

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Roger M. Young, Circuit Court Judge

Case No. 2012-212331

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**SC Court of Appeals**

Ron Orlosky in his capacity as Personal Representative of The Estate of Debora L. Orlosky and in his capacity as trustee of the Debora Laura Orlosky Revocable Trust

Respondent

v.

The Law Office of Jay A. Mullinax, LLC

Appellant

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APPELLANT'S MOTION TO MODIFY ORDER AND MEMORANDUM IN SUPPORT

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Pursuant to South Carolina Appellate Court Rule 240, Appellant, The Law Office of Jay A. Mullinax, LLC, by and through undersigned counsel, hereby moves for the South Carolina Court of Appeals to modify its order to include an option for the Circuit Court to determine that the record cannot be reconstructed with the specificity to support meaningful appellate review.

MEMORANDUM IN SUPPORT

BACKGROUND

The Respondent filed a Motion to Dismiss on April 5, 2013. The Court of Appeals dismissed the Respondent's Motion on June 6, 2013 and directed the parties, *inter alia*, to either

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consent to moving forward without a transcript or to file a motion to remand the matter back to the Circuit Court in order to reconstruct the record (See Court of Appeal's letter dated June 06, 2013 attached as **Exhibit A**). At the direction of the Court of Appeals, the Appellant filed a motion on June 18, 2013 (**Exhibit B**) to the Court of Appeals and requested that this matter be remanded back to the Circuit Court in order to reconstruct the record, or alternatively, for the Circuit Court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review.

The Court of Appeals granted Appellant's motion and remanded this case to the Circuit Court to reconstruct the record. The Court of Appeal's order provided no option for the Circuit Court to conclude that the record could not be reconstructed with specificity to support meaningful appellate review.

#### DISCUSSION

In response to the Court of Appeals letter dated June 06, 2013, the Appellant choose to file a motion to remand the matter back to the Circuit Court in order to reconstruct the record, or alternatively, for the Circuit Court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review. On July 31, 2013 (**Exhibit C**), the Court of Appeals granted the Appellant's motion to remand this matter to the Circuit Court to reconstruct the record.


This motion is now being presented by the Appellant to request that the Court of Appeals offer the Circuit Court the option to conclude that the record cannot be reconstructed with the specificity to support meaningful appellate review. The Court of Appeals granted its order for the reconstruction of the record approximately seventeen months after the original trial took place on

April 18-20, 2012. With such a significant time lapse between the actual trial and the reconstruction of the trial, the insufficiency of a reconstructed record must be considered since it is reasonable to believe that the testimonies and evidence of a three day trial will only be recalled in summary fashion. Despite good faith efforts, it may be unrealistic for a record to be properly reconstructed by any judge and counsel with the seventeen month lapse presented here.

#### CONCLUSION

The Appellant respectfully prays that the South Carolina Court of Appeals amend its order to present the Circuit Court with the option to determine that the record cannot be reconstructed with the specificity to support meaningful appellate review.

August 7<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-6101

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L. Orlosky and in his capacity as trustee  
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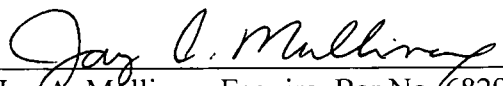
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CERTIFICATE OF SERVICE

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I, Jay A. Mullinax, hereby certify that I have served one (1) copy of the Appellant's Motion to Modify Order and Memorandum in Support on Ron Orlosky's counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, John R. C. Bowen, Esquire, Laughlin & Bowen, P.C., P.O. Drawer 21119, Hilton Head Island, SC 29925, Attorney for Respondent.

August 7<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928  
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2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

August 7, 2013

**VIA U.S. POSTAL SERVICE**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: Ron Orlosky v. The Law Office of Jay Mullinax  
Appellate Case No. 2012-212331

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellant's Motion to Modify Order and Memorandum in Support and Certificate of Service. We would appreciate it if you could please file the original and return a clocked copy in the self-addressed, stamped envelope provided.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:kem

Cc: The Honorable Roger M. Young  
Mr. John R.C. Bowen, Esquire  
Mr. Stephen A. Spitz, Esquire

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