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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley D. Price

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

Pet Helpers, Inc. ....Respondent,

v.

Janet L. Frisco .....Appellant,

v.

Melissa Susko ..... Third-Party Respondent.

**RESPONDENTS’ RETURN TO APPELLANT’S MOTION TO STRIKE SECOND  
AMENDED DESIGNATION OF MATTER**

Respondents move this Honorable Court for an Order denying Appellant’s Motion to Strike Matters from Respondents’ Second Amended Designation of Matter because Respondents’ Second Amended Designation of Matter was timely filed and served and because Respondents’ Designation does not include any matter irrelevant to this appeal.

**PROCEDURAL BACKGROUND**

On December 6, 2022, this Court ordered, among other things, that Respondents had until January 5, 2023 to file their Initial Brief and Designation of Matter. Respondents filed their Designation of Matter on December 12, 2022, but neglected to certify that the Designation did not

include any irrelevant matters. Thereafter, on December 20, 2022, Appellant filed a Motion to Strike Respondents' Designation of Matter. On December 21, 2022, Respondents filed their first Amended Designation of Matter to include the proper certification.

On February 15, 2023, this Court ordered that Respondents' Amended Designation of Matter was accepted as filed. Also, on February 15, 2023, this Court ordered Appellant, among other things, to amend her Initial Brief within thirty days.

Appellant filed her Amended Initial Brief on March 17, 2023. On March 21, 2023, Respondents filed a Motion to Strike Appellant's Amended Initial Brief. On May 15, 2023, this Court denied Respondents' Motion to Strike and ordered Respondents to submit their Initial Brief and Designation of Matter within thirty days.

On June 15, 2023, this Court ordered an extension of time to allow Respondents to file and serve their Initial Brief and Designation of Matter until July 14, 2023. Thereafter, Respondents timely filed and served their Initial Brief and a Second Amended Designation of Matter on July 11, 2023.

## **ARGUMENT**

### **I. THIS COURT SHOULD DENY APPELLANT'S MOTION BECAUSE RESPONDENTS TIMELY FILED THEIR SECOND AMENDED DESIGNATION OF MATTER PURSUANT TO DEADLINES SET FORTH BY THIS COURT IN ITS ORDER DATED JUNE 15, 2023.**

Appellant argues that Respondents' Second Amended Designation of Matter is untimely. Appellant's argument is without merit because this Court extended the deadline for Respondents' Designation of Matter. Pursuant to Rule 263(b), SCACR, "[t]he time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof."

Here, on June 15, 2023, this Court ordered that the “time for filing the Respondent’s . . . Designation of Matter is extended to July 14, 2023.” Thereafter, Respondents timely filed and served their Second Amended Designation of Matter on July 11, 2023. Accordingly, this Court should deny Appellant’s Motion to Strike.

**II. THIS COURT SHOULD DENY THE MOTION BECAUSE RESPONDENTS’ SECOND AMENDED DESIGNATION OF MATTER MEETS THE REQUIREMENTS OF RULE 209, SCACR.**

Rule 209(b) provides,

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

Here, Appellant moves to strike eight (8) designations from Respondents’ Second Amended Designation of Matter. In her Motion to Strike, Appellant does not directly assert that these designations are irrelevant. Instead, Appellant asserts that Respondents “arbitrarily” included additional designations. Assuming, *arguendo*, that Appellant asserts that the designations are irrelevant, this Court should deny Appellant’s Motion to Strike because the designations are relevant to this appeal as follows:

1) **Affidavit of Third-Party Respondent Melissa Susko in Support of Respondents’ Motion for Emergency Ex Parte Restraining Order and Injunctive Relief filed June 9, 2021** – Third-Party Respondent Melissa Susko’s affidavit is relevant because the lower court based its Order Granting Summary Judgment, which is the subject of this appeal, on the affidavits on file in this case. For example, the lower court wrote that [Respondents] submitted affidavits and exhibits to the court to show that [Appellant’s] claims that [Respondents] killed the dog were false. Additionally, on page 10 of Appellant’s Initial Brief, she claims that Respondents,

including Respondent Melissa Susko, made false statements on court documents, such as the affidavit in issue, to obtain restraining orders against her. Accordingly, Ms. Susko's affidavit is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

2) **Appellant's Answers to Requests for Admission dated July 7, 2021** – In the Summary Judgment Order that is the subject of this appeal, the lower court refers explicitly to Appellant's Answers to Requests for Admission as part of the basis for the lower court's decision. Specifically, on page 11 of its order, the lower court wrote "Moreover, in [Appellant's] answers to requests for admission, the only discovery request [Appellant] responded to, [Appellant] conceded that her claims that [Respondents] killed the dog are untrue." Accordingly, Appellant's Answers to Requests for Admission are relevant, they should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

3) **Respondents' Answer and Counterclaim filed July 9, 2021** – As previously indicated, the lower court based its order, which is the subject of this appeal, upon "the record in this case, the pleadings, affidavits, and memorandums filed by the parties" which includes the aforementioned Answer and Counterclaim. Additionally, Appellant argues on appeal that Respondents' claims against her, including those asserted in the Answer and Counterclaim, were "fraudulent," that Respondents made "false claims on court documents" such as the Answer and Counterclaim, and that the lower court is an "accomplice" in injustice. Accordingly, Respondents' Answer and Counterclaim is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

4) **Respondents' Motion for Consolidation filed July 9, 2021** – In her Statement of the Case in her Initial Brief, Appellant references Respondents' Motion for Consolidation.

