

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
Civil Court Case No. 2021-CP-10-2682

Pet Helpers, Inc. Respondent,

v.

Janet L. Frisco Appellant,

v.

Melissa Susko Third-Party Respondent.

**RESPONDENTS' THIRD MOTION TO STRIKE
APPELLANT'S DESIGNATION OF MATTER FILED ON NOVEMBER 13, 2023**

Respondents, by and through their undersigned counsel, hereby move for an Order striking Appellant's (Second) Amended Designation of Matter filed on November 13, 2023 based upon her failure to comply with Rules 209(b) and 210(c), SCACR.

BACKGROUND

Appellant appeals from the lower court's order, filed on May 5, 2022, granting partial summary judgment and other relief to Respondents. On November 16, 2022, Appellant filed her first Designation of Matter. On December 12, 2022, Respondents filed a Motion to Strike Appellant's Designation of Matter. On February 15, 2023, this Court granted Respondents'

Motion to Strike and ordered Appellant to file an Amended Designation of Matter on or before March 17, 2023. Appellant filed her Amended Designation of Matter on March 17, 2023. However, on November 13, 2023, Appellant unilaterally filed a second Amended Designation of Matter, attached hereto as **Exhibit A**, wherein Appellant listed additional, irrelevant matters to be included in the Record on Appeal. This motion followed.

ARGUMENTS

As set forth herein, without this Court's leave, Appellant amended her Designation of Matter a second time and has designated matters that are not relevant to this appeal as follows:

- a. # 7 – Plaintiff's (Respondents') First Interrogatories to Defendant (Appellant) Filed June 18, 2021 – On January 11, 2022, the lower court ordered Appellant to respond to Respondents' discovery and sanctioned Appellant. Appellant did not appeal this order. Accordingly, Respondents' interrogatories are not relevant to this appeal.
- b. # 9 – Defendant's (Appellant's) Answer to the Complaint filed June 23, 2021 – Albeit Appellant has added this matter without leave of the court, her Answer is potentially relevant to this appeal.
- c. # 13 – Affidavit of Melissa Susko in Support of Plaintiff's (Respondent's) 2nd Motion for Emergency/Ex Parte Restraining Order and Injunctive Relief – The lower court filed its order regarding Respondent's 2nd Motion for Emergency/Ex Parte Restraining Order and Injunctive Relief on July 30, 2021. Appellant did not appeal this order. Accordingly, this matter is not relevant to this appeal.
- d. # 14 – Defendant's (Appellant's) Motion to Dismiss and Consolidate Filed July 22, 2021 – The lower court filed its order regarding Appellant's Motion to Dismiss and

- Consolidate on January 11, 2022. Appellant did not appeal this order. Accordingly, this matter is not relevant to this appeal.
- e. # 16 – Order Extending 2nd Order for Injunction and Temporary Restraining Order Filed August 5, 2021 – Appellant did not appeal this order. Accordingly, this matter is not relevant to this appeal.
- f. # 17 – Plaintiff’s (Respondent’s) Notice of Motion and Motion for Rule to Show Cause Filed August 5, 2021 – The lower court filed its order on Respondent’s Motion for a Rule to Show Cause on November 5, 2021. Appellant filed an untimely appeal regarding this order, and this Court dismissed Appellant’s appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, this matter is not relevant to this appeal.
- g. # 18 – Affidavit of Melissa Susko Supporting Rule to Show Cause Filed Aug 5. 2021 – The lower court filed its order on Respondent’s Motion for a Rule to Show Cause on November 5, 2021. Appellant filed an untimely appeal regarding this order, and this Court dismissed Appellant’s appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, this matter is not relevant to this appeal.
- h. # 19 – Defendnent’s [sic] (Appellant’s) Objection to the Plaintiff’s (Respondent’s) Motion to Show Cause Filed August 13, 2021 – The lower court filed its order on Respondent’s Motion for a Rule to Show Cause on November 5, 2021. Appellant filed an untimely appeal regarding this order, and this Court dismissed Appellant’s appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, this matter is not relevant to this appeal.

