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Mar 25 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

The Honorable Brian M. Gibbons  
Circuit Court Judge

Civil Action No. 2022-CP-20-00104

Appellate Case No. 2023-001451

Bertha Goins, ..... Respondent,

v.

Jenkinsville Water Company Inc., ..... Appellant.

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**MOTION TO STRIKE**

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Pursuant to Rules 209, 210, and 240 of the South Carolina Appellate Court Rules, Respondent respectfully requests this Court to strike numerous items from Appellant’s Designation of Matter to be Included in the Record on Appeal, filed on December 21, 2023. Specifically, Respondent moves to strike numbers 10, 11, 12, 13, 14, and 15 from Appellant’s Destination of Matter as these items are new pieces of evidence Appellant is attempting to offer for the first time on appeal. *See* Rule 10, SCACR (stating the Record on Appeal shall not include any matter which was not presented to the lower court and “the appellate court will not consider any fact which does not appear in the Record on Appeal”).

Appellant is attempting to include the entirety of deposition transcripts from Greg Ginyard, Respondent Bertha Goins, and Clemart Camack. The only portions of these depositions submitted as evidence and considered by the lower court were the excerpts produced as exhibits to Respondent's Motion for Summary Judgment. These excerpts, therefore, can be the only portions of these depositions included as part of the Record on Appeal before this Court. Appellant's attempt to include the full deposition transcripts is improper as the entire transcripts were never presented to or considered by the circuit court. Respondent has designated the deposition excerpt exhibits that were submitted to the circuit court in its Designation of Matter. Thus, Respondent requests the Court strike #10 from Appellant's Designation of Matter.

Appellant is also attempting to include the minutes from Fairfield County Council meetings of April 8, 2019, April 22, 2019, October 14, 2019, and January 13, 2019. No Fairfield County meeting minutes were submitted to the circuit court for consideration.<sup>1</sup> Only the video recordings of the relevant Fairfield County Council meetings were submitted to the lower court for consideration by Respondent, as Exhibit K to her Motion for Summary Judgment, and which Respondent has designated in her Designation of Matter. Therefore, the Court should strike #11 from Appellant's Designation.

In #12, Appellant attempts to designate certain news articles identified as "bates no. 00816–00836." The only news articles that were submitted for consideration by the circuit court were the news articles submitted by Respondent as part of her Motion for Summary Judgment, and Respondent has designated all exhibits she submitted as part of the record. Specifically,

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<sup>1</sup> Further, Respondent notes any Fairfield County Council meeting on January 13, 2019 has never been at issue in this case and Appellant has never alleged Ms. Goins made any defamatory statements at a January 13, 2019 meeting. Appellant now apparently attempts to improperly broaden its defamation claim for the first time on appeal to include purported statements from this meeting.

Respondent submitted new articles with bates numbers 816-821, 827-831, and 835-838 to the circuit court. Neither Appellant nor Respondent submitted any new articles bearing bates numbers 822-826 or 832-834 for consideration by the circuit court. As such, #12 is an improper designation as it attempts to designate materials not presented to the circuit court, and the Court should strike it.

Appellant also attempts to include “State and National awards to JWC for best tasting water in 2017 and 2019,” a “letter from Senator Mike Fanning giving JWC public recognition for having the best tasting water dated January 6, 2020,” and “multiple boil water notice [sic] issued by JWC” in #13, #14, and #15. Respondent is not entirely sure what documents Appellant references in these designations as none of these documents were ever provided to the circuit court for consideration. As these documents were never presented to the circuit court, their inclusion in the Record on Appeal is improper.

Accordingly, Respondent respectfully asks that this Court strike #10, 11, 12, 13, 14, and 15 from Appellant’s Designation of Matter.

Further, Respondent requests the Court strike any portions of Appellant’s brief that cite to matters that are outside the Record on Appeal. Appellant cites these improper materials throughout its initial brief on at least seven pages of its twelve-page brief. Specifically, Appellant references these materials on pages 2, 3, 4, 5, 7, 8, and 9.<sup>2</sup> The Court should strike these references from Appellant’s brief and refuse to consider any evidence that is outside of the Record on Appeal.

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<sup>2</sup> Appellant also states in its brief: “After losing her board seat, Respondent has been a vocal critic of JWC and has openly supported consolidating JWC with the water systems of Winnsboro and Mid-County going so far as to write letters to the paper to that effect.” (App. Br. 2). Appellant did not designate any purported letters for inclusion in the Record on Appeal, and any designation of purported letters would be improper for this Court’s consideration as no purported letters were presented to the circuit court. Therefore, any reference to purported letters should be stricken from Appellant’s brief.

RESPECTFULLY SUBMITTED,

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**PROOF OF SERVICE**

I, the undersigned paralegal of the law offices of Smith Robinson Holler DuBose and Morgan, LLC, do hereby certify that on March 25, 2024, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court’s Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

**Documents Served:** Respondent’s Motion to Strike

**Counsel Served:** Via E-Mail Only  
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March 25, 2024