Moreover, Appellant argues that all orders of the lower court should be reversed which, presumably, includes the lower court's order to consolidate Appellant's separate lawsuit into the case at bar. Moreover, Respondents' Motion and the order consolidating Appellant's separate lawsuit with this action are part of the procedural history of this case. Indeed, on page 3 of the order on appeal, the lower court specifically referenced Respondents' Motion to Consolidate and the Order of Consolidation. Accordingly, Respondents' Motion to Consolidate is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

5) **Affidavit of Blaine John filed July 28, 2021** – The Affidavit of Blaine John was filed with the lower court to support Respondents' motion for summary judgment. Additionally, in granting Respondents summary judgment, the lower court wrote on page 11 of its order that it reviewed “the affidavits and exhibits to the court to show that [Appellant's] claims that [Respondents] killed the dog were false.” Lastly, Appellant references Blaine John and his Affidavit in her Initial Brief. On page 7 of her Initial Brief, Appellant argues that the lower “court acted like they knew beforehand that the Respondent's lawyer was going to submit an adoption application as evidence that a third party, not Blaine John the Pet Helper's employee, as Appellant contends, had legitimately adopted [the dog].” Additionally, on page 10 of her Initial Brief, Appellant argues that “Blaine John . . . posed as the adopter” and that Respondents “presented an affidavit from Blaine John . . . [that was not] admissible as evidence in court and [does] not prove that the adoption was legitimate.” Accordingly, the Affidavit of Blaine John is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

6) **Amended Notice of Appeal filed on January 14, 2022 in Pet Helpers, Inc. v. Janet L. Frisco, Appellant Case No, 2022-000021** – As previously set forth herein, Appellant argues that all orders of the lower court should be reversed. This Court must determine what issues

have been preserved for appellate review. Accordingly, Appellant's first appeal is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

7) **Order Dismissing Appeal filed March 2, 2022 re: Pet Helpers, Inc. v. Janet L. Frisco, Appellant Case No. 2022-000021** – Inasmuch as Appellant argues that all orders of the lower court should be reversed, and this Court must determine what issues have been preserved for appellate review, this Court's Order dismissing Appellant's first appeal is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

8) **Third-Party Respondent Melissa Susko's Affidavit in Support of Motion for Partial Summary Judgement filed on April 12, 2022** – Third-Party Respondent Melissa Susko's Affidavit was filed with the lower court in support of Respondents' summary judgment motion. As previously set forth herein, the lower court wrote on page 11 of its order that it reviewed "the affidavits and exhibits to the court to show that [Appellant's] claims that [Respondents] killed the dog were false."

As the lower court noted on pages 12 and 13 in the Order Granting Summary Judgment, "after learning the dog was still alive, [Appellant] pivoted her case to claim that [Respondents] had 'staged' the dog's adoption . . . to prevent [Appellant] from reclaiming the dog." On page 10 of Appellant's Initial Brief, Appellant still contends that Third-Party Respondent Melissa Susko "staged" the dog's adoption. Here, the lower court considered Third-Party Respondent Melissa Susko's Affidavit wherein Ms. Susko refutes Appellant's allegation that the dog's adoption was a ruse. Accordingly, Ms. Susko's affidavit is relevant, it should be included in the Record on Appeal, and Appellant's Motion to Strike should be denied.

## CONCLUSION

This Court should deny Appellant's Motion to Strike because Respondents timely filed and served their Second Amended Designation of Matter on July 11, 2023, pursuant to this Court's order on June 15, 2023, extending the time for filing Respondents' Designation of Matter to July 14, 2023. Additionally, this Court should deny Appellant's Motion to Strike because the pleadings, discovery responses, witness affidavits, and other documents Respondents designated are relevant to this appeal.

Respectfully submitted,

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Dated: July 24, 2023

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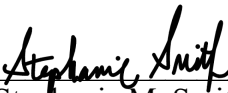
**PROOF OF SERVICE**

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I certify that I have served the *Respondents' Return to Appellant's Motion to Strike Second Amended Designation of Matter* by delivering the same via email and United States Regular Mail, postage prepaid, on July 24, 2023, addressed to the Appellant as follows:

Janet Frisco  
203 Cardinal Drive  
Summerville, SC 29485  
Janetfrisco@yahoo.com

FUTERAL AND NELSON, LLC

  
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Stephanie M. Smith

Paralegal to Stephan V. Futeral, Esq.

Dated: July 24, 2023