- i. # 20 – Defendant’s (Appellant’s) Letter Requesting Continuance for Covid-19 Recuperation Filed September 9, 2021 – Appellant filed this letter requesting a continuance when no hearing was scheduled with the lower court at that time. Accordingly, this matter is not relevant to this appeal.
- j. # 22 – Defendant’s (Appellant’s) Amended Motion to Reconsider Plaintiff’s (Respondent’s) Sanction Judgement Pursuant (sic) to Rule SCRCP 15(A) Filed November 1, 2021 – Appellant’s Motion to Reconsider concerns three of the lower court’s orders as follows: (1) 1st restraining order filed June 17, 2021; (2) 2nd restraining order filed July 30, 2021; and (3) order filed on October 12, 2021 granting Respondent’s Motion to Reconsider and imposing sanctions against Appellant for violating the 1st and 2nd restraining orders. Appellant did not appeal the 1st restraining order and, accordingly, it is not relevant to this appeal. Regarding the 2nd restraining order filed on July 30, 2021 and the order filed on October 12, 2021, Appellant filed an untimely appeal regarding these orders, and this Court dismissed Appellant’s appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, these matters are not relevant to this appeal.
- k. # 24 –Plaintiff’s (Appellant’s) Amended Objection to Respondent’s Motion to Reconsider Consolidation Filed November 19, 2021 (Consolidated Case # 2021-CP-10-2848) – The lower court filed its order regarding Appellant’s “Objection” Motion on January 11, 2022. Appellant did not appeal this order. Accordingly, this matter is not relevant to this appeal.
- l. # 28 – Appellant’s Notice of Appeal Filed January 10, 2022 – This Notice is already filed with this Court, and therefore it is superfluous to the Record on Appeal.

Moreover, this Court dismissed Appellant’s first appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, this matter is not relevant to this appeal.

- m. # 31 – Appellant’s Return to the Motion to Dismiss filed January 24, 2022 – This Notice is already filed with this Court, and therefore it is superfluous to the Record on Appeal. Moreover, this Court dismissed Appellant’s first appeal by order dated March 2, 2022, attached hereto as **Exhibit B**. Accordingly, this matter is not relevant to this appeal.
- n. # 36 – Notice of Motion Scheduling for Defendant’s (Appellant’s) Motion to Supplement Answer April 6, 2022 – Appellant did not file a “Notice of Motion” with the Clerk of Court on April 6, 2022. Pursuant to Rule 210(c), SCACR, the “Record shall not, however, include matter which was not presented to the lower court or tribunal.” Accordingly, this matter is not relevant to this appeal.
- o. # 43 – Defendant’s (Appellant’s) First Interrogatories to Plaintiff (Respondent) Filed November 29, 2022 – For unknown reasons, Appellant filed her interrogatories with the lower court on November 29, 2022. Such filing postdates the May 5, 2022 order that is the subject of this appeal. Accordingly, this matter is not relevant to this appeal.

CONCLUSION

Because the aforementioned matters are irrelevant to this appeal, Respondents respectfully request that this Court:

- 1) Stay the time period for the filing of Final Briefs until such time as this Court has issued its Order on Respondents’ Motion to Strike;
- 2) Strike Appellant’s second Amended Designation of Matter filed on November 13, 2023; and

3) Order Appellant to properly prepare and submit the Record on Appeal based solely upon Appellant's Amended Designation of Matter filed on March 17, 2023 and Respondents' 2nd Amended Designation of Matter filed on July 11, 2023.

Respectfully submitted,

FUTERAL & NELSON, LLC

/s/Stephan V. Futeral
Stephan V. Futeral
SC Bar ID 66427
1004 Anna Knapp Blvd., Suite 3
Mount Pleasant, South Carolina 29464
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sfuteral@charlestonlaw.net
Attorney for Respondents

Date: November 22, 2023

RECEIVED

Nov 13 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

Court of Appeals Case No. 2022-000775

Civil Court Case Nos. 2021-CP-10-2682, 2021-CP-10-2848

Pet Helpers, Inc.....Respondent,

v.

Janet L. Frisco.....Appellant,

v.

Melissa Susko.....Third-Party Defendant

APPELLANT'S DESIGNATION OF MATTER

Janet L. Frisco, Pro Se Appellant
203 Cardinal Drive
Summerville, South Carolina 29485
(843) 804-0875

November 13, 2023

EXHIBIT A

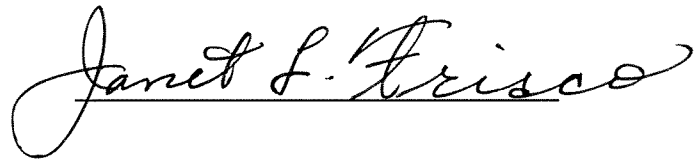
Appellant proposes the following be included in the Record of Appeal and certifies that this designation contains no matter which is irrelevant to the appeal:

