorce to be \$154,000.00. In addition, the purchase price paid was funded partially from the funds that belonged to the Plaintiff. The Defendants through their intentional actions and representations made to the Plaintiff concealed the truth of the transaction from the Plaintiff. Defendants' actions were not only dishonest but in light of the facts of this case outrageous based on the fiduciary duty owed by Jeannette M Benson to the Plaintiff. In this case punitive damages are proper based on this Court's consideration of the factors pursuant to the holding in Gamble v. Stevenson, 305 S.C.104, 406 S.E. 2d 350 (1991)
- 4) The Defendants have failed to carry the burden of proving the allegations set out in their counterclaim either by way of testimony or documentation.

Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1 Within thirty (30) days of the date of this Order, the Defendants shall re-convey the subject property to the Plaintiff by warranty deed with no encumbrances except for the current year's taxes.

2 Defendants shall pay to the Plaintiff his actual damages in the amount of \$30,215.82 plus the early withdrawal penalty in the amount of \$122.53 which totals \$30,338.35. The Defendants will receive a credit against the awarded damages in the amount of \$26,568.09 which is the amount that the Defendants contributed to the total amount required to consummate the closing on March 9, 2001. This leaves a total balance due to the Plaintiff for actual damages in the amount of \$3,770.26.

3 Punitive damages in the amount of \$25,000.00.

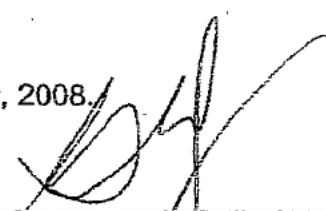
4 That the Counterclaim of the Defendants is dismissed.

5. The parties shall be responsible for their respective fees and costs.

6. This Court shall retain jurisdiction to do all necessary acts incident to this Order.

AND IT IS SO ORDERED.

Dated this 28th day of October, 2008.



Honorable Gordon G. Cooper
Master In Equity for Spartanburg County

RECEIVED

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

NOV 10 2008

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO. 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M Benson and Thomas Lee Benson, Jr Appellant,

PROOF OF SERVICE

I certify that I have served a true copy of the Notice of Appeal by hand delivery on

Nov 7, 2008 to.

Edwin C Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr Blvd.
Spartanburg, SC 29306

Pat Rainer

November 5, 2008

Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

November 14, 2008

Jenny H. Williams
123 Summer Haven Drive
Chapin, SC 29036

IN THE MATTER OF: James Moore v. Jeannette M. Benson
and Thomas Lee Benson, Jr.
2006-CP-42-3378

Dear Ms. Williams,

Please be advised that Ms. Jessica Salvini has been retained by Mr. & Mrs. Benson to appeal the Final Order in the above matter. As such, please accept this letter as our request for a copy of the transcripts for the trial that was held on August 19, 2008, August 25, 2008, and October 21, 2008 in the above matter. Please advise me if I need to contact another Court Reporter for the earlier scheduled trial dates.

Thank you.

Sincerely,


Leah Salvini, Legal Assistant

cc: Kenneth A. Richstad, Court Of Appeals
E. Haskell, III, Esq.
Chadwick D. Pye

AFFIDAVIT OF SERVICE

State of South Carolina

County of Spartanburg

Common Pleas Court

Case Number: 2006-CP-42-3378

Plaintiff:

James Moore

vs.

Defendant:

Jeannette M. Benson, et al.

For: Jessica Salvini

Salvini & Bennett, LLC

Received by Salvini & Bennett, LLC to be served on James Moore, 43 Montgomery Rd, Lyman, SC 29365. I, Matthew D. Rodden, being duly sworn, depose and say that on the 11th day of November, 2008 at 6:30 p.m., executed service by delivering a true copy of the **Notice of Appeal, Proof of Service** in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served personally to the within-named.

SUBSTITUTE SERVICE: By delivering to: _____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

OTHER SERVICE: As described in the Comments below by serving _____ as _____.

NON SERVICE: Due to reasons detailed in Comments below.

MILITARY STATUS: Y If Yes, what branch: _____

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 13th day of November, 2008 by the affiant who is personally known to me.

Angela R. Crowder
NOTARY PUBLIC

My Commission Expires: 4/30/2012

Matthew D. Rodden

PROCESS SERVER # _____
Appointed in accordance with State Statutes

Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601
(864) 232-5800

Our Job Serial Number: 2008010323

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

CERTIFICATE OF SERVICE

Respondent received written notice of the Notice of Appeal on November 11, 2008.
Please see the attached affidavit of service.

November 18, 2008



Leah Salvini, Legal Assistant

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888

Other Counsel of Record:
Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

RECEIVED
NOV 19 2008
SC Court of Appeals



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

RECEIVED

NOV 19 2008

SC Court of Appeals

November 18, 2008

Kenneth A. Richstad
Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk of Court,

Enclosed please find a copy of the Affidavit of Service in the above matter for filing. Please return the filed copies to me in the envelop provided herein, postage fully prepaid thereon.

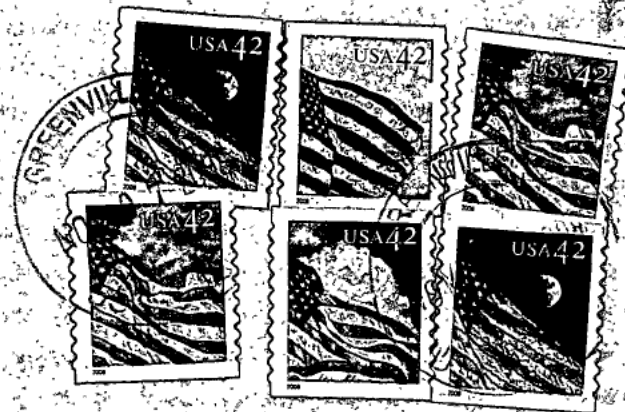
If you have any questions please feel free to call Ms. Jessica Salvini, Esq.

Sincerely,

Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
Chadwick Pye
Jeannett M. Benson & Thomas Lee Benson, Jr.

Saturn 3 Bennett, LLC
101 W. Park Ave.
Greenville, SC 29101



SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

November 14, 2008

Jenny H. Williams
123 Summer Haven Drive
Chapin, SC 29036

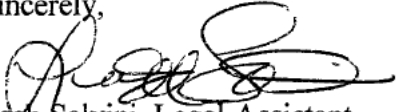
IN THE MATTER OF: James Moore v. Jeannette M. Benson
and Thomas Lee Benson, Jr.
2006-CP-42-3378

Dear Ms: Williams,

Please be advised that Ms. Jessica Salvini has been retained by Mr. & Mrs. Benson to appeal the Final Order in the above matter. As such, please accept this letter as our request for a copy of the transcripts for the trial that was held on August 19, 2008, August 25, 2008, and October 21, 2008 in the above matter. Please advise me if I need to contact another Court Reporter for the earlier scheduled trial dates.

Thank you.

