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Jul 20 2023

SC Court of Appeals

THE STATE OF SOUTH
CAROLINA
In The Court of
Appeals

APPEAL FROM CHARLESTON
COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Civil Court Case No. 2021-CP-10-
2682
Court of Appeals Case No. 2022-
000775

Pet Helpers, Inc.....Respondent,

v.

Janet L. Frisco..... Appellant

v.

Melissa Susko.....Third-Party Defendant

**APPELLANT’S MOTION TO STRIKE MATTERS FROM
RESPONDENT’S SECOND AMENDED DESIGNATION OF MATTER**

Appellant Pro Se hereby moves for an order striking certain matters from Respondent’s Designation of Matter to be included in the Record of Appeal (Herein after, “Designation”) based upon failure to comply with Rule 208 of the

South Carolina Court Rules. Concerning Initial Brief of Respondent, Rule 208 (2) states, "Within thirty (30) days after service of Appellant's brief, Respondent shall serve one copy of the brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service."

The respondent's counsel is inexperienced in the rules of the Court of Appeals and filed his original Designation without the Initial Brief. He also misunderstood the court's order of May 15, 2023 and thought Appellant was supposed to modify Initial brief within 30 days of that order according to an email he sent me (See Exhibit A). Respondent's counsel also believes that if he flaunts the illicit actions of the court enough times, it proves they were valid.

RULE 208
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

(a) Time to Serve and File. *At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.*

Respondent's counsel filed first Designation on December 12, 2022 without Initial Brief. Their Amended Designation was filed on December 21, 2022 adding certification in compliance with Rule 209(c) after Appellant filed Motion to Strike Respondent's Designation of Matter due to the omission. Respondent's Second Amended Designation filed on July 11, 2023 contained eight additional items that were not included on the previous two Designations. Respondent is not allowed to arbitrarily add items to the Designation after the original filing, but the Appellant is allowed to change or add matter to her designations when she

receives the Respondent's initial brief and files her replies.

Respondents received the Appellant's Initial Brief in its present amended form as of March 17, 2023 and although they filed a Motion to Strike Appellants Amended Initial Brief, it was accepted as is until the Appellant's final brief is due in this Court's order of May 15, 2023 (See Exhibit B).

Appellant moves to strike the eight designations listed below because they were not included on Respondent's initial or amended Designations and requests that Appellant's Initial Reply Brief and Designation of Matter be held in abeyance until decision on the motion is reached by this court:

2. Affidavit of Third-Party Respondent Melissa Susko in Support of Respondent's Motion for Emergency Ex Parte Restraining Order and Injunctive Relief filed June 9, 2021.

7. Appellant's Answers to Requests for Admission dated July 7, 2021.

8. Respondent's Answer and Counterclaim filed July 9, 2021.

9. Respondent's Motion for Consolidation filed July 9, 2021.

10. Affidavit of Blaine John filed July 28, 2021.

18. Amended Notice of Appeal filed on January 14, 2022 in Pet Helpers, Inc. v. Janet L. Frisco, Appellant Case No, 2022-000021.

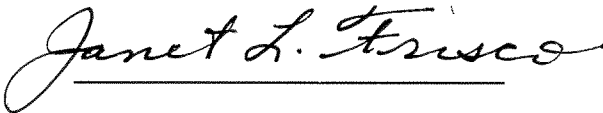
21. Order Dismissing Appeal filed March 2, 2022 re: Pet Helpers, Inc. v. Janet L. Frisco, Appellant Case No. 2022-000021.

24. Third-Party Respondent Melissa Susko's Affidavit in Support of Motion for Partial Summary Judgement filed on April 12, 2022.

Based on the foregoing, Appellant hereby moves this Honorable Court for an Order striking matter Numbers 2, 7, 8, 9, 10, 18, 21, 24 as set forth from the Respondent's Designation filed on July 11, 2023 because the Respondent did not comply with SCRCR Rule 208.

Motion filing fee of \$50.00 will be mailed to the Appellate Court this week.

Respectfully submitted,



Janet L. Frisco, Pro Se Appellant
203 Cardinal Drive
Summerville, South Carolina
843-824-0875
janetfrisco@yahoo.com

DATED: July 20, 2023

EXHIBIT

A

Pet Helpers v. Frisco - Appellant's Final Brief

From: Stephanie Smith (ssmith@charlestonlaw.net)

To: janetfrisco@yahoo.com

Cc: sfuteral@charlestonlaw.net

Date: Friday, July 7, 2023 at 03:37 PM EDT

From Stephan V. Futeral, Esq
Dictated, but not read

Ms. Frisco,

Pursuant to the attached Order filed with the Court of Appeals on May 15, 2023, you were ordered to double space your final brief and to correct the typographical error regarding the affidavit referenced in the fifth argument of your final brief no later than June 14, 2023. As of this date, we have not received a copy of your amended final brief. Please amend your final brief as ordered and provide our office with a copy of the same so this issue does not have to be raised with the court.

Stephan V. Futeral, Esq
Dictated, but not read

Sincerely,

Stephanie M. Smith

Paralegal
Futeral & Nelson, LLC
1004 Anna Knapp Blvd., 2nd Floor
Mount Pleasant, SC 29464
(843) 284-5500 – Phone
(843) 284-5501 – Facsimile
www.charlestonlaw.net

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The South Carolina Court of Appeals

Pet Helpers, Inc., Respondent,

v.

Janet Frisco, Appellant,

v.

Melissa Susko, Third-Party Defendant.

Appellate Case No. 2022-000775

ORDER

On March 21, 2023, Respondent filed a motion strike Appellant's amended initial brief of appellant for failing to comply with the South Carolina Appellate Rules. The motion is denied. However, we order Appellant to double space her final brief of appellant and to correct the typographical error regarding the affidavit referenced in the fifth argument in her final brief of appellant. Respondent's initial brief and designation of matter is due within thirty days of the date of this order.



FOR THE COURT

Columbia, South Carolina

FILED
May 15 2023

cc:

Janet L. Frisco

Stephan Victor Futeral, Esquire

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SC Court of Appeals

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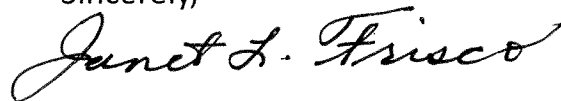
Melissa Susko.....Third-Party Defendant

PROOF OF SERVICE

I certify that I have served the *Motion to Strike Respondent's Second Amended Designation of Matter* by delivering the same via email and United States Mail, postage prepaid on July 20, 2023 addressed to the Respondent's legal representative as follows:

Stephan V. Futeral
1004 Anna Knapp Blvd. Suite 3
Mount Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net

Sincerely,



Janet L. Frisco, Pro Se

Dated: July 20, 2023