1. PLAINTIFF'S SUMMONS AND COMPLAINT FILED JUNE 9, 2021
2. AFFIDAVIT OF MELISSA SUSKO IN SUPPORT OF RESPONDENTS MOTION FOR EMERGENCY EX PARTE RESTRAINING ORDER AND INJUNCTIVE RELIEF FILED JUNE 9, 2021
3. EX PARTE INJUNCTION AND RESTRAINING ORDER FILED JUNE 11, 2021
4. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT FILED JUNE 16, 2021
5. INJUNCTION AND RESTRAINING ORDER FILED JUNE 17, 2021
6. DEFENDANT'S SUMMONS AND COMPLAINT FILED JUNE 17, 2021
7. PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT FILED JUNE 18, 2021
8. PLAINTIFF'S REQUESTS FOR PRODUCTION FILED JUNE 18, 2021
9. DEFENDANT'S ANSWER TO THE COMPLAINT FILED JUNE 23, 2021
10. DEFENDANT'S OBJECTION TO THE PLAINTIFF'S MOTION FOR A PARTIAL SUMMARY JUDGEMENT FILED JUNE 23, 2021
11. PLAINTIFF'S ANSWERS TO DEFENDANT'S REQUESTS TO ADMIT
12. PLAINTIFF'S MOTION TO CONSOLIDATE FILED JULY 9, 2021
13. AFFIDAVIT OF MELISSA SUSKO IN SUPPORT OF PLAINTIFF'S 2ND MOTION FOR EMERGENCY/EX PARTE RESTRAINING ORDER AND INJUNCTIVE RELIEF
14. DEFENDANT'S MOTION TO DISMISS AND CONSOLIDATE FILED JULY 22, 2021
15. AFFIDAVIT OF BLAINE JOHN FILED JULY 28, 2021
16. ORDER EXTENDING 2ND ORDER FOR INJUNCTION AND TEMPORARY RESTRAINING ORDER TEN (10) DAYS FILED AUGUST 5, 2021
17. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE FILED AUGUST 5, 2021
18. AFFIDAVIT OF MELISSA SUSKO SUPPORTING RULE TO SHOW CAUSE FILED AUG 5, 2021
19. DEFENDANT'S OBJECTION TO THE PLAINTIFF'S MOTION TO SHOW CAUSE FILED AUGUST 13, 2021
20. DEFENDANT'S LETTER REQUESTING CONTINUANCE FOR COVID-19 RECUPERATION FILED SEPTEMBER 9, 2021
21. ORDER ON PLAINTIFF'S MOTION TO RECONSIDER FILED OCTOBER 12, 2021
22. DEFENDANT'S AMENDED MOTION TO RECONSIDER PLAINTIFF'S SANCTION JUDGEMENT PURSUANT TO RULE SCRCP 15(A) FILED NOVEMBER 1, 2021
23. ORDER DEFENDANT HELD IN CONTEMPT FILED NOVEMBER 5, 2021
24. PLAINTIFF'S AMENDED OBJECTION TO RESPONDENT'S MOTION TO RECONSIDER CONSOLIDATION FILED NOVEMBER 19, 2021 (CONSOLIDATED CASE # 2021-CP-10-2848)