Sincerely,


Lean Salvini, Legal Assistant

cc: Kenneth A. Richstad, Court Of Appeals
E. Haskell, III, Esq.
Chadwick D. Pye

RECEIVED

NOV 17 2008

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.


v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

CERTIFICATE OF MAILING

Correspondence to the Court Reporter requesting transcript of trial.

November 18, 2008



Leah Salvini, Legal Assistant
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888

Other Counsel of Record:
Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

RECEIVED
NOV 19 2008
SC Court of Appeals



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

November 18, 2008

RECEIVED

NOV 19 2008

SC Court of Appeals

Office of Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

To Whom It May Concern:

Enclosed please find a copy of correspondence to Ms. Jenny H. Williams, Court Reporter and Certificate of Mailing in the above matter for your information and records.

If you have any questions please feel free to call Ms. Jessica Salvini.

Sincerely,


Leah Salvini, Legal Assistant

cc: Court of Appeals
Edwin C. Haskell, III
Chadwick Pye
Jeannett M. Benson & Thomas Lee Benson, Jr.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

November 21, 2008

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M. (Case No: 2008107786)

Dear Ms. Salvini:


This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. **Please use this number on all future correspondence (but not on briefs, records, motions, and the like) relating to this matter.**

Within fourteen (14) days of the date of this letter, you must provide the Court with the following:

(1) The original Notice of Appeal and Proof of Service

I wish to call the attention of the parties to the Supreme Court Order dated August 13, 2007 relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. **This office will not review filings for redaction or to determine if materials should be sealed.**

Very truly yours,


CLERK

KAR/et

cc: Chadwick Dean Pye, Esquire
dwin C. Haskell, III, Esquire



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

November 21, 2008

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.

Dear Ms. Salvini:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 238(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Kenneth A. Richstad
CLERK

KAR/et

cc: Chadwick Dean Pye, Esquire
Edwin C. Haskell, III, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

DEC 03 2008

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

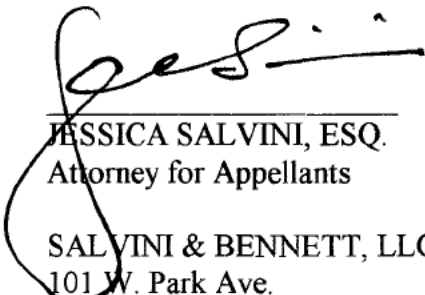
v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

NOTICE OF APPEAL

Jeannette M. Benson and Thomas Lee Benson, Jr. hereby appeal the order of the Honorable Gordon G. Cooper dated October 28, 2008. Appellants received written notice of entry of this order on October 28, 2008.

November 3, 2008


JESSICA SALVINI, ESQ.
Attorney for Appellants

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888

Other Counsel of Record:
Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

RECEIVED

DEC 03 2008

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

PROOF OF SERVICE

I certify that I have served a true copy of the Notice of Appeal by hand delivery on

Nov. 7, 2008 to:

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

Pat Rainey

November 5, 2008



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

December 1, 2008

RECEIVED

DEC 03 2008

SC Court of Appeals

Kenneth A. Richstad
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201


IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Hon. Kenneth A. Richstad,

Enclosed please an original Notice of Appeal, Proof of Service and Final Order
for filing.

Thank you in advance for your assistance with this matter. It is greatly
appreciated. If you have any questions please feel free to call our office.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
Chadwick Pye
Jeannett M. Benson & Thomas Lee Benson, Jr.



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

December 5, 2008

RECEIVED

DEC 09 2008

SC Court of Appeals

Sarah Hollis, Court Reporter
P. O. Box 5666
Spartanburg, SC 29304

IN THE MATTER OF: James Moore v. Jeannette M. Benson
and Thomas Lee Benson, Jr.
2006-CP-42-3378

Dear Ms. Williams,

Please be advised that Ms. Jessica Salvini has been retained by Mr. & Mrs. Benson to appeal the Final Order in the above matter. As such, please accept this letter as our request for a copy of the transcripts for the trial that was held on August 19, 2008, August 25, 2008, and October 21, 2008 in the above matter. I apologize in the delay in sending this transcript request. We had sent it to another court reporter believing she was the Court reporter for this trial. Immediately upon being notified you were the court reporter we sent you this request.

If you have any questions please feel free to call Ms. Salvini or me.

Sincerely,

Leah Salvini, Legal Assistant

cc: Kenneth A. Richstad, Court Of Appeals

Court Administration

E: Haskell, III, Esq.

Chadwick D. Pye

RECEIVED

FEB 09 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellants,

**DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

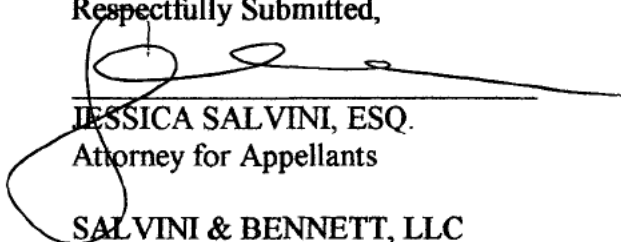
Appellants propose the following be included in the Record on Appeal:

1. Complaint;
2. Answer and Counterclaim;
3. Motion to Dismiss and supporting memorandum;
4. Entire Trial Transcript;
5. Trial Exhibits:
 - a. Durable Power of Attorney;
 - b. Purchase Contract;
 - c. Title to Real Estate;
 - d. HUD-1 Settlement Statement;
 - e. Sheet with Check, front and back;
 - f. BB&T Statement;
 - g. Signature Card;
 - h. Deposit Slip

- i. Official Check, No. 70561387;
- j. Miscellaneous Debit Slip;
- k. Individual Retirement Account Withdrawal;
- l. Copy of Cashier Check;
- m. Copy of Certificate of Deposit Slip;
- n. Divorce Decree;
- o. Order on Defendant's Motion to Alter or Amend;
- p. Petition for Order of Protection;

I certify that this designation contains no matter which is irrelevant to this Appeal:

Respectfully Submitted,



JESSICA SALVINI, ESQ.
Attorney for Appellants

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No. (864) 232-5800
Facsimile No. (864) 232-5888

Greenville, SC
February 6, 2009

RECEIVED

FEB 09 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr..Appellant,

**CERTIFICATE OF SERVICE FOR APPELLANT'S
DESIGNATION OF MATTER**

I certify that I have served Appellant's Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 6, 2009, addressed to: Edwin C. Haskell, III, Attorney for Respondent, at 218 E. Henry Street Spartanburg, SC 29306, Chadwick D. Pye, Attorney for Respondent, at 959 John B. White Sr. Blvd. Spartanburg, SC 29306, and James Moore, Respondent, at 67 Montgomery Rd., Lyman, SC 29365.



Leah Salvini, Legal Assistant
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No. (864) 232-5800
Facsimile No. (864) 232-5888



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

RECEIVED

February 6, 2009

FEB 09 2009

SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
 Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk Of Court,

Enclosed please find a copy of the Initial Brief of Appellant and the Designation of Matter To Be Included In The Record Of Appeal, and Certificate of Service for filing.

Thank you in advance for your assistance with this matter. It is greatly appreciated. If you have any questions please feel free to call our office.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
 Chadwick Pye
 James Moore
 Jeannett M. Benson & Thomas Lee Benson, Jr.



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

February 9, 2009

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.

Dear Ms. Salvini:

This office is in receipt of your Initial Brief of Appellant and Designation of Matter.

However, you must provide the date that the transcript was received so that the briefing schedule may be set.

Therefore, you must provide the necessary information within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J.F. Barber".

CLERK

JFB/et

cc: Chadwick Dean Pye, Esquire
Edwin C. Haskell, III, Esquire



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

February 10, 2009

Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

IN THE MATTER OF: *James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378*

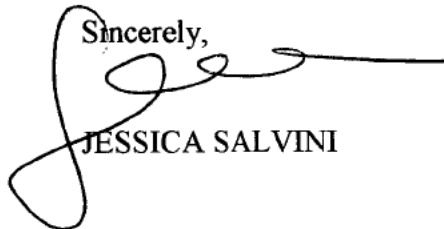
Dear Clerk of Court,

Please accept this letter as a response to your correspondence dated February 9, 2009 and as verification and confirmation of the date the transcript was received in this matter.

I received the transcript in this matter on January 8, 2009.

Please do not hesitate to contact me if any additional information is needed.

Sincerely,



JESSICA SALVINI

cc: Edwin C. Haskell, III
Chadwick Pye
James Moore
Jeannett M. Benson & Thomas Lee Benson, Jr.

RECEIVED

FEB 12 2009

SC Court of Appeals

SMITH & HASKELL LAW FIRM, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW
LAW OFFICES SINCE 1926

218 EAST HENRY STREET
SPARTANBURG, SOUTH CAROLINA
29306

EDWIN C. HASKELL, III
WILLIAM McBEE SMITH

TELEPHONE (864) 582-6727
FACSIMILE (864) 585-8358
HTTP://SMITHANDHASKELL.LAWOFFICE.COM
FEIN 57-0811119

J. DAVIS KERR (1903-1964)
ROY McBEE SMITH (1928-2006)

March 10, 2009

RECEIVED

MAR 11 2009

SC Court of Appeals

UPS Next Day

Ms. Jeanette Barber
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

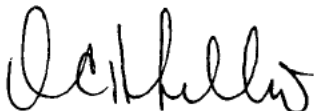
RE: *James Moore vs. Jeannette M. Benson and Thomas Lee Benson, Jr.*
C.A. No.: 06-CP-42-3378 / Our File No.: 5623

Dear Ms. Barber:

Enclosed for filing is a copy of the Initial Brief, Motion for Extension of Time to File Brief and Designation of Matter to be included in the Record on Appeal of Respondent, James Moore. Please also find enclosed a copy of the Proof of Service for filing.

By copy of this letter, I am serving Jessica Salvini, Attorney for Appellants, with a copy of the enclosed.

Sincerely,



Edwin C. Haskell, III
ECH/ast

Enclosures

cc: Jessica Salvini, Esq.
Chadwick D. Pye, Esq.

RECEIVED

MAR 11 2009

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Court of Common Pleas
Gordon G. Cooper, Master-in-Equity for Spartanburg County

Case No. : 2006-CP-42-3378

JAMES MOORE Respondent

v.

JEANNETTE M. BENSON and
THOMAS LEE BENSON Appellants

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

PLEASE TAKE NOTICE that the undersigned, the attorney for the Respondent, James Moore, in the present appeal, does hereby move the court for an order granting an extension of time within which to file the Initial Brief of the Respondent. The basis for such motion is that my office was closed for two days due to snow which caused a delay in the preparation of the Initial Brief of the Respondent. The undersigned does hereby request an extension of time to March 12, 2009, within which to file the Initial Brief of the Respondent with the court.

Respectfully submitted.

Edwin C. Haskell III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Attorney for Respondent

KAYE G. HEARN, C.J.
FOR THE COURT

By:

(Clerk) ~~(Deputy Clerk)~~

FILED
3/31/09

RECEIVED

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

MAR 11 2009

SC Court of Appeals

**APPEAL FROM SPARTANBURG COUNTY
Master In Equity**

Gordon G. Cooper, Master In Equity Judge

Case No. 2006-CP-42-3378

**Jeannette M. Benson and
Thomas Lee Benson, Jr. Appellants,**

v.

James Moore Respondent.

**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondents propose the following to be included in the Record on Appeal:

- (1) Complaint
- (2) Answer and Counterclaim
- (3) Motion to Dismiss and supporting memorandum
- (4) Entire Trial Transcript
- (5) Trial Exhibits:
 - (a) Durable Power of Attorney
 - (b) Purchase Contract
 - (c) Title to Real Estate
 - (d) HUD-1 Settlement Statement
 - (e) Sheet with check, front and back
 - (f) BB&T Statement
 - (g) Signature Card
 - (h) Deposit Slip

- (i) Official Check, No. 70561387
- (j) Miscellaneous Debit Slip
- (k) Individual Retirement Account Withdrawal
- (l) Copy of Cashier's Check
- (m) Copy of Certificate of Deposit Slip
- (n) Divorce decree
- (o) Order on Defendant's Motion to Alter or Amend
- (p) Petition for Order of Protection
- (6) Order of October 28, 2008, executed by Judge Gordon G. Cooper

I certify that this designation contains no matter which is irrelevant to this Appeal.

Respectfully Submitted,



Edwin C. Haskell, III (State Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Main Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Chadwick D. Pye (S.C. Bar No. 15834)
Post Office Box 18328
Spartanburg, SC 29318
Telephone: (864) 583-5658
Fax: (864) 583-5672

Attorneys for Respondent, James Moore

Spartanburg, SC
March 10, 2009

RECEIVED

MAR 11 2009

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Spartanburg County

Court of Common Pleas

Gordon G. Cooper, Master-in-Equity for Spartanburg County

Case No. : 2006-CP-42-3378

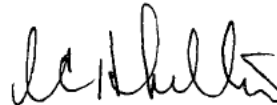
JAMES MOORE Respondent

v.

JEANNETTE M. BENSON and
THOMAS LEE BENSON Appellants

CERTIFICATE OF SERVICE FOR RESPONDENT'S BRIEF

I certify that I have served Respondent's Brief by depositing a copy of it in the United States Mail, postage prepaid, on March 10, 2009, addressed to Jessica Salvini, Esquire, Salvini & Bennett, LLC, 101 West Park Avenue, Greenville, South Carolina 29601.



Edwin C. Haskell III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Attorney for Respondent



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

March 12, 2009

Edwin C. Haskell, III, Esquire
Smith & Haskell Law Firm, LLP
218 E. Henry St.
Spartanburg, SC 29306

Re: Moore, James v. Benson, Jeannette M.

Dear Mr. Haskell:

We are in receipt of your Motion for Extension of Time, Brief of Respondent and Designation of Matter for the above appeal. Be advised it will be necessary for you to provide this office with the \$25 motion filing fee and proof of service showing the designation of matter and motion was served on opposing counsel.