25. DEFENDANT'S SUPPLEMENT FOR SECOND OBJECTION TO RESPONDENT'S MOTION FOR A PARTIAL SUMMARY JUDGEMENT FILED DECEMBER 8, 2021
26. DEFENDANT'S SECOND OBJECTION TO RESPONDENT'S MOTION FOR A PARTIAL SUMMARY JUDGEMENT FILED DECEMBER 8, 2021
27. AMENDED ORDER ON PLAINTIFF'S MOTION TO CONSOLIDATE FILED JANUARY 6, 2022
28. APPELLANT'S NOTICE OF APPEAL FILED JANUARY 10, 2022.
29. ORDER ON MOTIONS FOR PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT, DEFENDANT'S MOTION TO COMPEL DISCOVERY, PLAINTIFF'S MOTION TO DISMISS AND CONSOLIDATE, DEFENDANT'S MOTION TO AMEND ORIGINAL ANSWER, AND PLAINTIFF'S REQUEST FOR SANCTIONS FILED JANUARY 11, 2022
30. PLAINTIFF'S MOTION FOR SANCTIONS FOR DEFENDANT'S FAILURE TO COMPLY WITH AN ORDER OF DISCOVERY FILED JANUARY 21, 2022
31. DEFENDANT'S RETURN TO THE MOTION TO DISMISS FILED JANUARY 24, 2022
32. DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH AN ORDER OF DISCOVERY
33. ORDER OF COURT OF APPEAL DISMISSING APPELLANT FIRST APPEAL FILED MARCH 2, 2022
34. APPELLANT'S PETITION FOR REHEARING FILED MARCH 15, 2022
35. DEFENDANT'S FORM MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO RESPONDENT'S COMPLAINT PURSUANT TO RULE 15(D) AND AMENDED COUNTERCLAIM FOR MALICIOUS PROSECUTION FILED MARCH 24, 2022
36. NOTICE OF MOTION SCHEDULING FOR DEFENDANT'S MOTION TO SUPPLEMENT ANSWER APRIL 6, 2022
37. PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT FILED APRIL 12, 2022
38. DEFENDANT'S MEMORANDUM IN OPPOSITION OF RESPONDENT'S MOTION FOR A PARTIAL SUMMARY JUDGEMENT FILED APRIL 21, 2022
39. AFFIDAVIT OF JANET FRISCO PURSUANT TO RULE 56(F) FILED APRIL 21, 2022
40. TRANSCRIPT OF HEARING APRIL 22, 2022
41. ORDER ON MOTION HEARING HELD ON APRIL 22, 2022 FILED MAY 5, 2022 GRANTING PARTIAL SUMMARY JUDGEMENT, DEFAULT JUDGEMENT FOR LIBEL AND SLANDER, DISMISSAL OF DEFENDANT'S CLAIMS AGAINST PET HELPERS, INC. AND MELISSA SUSKO WITH PREJUDICE, DEFAULT JUDGEMENT AGAINST DEFENDANT'S MALICIOUS PROSECUTION CLAIM, DEFAULT JUDGEMENT AGAINST DEFENDENT FOR PLAINTIFF'S MALICIOUS PROSECUTION CLAIM, DEFAULT JUDGEMENT FOR A PERMANENT INJUNCTION AGAINST DEFENDENT AND ADDITIONAL SANCTIONS AGAINST THE DEFENDENT IN THE AMOUNT OF \$9,638.48.
42. ORDER OF COURT OF APPEALS DENYING APPELLANT'S PETITION FOR REHEARING FILED MAY 12, 2022
43. DEFENDANT'S FIRST INTERROGATORIES TO PLAINTIFF FILED NOVEMBER 29, 2022

44. PLAINTIFF'S ANSWERS TO INTERROGATORIES, REQUEST FOR CONSENT ORDER OF CONFIDENTIALITY WITH PROOF OF SERVICE BUT NOT FILED WITH LOWER COURT DATED DECEMBER 2, 2022
45. DEFENDANT'S MOTION TO COMPEL DISCOVERY FILED DECEMBER 7, 2022
46. RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE SECOND AMENDED DESIGNATION OF MATTER FILED JULY 24, 2023
47. AMENDED REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDENTS MOTION TO COMPEL DISCOVERY FILED OCTOBER 10, 2023

November 13, 2023

A handwritten signature in black ink that reads "Janet L. Frisco". The signature is written in a cursive style with a horizontal line underneath the name.

Janet L. Frisco, Pro Se Appellant
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The South Carolina Court of Appeals

Pet Helpers, Inc., Respondent,

v.

Janet L. Frisco, Appellant.

Appellate Case No. 2022-000021

ORDER

Appellant failed to timely serve her notice of appeal pursuant to Rule 203(b)(1), SCACR, which provides "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Accordingly, this appeal is dismissed. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as provided by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:
Janet L. Frisco
Stephan Victor Futeral, Esquire

FILED
Mar 02 2022

EXHIBIT B

RECEIVED

Nov 22 2023

SC Court of Appeals

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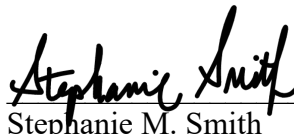
Melissa Susko Third Party Respondent.

PROOF OF SERVICE

I certify that I have served the *Respondents' Third Motion to Strike Appellant's Designation of Matter Filed on November 13, 2023* by delivering the same via email and United States Regular Mail, postage prepaid, on November 22, 2023, addressed to the Appellant as follows:

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

FUTERAL AND NELSON, LLC



Stephanie M. Smith
Paralegal to Stephan V. Futeral, Esq.

Dated: November 22, 2023