Please provide this office with the above information within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.F. Barber", written over a horizontal line.

CLERK

JFB/ab

cc: Jessica Ann Salvini, Esquire
Chadwick Dean Pye, Esquire

SMITH & HASKELL LAW FIRM, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW
LAW OFFICES SINCE 1926

218 EAST HENRY STREET
SPARTANBURG, SOUTH CAROLINA
29306

EDWIN C. HASKELL, III
WILLIAM McBEE SMITH

TELEPHONE (864) 582-6727
FACSIMILE (864) 585-8358
HTTP://SMITHANDHASKELL.LAWOFFICE.COM
FEIN 57-0811119

J. DAVIS KERR (1903-1964)
ROY McBEE SMITH (1928-2006)

March 13, 2009

RECEIVED

MAR 16 2009

SC Court of Appeals

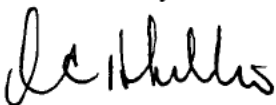
Ms. Jeanette Barber
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: *James Moore vs. Jeannette M. Benson and Thomas Lee Benson, Jr.*
C.A. No.: 06-CP-42-3378 / Our File No.: 5623

Dear Ms. Barber:

Enclosed for filing is a copy of the Certificate of Service of the Designation of Matter and Motion for Extension of Time to be included in the Record on Appeal of Respondent, James Moore. Please also find a check enclosed in the amount of \$25.00 for payment for the motion filing fee..

Sincerely,



Edwin C. Haskell, III
ECH/ast

Enclosures

cc: Jessica Salvini, Esq.
Chadwick D. Pye, Esq.

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 16 2009

Appeal from Spartanburg County

SC Court of Appeals

Court of Common Pleas
Gordon G. Cooper, Master-in-Equity for Spartanburg County

Case No. : 2006-CP-42-3378

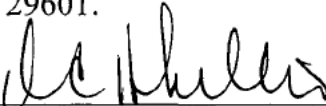
JAMES MOORE Respondent

v.

JEANNETTE M. BENSON and
THOMAS LEE BENSON Appellants

CERTIFICATE OF SERVICE FOR DESIGNATION OF MATTER
AND MOTION FOR EXTENSION OF TIME

I certify that I have served Respondent's Designation of Matter and Motion for Extension of Time by depositing a copy of it in the United States Mail, postage prepaid, on March 10, 2009, addressed to Jessica Salvini, Esquire, Salvini & Bennett, LLC, 101 West Park Avenue, Greenville, South Carolina 29601.


Edwin C. Haskell III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Attorney for Respondent

RECEIVED

MAR 20 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr..Appellants,

MOTION FOR EXTENSION TO FILE AND SERVE APPELLANT'S
REPLY BRIEF

COMES NOW Appellants, who by and through undersigned counsel, respectfully request this Court grant an extension within which to file and serve Appellants' Reply Brief to Respondent's Brief in the above captioned matter.

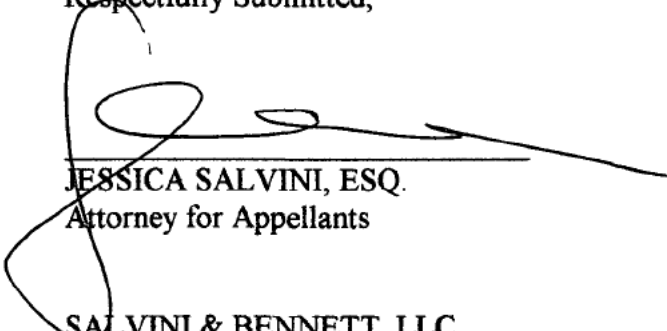
In support of this motion, undersigned counsel states that counsel received Respondent's brief, which was filed out of time, on March 12, 2009. However, on March 12, 2009, Appellants' counsel was scheduled to appear and did appear for a trial before the Anderson County Family Court. Thereafter, Appellants' counsel was scheduled for a two day custody trial in the Greenville County Family Court, for March 17th and 18th, 2009. Thus, due to counsel's trial schedule, she has been unable to prepare a Reply brief within the time constraints of the South Carolina Rules of Appellate Procedure; and, along with Appellants, seeks an order of this Court granting her a 30 day extension within which to prepare and file Appellants' Reply Brief.

3-20-09
4-20-09

Further, in counsel's humble opinion, a Reply Brief is necessary to address the issues raised in Respondent's brief and an extension will enable counsel to prepare a thorough response for this Court to consider.

On information and belief, granting Appellants an extension to file their Reply Brief will enable this Court to consider the substantive issues raised by Appellants and Respondent and will not prejudice the Respondent.

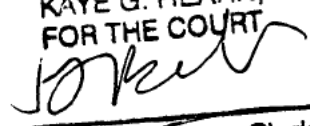
Respectfully Submitted,



JESSICA SALVINI, ESQ.
Attorney for Appellants

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No. (864) 232-5800
Facsimile No. (864) 232-5888

Greenville, SC
March 18, 2009

KAYE G. HEARN, C.J.
FOR THE COURT

By: _____
(Clerk) ~~(Deputy Clerk)~~

FILED
4/1/09

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

CERTIFICATE OF MAILING

**MOTION FOR EXTENSION TO FILE AND
SERVE APPELLANTS' REPLY BRIEF**

I served the attached Motion for Extension to File and Serve the Appellants' Reply Brief on the following person(s) on the date set forth below, by mailing a true copy thereof, in a sealed envelope, postage fully prepaid thereon and addressed to:

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

RECEIVED

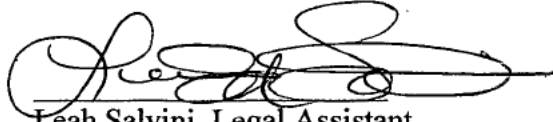
MAR 20 2009

SC Court of Appeals

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2009, in Greenville, South Carolina.

March 18, 2009

A handwritten signature in black ink, appearing to read 'Leah Salvini', written over a horizontal line.

Leah Salvini, Legal Assistant
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

March 18, 2009

RECEIVED
MAR 20 2009
SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

IN THE MATTER OF: *James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378*

Dear Clerk of Court,

Enclosed please find the original and six copies of the Motion for Extension to File and Serve the Appellants' Reply Brief in the above matter along with a check for filing fees.

If you have any questions please feel free to call MS. Salvini.

Sincerely,

Leah Salvini, Legal Assistant

Cc:

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

March 31, 2009

Edwin C. Haskell, III, Esquire
Smith & Haskell Law Firm, LLP
218 E. Henry St.
Spartanburg, SC 29306

Re: Moore, James v. Benson, Jeannette M.

Dear Mr. Haskell:

The following Order has been endorsed on your Motion for Extension of Time to File Brief in the above entitled case on appeal.

Kaye G. Hearn C.J.
For the Court

By s/ Jeanette F. Barber
Clerk

March 31, 2009."

Please be advised the Respondent's Initial Brief and Designation of Matter have been received and accepted as filed. The Appellants' Motion for Extension of Time to Serve and File the Reply Brief remains pending.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Barber".

CLERK

JFB/ma

cc: Jessica Ann Salvini, Esquire
Chadwick Dean Pye, Esquire



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW SCCOURTS.ORG

April 17, 2009

Jessica A Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.

Dear Ms. Salvini:

The following Order has been endorsed on your Motion for Extension in the above entitled case on appeal.

Kaye G. Hearn C.J.
For the Court

By s/ Jeanette F. Barber
Clerk

April 17, 2009 ."

Please be advised the Appellant's Initial Reply Brief and Designation of Matter must be served and filed on or before April 20, 2009.

Very truly yours,

A handwritten signature in black ink, appearing to read "JF Barber", is written over the typed name of the clerk.

CLERK

JFB/ma

cc: Chadwick D Pye, Esquire
Edwin C Haskell, III, Esquire

RECEIVED

APR 22 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellants,

**DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

Appellants propose the following be included in the Record on Appeal:

1. Complaint;
2. Answer and Counterclaim;
3. Motion to Dismiss and supporting memorandum;
4. Entire Trial Transcript;
5. Trial Exhibits:
 - a. Durable Power of Attorney;
 - b. Purchase Contract;
 - c. Title to Real Estate;
 - d. HUD-1 Settlement Statement;
 - e. Sheet with Check, front and back;
 - f. BB&T Statement;
 - g. Signature Card;
 - h. Deposit Slip

- i. Official Check, No. 70561387;
- j. Miscellaneous Debit Slip;
- k. Individual Retirement Account Withdrawal;
- l. Copy of Cashier Check;
- m. Copy of Certificate of Deposit Slip;
- n. Divorce Decree;
- o. Order on Defendant's Motion to Alter or Amend;
- p. Petition for Order of Protection;
- q. Including all documents identified by Respondent in his designation of matter.

I certify that this designation contains no matter which is irrelevant to this Appeal:

Respectfully Submitted,



JESSICA SALVINI, ESQ.
Attorney for Appellants

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No. (864) 232-5800
Facsimile No. (864) 232-5888

Greenville, SC
April 20, 2009

RECEIVED

APR 22 2009

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

GORDON G. COOPER, MASTER IN EQUITY FOR SPARTANBURG COUNTY

CASE NO.: 2006-CP-42-3378

James Moore, Respondent.

v.

Jeannette M. Benson and Thomas Lee Benson, Jr. Appellant,

CERTIFICATE OF MAILING

DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL

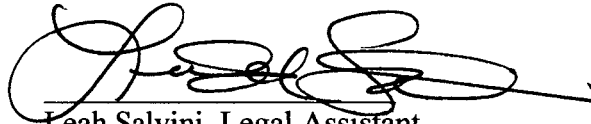
I served the attached the Designation of Matter to be Included on the Record on Appeal on the following person(s) on the date set forth below, by mailing a true copy thereof, in a sealed envelope, postage fully prepaid thereon and addressed to:

Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2009, in Greenville, South Carolina.

A handwritten signature in black ink, appearing to read 'Leah Salvini', written over a horizontal line.

Leah Salvini, Legal Assistant
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone No.: (864) 232-5800
Facsimile No.: (864) 232-5888



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

RECEIVED

APR 22 2009

SC Court of Appeals

April 20, 2009

Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk of Court,

Enclosed please find a copy of the Designation of Matter to be included on the Record on Appeal, along with a Certificate of Mailing thereof, as well as, the Appellants' Reply Brief and Certificate of Mailing.

If you have any questions please feel free to call Ms. Salvini.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW SCCOURTS.ORG

April 23, 2009

Jessica A Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.
2008107786

Dear Ms. Salvini:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 238(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

Be further advised that your original final brief or record on appeal will not be accepted if it is bound or if the front and back covers are missing.

We remind you that it is your responsibility to insure that personal data identifiers and other sensitive information is redacted or sealed as required by the August 13, 2007 order of the South Carolina Supreme Court. This office will not review filings for redaction or to determine if materials should be sealed. Therefore, we request that the record on appeal and final briefs be accompanied by certification that these documents are in compliance with the above mentioned order.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. B. Haskell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

CLERK

JFB/mpm

cc: Chadwick D Pye, Esquire
Edwin C Haskell, III, Esquire



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

May 20, 2009

RECEIVED

MAY 26 2009

SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

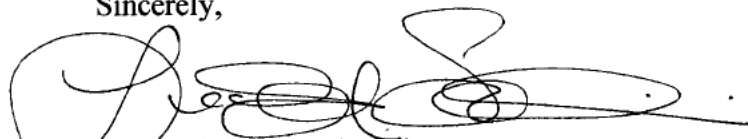
IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk of Court,

Enclosed please find 15 copies of the Record on Appeal, along with a Certificate of Mailing thereof for filing.

If you have any questions please feel free to call Ms. Salvini.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306

Chadwick D. Pye
959 John B. White Sr. Blvd.
Spartanburg, SC 29306

SMITH & HASKELL LAW FIRM, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW
LAW OFFICES SINCE 1926

218 EAST HENRY STREET
SPARTANBURG, SOUTH CAROLINA
29306

EDWIN C. HASKELL, III
WILLIAM McBEE SMITH

TELEPHONE (864) 582-6727
FACSIMILE (864) 585-8358
HTTP://SMITHANDHASKELL.LAWOFFICE.COM
FEIN 57-0811119

J. DAVIS KERR (1903-1964)
ROY McBEE SMITH (1928-2006)

RECEIVED
JUN 05 2009
SC Court of Appeals

June 4, 2009

UPS Next Day

Ms. Jeanette Barber
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: *James Moore vs. Jeannette M. Benson and Thomas Lee Benson, Jr.*
C.A. No.: 06-CP-42-3378 / Our File No.: 5623

Dear Ms. Barber:

Enclosed for filing are 15 copies of the Final Brief of Respondent, James Moore. The original is unbound for archiving requirements.

I also enclose an extra copy of the Final Brief and Proof of Service and would appreciate it if you would please return a clocked copy in the enclosed self-addressed envelope.

By copy of this letter, I am serving Jessica Salvini, Attorney for Appellants, with three copies of the enclosed Final Brief. I also enclose the original and a copy of Proof of Service.

Sincerely,

SMITH & HASKELL LAW FIRM, L.L.P.



By: Edwin C. Haskell, III
ECH/ast

Enclosures

cc: Jessica Salvini, Esq.
Chadwick D. Pye, Esq.



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 5, 2009

Jessica A Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.
2008107786

Dear Ms. Salvini:

We have received your Record on Appeal in the entitled case on appeal. However, a certification complying with the Supreme Court's order of August 13, 2007 was not filed with the Record, as requested on our letter of April 23, 2009. Please provide a certification of compliance within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J F Barber".

CLERK

JFB/mpm

cc: Chadwick D Pye, Esquire
Edwin C Haskell, III, Esquire



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

June 9, 2009

RECEIVED

JUN 10 2009

SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201


IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk of Court,

Enclosed please find 15 copies of the Final Brief of Appellant, along with a Certificate of Mailing thereof for filing.

If you have any questions please feel free to call Ms. Salvini.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 11, 2009

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Chadwick Dean Pye, Esquire
Pye & Talley, PA
213 Magnolia St
Spartanburg, SC 29306-2317

Edwin Haskell, III, Esquire
Smith & Haskell Law Firm, LLP
218 E. Henry Street
Spartanburg, SC 29306

Re: Moore, James v. Benson, Jeannette M.
2008107786

Dear Counsel:

We have received your Respondent's Final Brief and Appellant's Final Brief in the above entitled case on appeal. However, a certificate stating that these Briefs comply with the Supreme Court's order of August 13, 2007 was not filed.

Furthermore, the Proof of Service for the Appellant's Final Brief shows that the Brief served was the Appellant's Reply Brief. Please provide this Court with a certificate of compliance and an amended proof of service from the appellant showing that the brief served and filed was the Appellant's Final Brief within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/mpm

SMITH & HASKELL LAW FIRM, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW
LAW OFFICES SINCE 1926

218 EAST HENRY STREET
SPARTANBURG, SOUTH CAROLINA
29306

EDWIN C. HASKELL, III
WILLIAM McBEE SMITH

TELEPHONE (864) 582-6727
FACSIMILE (864) 585-8358
HTTP://SMITHANDHASKELL.LAWOFFICE.COM
FEIN 57-0811119

RECEIVED

JUN 17 2009

SC Court of Appeals

J. DAVIS KERR (1903-1964)
ROY McBEE SMITH (1928-2006)

June 16, 2009

UPS Next Day

Ms. Jeanette Barber
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: *James Moore vs. Jeannette M. Benson and Thomas Lee Benson, Jr.*
C.A. No.: 06-CP-42-3378 / Our File No.: 5623

Dear Ms. Barber:

Enclosed for filing are 15 copies of the Final Brief of Respondent, James Moore. The original is unbound for archiving requirements. *We are resubmitting the final brief in order to be in compliance with the Supreme Court order dated August 13, 2007.*

I also enclose an extra copy of the Final Brief and Proof of Service and would appreciate it if you would please return a clocked copy in the enclosed self-addressed envelope.

By copy of this letter, I am serving Jessica Salvini, Attorney for Appellants, with three copies of the enclosed Final Brief. I also enclose the original and a copy of Proof of Service.

Sincerely,

SMITH & HASKELL LAW FIRM, L.L.P.



By: Edwin C. Haskell, III
ECH/ast

Enclosures

cc: Jessica Salvini, Esq.
Chadwick D. Pye, Esq.



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

June 18, 2009

RECEIVED

JUN 22 2009

SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201


IN THE MATTER OF: James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378

Dear Clerk of Court,

Enclosed please find 15 copies of the Redacted Record on Appeal, along with a Certificate of Mailing and Certificate of Counsel thereof for filing. I have also enclosed a corrected Certificate of Service for the Appellants' Final Brief per the Court's request.

If you have any questions please feel free to call Ms. Salvini.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

June 22, 2009

RECEIVED

JUN 25 2009

SC Court of Appeals

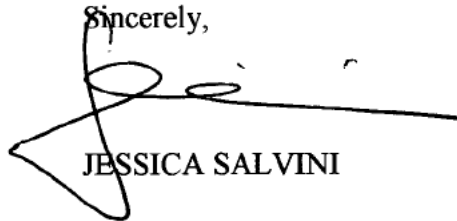
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

IN THE MATTER OF: *James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378*

Dear Clerk of Court,

Enclosed please find 15 copies of Appellant's Final Brief. Pursuant to your correspondence dated June 11, 2009, which I received on June 15, 2009, I have redacted Appellant's Final Brief in accordance with the Supreme Court's Order dated August 13, 2007, and I am re-submitting the Final Brief (redacted version) to you for filing. I apologize for any inconvenience this may have caused.

Sincerely,



JESSICA SALVINI

cc: Edwin C. Haskell, III
218 E. Henry Street
Spartanburg, SC 29306



The South Carolina Court of Appeals

JEANETTE F BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 29, 2009

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Re: Moore, James v. Benson, Jeannette M.
2008107786

Dear Ms. Salvini:

We have received your redacted Record on Appeal in the above entitled case on appeal. However, the original does not have heavy front and back covers. Please provide this Court with heavy covers for the redacted Record on Appeal within ten (10) days of the date of this letter.

Very truly yours,


CLERK

JFB/mpm

cc: Chadwick Dean Pye, Esquire
Edwin Haskell, III, Esquire



Salvini & Bennett, LLC
Attorneys at Law

101 W. Park Avenue
Greenville, SC 29601
864.232.5800 OFFICE
864.232.5888 FAX

July 6, 2009

RECEIVED

JUL 08 2009

SC Court of Appeals

Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

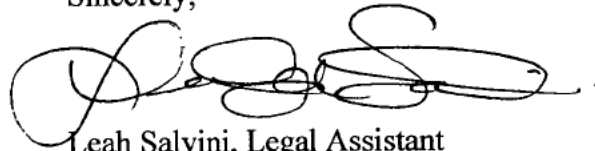
IN THE MATTER OF: *James Moore v. Jeannett M. Benson & Thomas Lee
Benson, Jr., Case No: 2006-CP-42-3378*

Dear Clerk of Court,

Enclosed please find the new (Redacted) Record on Appeal front and back covers per your request.

I am sorry for not including this with the redacted record on appeal. If you have any questions please feel free to call Ms. Salvini or me.

Sincerely,



Leah Salvini, Legal Assistant

cc: Edwin C. Haskell, III

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Moore,

Respondent,

v.

Jeannette M. Benson and
Thomas Lee Benson, Jr.,

Appellants.

Appeal From Spartanburg County
Gordon G. Cooper, Master-in-Equity

Opinion No. 4745
Submitted May 3, 2010 – Filed September 22, 2010

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Jessica Ann Salvini, of Greenville, for Appellants.

Edwin C. Haskell, III, and Chadwick Dean Pye, both
of Spartanburg, for Respondent.

PER CURIAM: James Moore filed this action against Jeannette M. Benson and Thomas Lee Benson seeking damages and equitable relief based on allegations of inter alia, fraud, conversion, and breach of fiduciary duty arising from the sale of real property from Moore to the Bensons. The master ordered the Bensons to reconvey the property to Moore, and awarded Moore actual and punitive damages. This appeal followed. We affirm in part, reverse in part, and remand.¹

FACTS

Moore was eighty-eight years old at the time of the trial in 2008. Moore and Allean Moore were married in 1949. Throughout the marriage, Allean handled the bills and personal business. Moore and Allean lived on seventeen acres in Lyman, South Carolina, in the marital home.

Moore's daughter, Jeannette, testified she began the caretaking of her father as early as 1989. According to Jeannette, BB&T sent Moore a letter, dated January 14, 1999, stating that because Moore was to turn eighty, his retirement account needed to be closed and the money transferred to another account. The funds, \$29,433.46, were transferred into account #471, Jeannette's account. Jeannette testified Moore stated: "Jeannette, you have been taking care [of] me all of these years I am giving you all of this money." According to her, she was to continue to take care of Moore and pay his bills. On February 16, 1999, Moore signed a durable power of attorney, appointing Jeannette as his attorney-in-fact.

Moore and Allean were divorced by family court orders filed on November 3, 2000, and January 8, 2001. The divorce decree awarded Moore the marital home, valued by the family court at \$154,000, and further provided:

9. Husband is to inform wife, within forty-five (45) days of the date of this Order, relative to his election to buy her out; if he is able, or elects to do so, this is

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

to be done within ninety (90) days of the date of this Order.

10. If husband is unable or unwilling to buy out wife's interest, then within forty-five (45) days of the date of this Order, the home is to be placed on the market for sale, under the control of the husband; upon the sale of the home, wife's interest in the marital estate is to be paid forthwith; if the home is not under contract for sale within six (6) months of being placed on the market, wife has the election to petition the Court for a judicial sale.

In the order addressing Allean's motion to reconsider, the family court ordered Moore to pay \$52,851 to Allean to effectuate the order relative to equitable distribution.

On March 8, 2001, account #471, with a balance of \$30,338.35 was closed, withdrawing \$30,215.82 and incurring a \$122.53 early withdrawal penalty. The withdrawal check was made payable to Jeannette. On March 9, 2001, Moore signed a purchase contract and HUD settlement statement, selling the marital home to the Bensons.² The price paid for the property, \$56,294.41, was the amount necessary to pay costs, a small mortgage remaining on the property, and the equitable distribution amount due to Allean.

John H. Heckman, III, a real estate attorney, testified he knew many of the Moore family members, including Moore, from a previous family land dispute. Heckman testified Jeannette and her husband Thomas were purchasing Moore's house to enable Moore to pay Allean her equitable distribution award. Heckman stated he met with Jeannette and Moore in his conference room and explained each document to Moore. Moore appeared to understand he was selling his property. The proceeds check from the sale was made payable to Allean's attorney.

² The Purchase Contract is dated March 1, 2001. The HUD Settlement Statement and the Title to Real Estate are dated March 9, 2001.

Moore testified he has a fifth-grade education and cannot read. He also testified Jeannette took over paying his bills after his divorce. He stated Jeannette would have him sign papers from time to time, but she did not explain to him what he was signing. He denied gifting the funds from his retirement account to Jeannette. He claimed he did not know he had signed a power of attorney or closing documents to sell his property. Moore testified he did not intend to sell the property to the Bensons, and he did not talk to Heckman at the closing. He testified he was in the hall at Heckman's office and Jeannette brought papers out for him to sign.

Jeannette testified Moore could read, stating he read the newspaper, his driver's manual, and readings in church. She testified she used the money withdrawn from Moore's retirement account to pay his expenses, such as his divorce attorney's fees of approximately \$15,000, and medical bills. She testified Moore asked her to obtain money to pay the equitable distribution award from her siblings. She testified she could not get any of them to provide financial help.

Jeannette took Moore to Heckman's office. According to her, Heckman explained "everything" to Moore and he understood. She agreed to pay all of the taxes and insurance on the house, and Moore could live there for the remainder of his life.

Thomas, Jeannette's husband, testified he cashed in a \$20,000 certificate of deposit, a savings bond worth more than \$5,000, and borrowed \$20,000 to contribute to the purchase of the house. He stated Moore contributed the remaining \$10,000 from the funds transferred to Jeannette's name. Thomas also testified he was at the closing, and Moore was present and "fine."

The master found Jeannette breached her fiduciary duty to Moore and converted Moore's retirement account. He further found the Bensons paid for the property partially with funds belonging to Moore. He also found the Bensons intentionally concealed the truth from Moore and "were not only dishonest but in light of the facts of this case outrageous" The master

ordered the Bensons to reconvey the property to Moore, pay actual damages of \$3,770.26, and pay punitive damages of \$25,000. This appeal followed.

STANDARD OF REVIEW

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Corley v. Ott, 326 S.C. 89, 92 n.1, 485 S.E.2d 97, 99 n.1 (1997). The reviewing court should "view the actions separately for the purpose of determining the appropriate standard of review." Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). In an action in equity, tried by the judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). On the other hand, when reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to the correction of errors at law, and the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence. Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

LAW/ANALYSIS

I. Statute of Limitations

The Bensons argue the master erred in denying their motion to dismiss based on the statute of limitations. We disagree.

This action is governed by a three-year statute of limitations period. S.C. Code Ann. § 15-3-530 (2005); see Mazloom v. Mazloom, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009) (citing three-year statute of limitations in breach of fiduciary duty action); Turner v. Milliman, 381 S.C. 101, 109-10, 671 S.E.2d 636, 640 (Ct. App. 2009) (applying three-year statute of limitations in fraud action).

The discovery rule applies to this action. See S.C. Code Ann. § 15-3-535 (2005) (applying the discovery rule to causes of action arising under

section 15-3-530(5)); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under section 15-3-530, we apply the 'discovery rule'"). According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence that a cause of action might exist. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999). The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, this court stated:

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

The property transfer in this case was made on March 9, 2001. The action was not filed until October 2006. Moore testified he first became aware that something was amiss on December 25, 2005. When he was riding with the Bensons to Christmas dinner at his son Robert's house, Thomas asked who had permitted someone to park a truck on the subject property. Moore testified he had concern about why Thomas was asking about his property.

Moore's son, James Luther Moore, Jr., testified Moore rode home with him from the Christmas dinner and Moore stated he heard Jeannette tell Thomas to "be quiet" when Thomas asked about the vehicle parked on the property. Moore allegedly explained to James that Thomas and Jeannette acted like the property belonged to them. According to James, Moore was also concerned that Thomas was picking up bottles and cans on the property and Moore wanted James's son, Marcus, to check on it.

Marcus testified Moore and his father asked him to look into Moore's affairs a week or so after Christmas 2005. He found the property was titled to the Bensons. He later took Moore to the bank and received the bank records from 2000 to at least 2005. He explained the withdrawal of retirement funds to Moore, who denied withdrawing any money. Marcus also took Moore to Heckman's office to get copies of the closing documents on the property.

In this case, we look to when a person of common knowledge and experience under the circumstances of the case would have known that he sold his property to the Bensons. In light of the evidence that Jeannette handled Moore's personal affairs, we affirm the master's finding that the statute of limitations did not begin to run until Moore first had suspicions that something was amiss in December 2005.

II. Conversion

The Bensons argue the master erred in finding Jeannette converted Moore's retirement funds. We disagree.

"'Conversion' is defined as the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner." Mullis v. Trident Emergency Physicians, 351 S.C. 503, 506-07, 570 S.E.2d 549, 550-51 (Ct. App. 2002). An action for conversion is an action at law. Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986). Therefore, we review the record to determine if any evidence supports the master's finding. See id. (finding in an action for conversion where the appeal is based on alleged errors of fact, this court must affirm if there is any evidence reasonably supporting the findings of the trial court).

Moore presented evidence his retirement account was closed in January 1999, and the retirement funds were deposited into Jeannette's account. Moore testified he did not give the retirement funds to Jeannette. During direct examination, Moore was asked: "Did you give that money to anybody? Did you make a gift of that retirement money to anybody?" Moore

responded: "No." We find evidence to support the master's finding of conversion.

III. Breach of Fiduciary Duty

The Bensons next argue the master erred in finding Jeannette breached her fiduciary duty to Moore. We disagree.

Our supreme court recently held that an action alleging a breach of fiduciary duty is an action at law but "may sound in equity if the relief sought is equitable." Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). The "[c]haracterization of an action as equitable or legal depends on the appellant's 'main purpose' in bringing the action." Id. at 16, 690 S.E.2d at 773 (quoting Ins. Fin. Servs., Inc. v. S.C. Ins. Co., 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978)). We find the main purpose of the breach of fiduciary duty action in this case was for the equitable remedy to rescind the contract and reconvey the property to Moore. See Dixon v. Dixon, 362 S.C. 388, 395, 608 S.E.2d 849, 852 (2005) (finding action to rescind contract and set aside deed is in equity). Thus, we may find facts in accordance with our own view of the preponderance of the evidence. See Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) (stating appellate court may find facts in accordance with its own view of the preponderance of the evidence in equitable actions).

"A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004); see In re Estate of Cumbee, 333 S.C. 664, 672, 511 S.E.2d 390, 394 (Ct. App. 1999) (finding fiduciary relationship existed where a son had his mother's power of attorney and managed her finances).

Like the master, we find the timing of the withdrawal to Jeannette on March 8, 2001, of all funds in account #471, indicated the funds originally

belonging to Moore were used by the Bensons as part of the purchase price of the property. The master further found Jeannette:

concocted a scheme whereby the [Bensons] could purchase property of James Moore for \$56,294.41, which is approximately 37% of the value of the subject property In addition, the purchase price paid was funded partially from the funds that belonged to [Moore]. The [Bensons] through their intentional actions and representations made to [Moore] concealed the truth of the transaction from [Moore].

The master found Jeannette breached her fiduciary duty to Moore. After our own review of the record, we likewise find Jeannette breached her fiduciary duty owed to Moore and affirm the master's order directing the Bensons to reconvey the property to Moore.

IV. Property Taxes and Insurance

The Bensons argue the master erred in awarding damages by failing to credit them for property taxes and insurance payments they allegedly made. We find no error.

Although Moore did not dispute the allegations and testimony that the Bensons paid these items, the Bensons provided no documentary evidence in support of their claims. The master, as the fact finder, was free to accept or reject the testimony. See S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 668 n.12, 667 S.E.2d 7, 20 n.12 (Ct. App. 2008) (finding the master in equity, as the trier of fact, is free to accept or reject all of a witness's testimony). We find no error by the master.

V. Award of Damages to Moore

The Bensons argue the master erred in finding Moore was entitled to damages because the master failed to consider the equitable distribution

award and the outstanding mortgage on the property, paid on Moore's behalf from the proceeds of the sale. We agree.

The Settlement Statement showed that from the proceeds of the sale of the property, Allean Moore was paid \$52,851 and a mortgage on the property of \$3,024.36 was paid in full, totaling \$55,875.36. The master found Moore was entitled to damages of \$3,770.26 by subtracting the Bensons' contribution to the sales proceeds, \$26,568.09, from the amount in account #471 at the time of the closing, \$30,338.35. However, this fails to take into account Moore's debts of \$55,875.36, which were paid off at the closing. From this, we find Moore is entitled to a credit for his retirement funds of \$30,338.35, but must repay the Bensons for their contribution to the payment of his debts of \$25,537.01.³

VI. Punitive Damages

The Bensons argue the master erred in awarding punitive damages because there were no actual damages. We agree.

Punitive damages may only be awarded upon an underlying finding of actual damages. Keane v. Lowcounty Pediatrics, 372 S.C. 136, 148, 641 S.E.2d 53, 60 (Ct. App. 2007). In Keane, this court reversed the actual damages award, on which an award of punitive damages was based. Id. at 149, 641 S.E.2d at 60. Thus, this court likewise reversed the punitive damages stating "without a finding of actual damages . . . the award of punitive damages is reversed." Id.

³ Moore argues this issue is not preserved for appellate review. The HUD-1 Settlement Statement, which included information regarding the equitable distribution award and outstanding mortgage, was introduced into evidence and considered by the master. The master also ordered a credit against Moore's award. We find this issue was before the court and preserved for our review. See Spence v. Wingate, 381 S.C. 487, 489-90, 674 S.E.2d 169, 169 (2009) (finding an issue preserved despite the failure to file a Rule 59(e), SCRCR, motion where the issue was raised to and ruled upon by the trial court).

In this case, the master's award of actual damages failed to take into account debts paid on Moore's behalf. As the final calculation of damages requires Moore to reimburse the Bensons in the amount of \$25,537.01, we find no actual damages due to Moore, and reverse the award of punitive damages pursuant to Keane.

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part, and remand for entry of judgment in accordance with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT, HUFF, and WILLIAMS, JJ., concur.



Case Tracking No. 2008-10778
No. 17552

AFFIRMED

The State of South Carolina
IN THE COURT OF APPEALS

Spartanburg County

James Moore,

Respondent,

v.

Jeannette M. Benson & Thomas Lee
Benson, Jr.,

Appellants.

PER CURIAM

Thomas C. Hill

J.

Paul G. Short, Jr.

J.

H. Bruce Siler

J.

South Carolina Court of Appeals
Clerk's Office, Columbia, S.C.

FILED

SEP 22 2010

Janya A. Lee
Clerk



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 22, 2010

Jessica Ann Salvini, Esquire
Salvini & Bennett, LLC
101 W. Park Ave.
Greenville, SC 29601

Chadwick Dean Pye, Esquire
Chadwick D. Pye, LLC
213 Magnolia St
Spartanburg, SC 29306-2317

Edwin C. Haskell, III, Esquire
Smith & Haskell Law Firm, LLP
218 E. Henry Street
Spartanburg, SC 29306

Re: Moore, James v. Benson, Jeannette M.

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case.

Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Spartanburg County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a petition for rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

TAG/rj



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

October 8, 2010

REMITTITUR

The Honorable M. Hope Blackey
Post Office Box 3483
Spartanburg, SC 29304

Re: Moore, James v. Benson, Jeannette M.
2006-CP-42-03378

Dear Ms. Blackley:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

Handwritten initials "TAG/rj" in black ink.
TAG/rj

cc: Jessica Ann Salvini, Esquire
Chadwick Dean Pye, Esquire
Edwin C. Haskell, III, Esquire