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Jun 03 2024

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

Pet Helpers, Inc. Respondent,

v.

Janet L. Frisco Appellant,

v.

Melissa Susko Third-Party Defendant.

RESPONDENT’S MOTION TO STRIKE RECORD ON APPEAL

Respondent, by and through its undersigned counsel, hereby moves for an Order striking the Record on Appeal, Volumes I and II, served on Respondent on May 29, 2024, for Appellant’s failure to comply with Rule 210(c), SCACR by: (1) excluding from the Record on Appeal matters designated by Respondent and (2) including in the Record on Appeal matters not designated by Appellant. Moreover, Respondent hereby moves for an Order requiring Appellant to serve and file a Record on Appeal that complies with Rule 210(c), SCACR as set forth herein.

BACKGROUND

On July 11, 2023, Respondent filed its Second Amended Designation of Matter attached hereto as **Exhibit A**. On November 13, 2023, Appellant filed her Amended Designation of Matter,

attached hereto as **Exhibit B**. On May 29, 2024, Appellant served upon Respondent Volumes I and II of the Record on Appeal. This motion followed.

I. THIS COURT SHOULD STRIKE THE RECORD ON APPEAL AND ORDER APPELLANT TO FILE AND SERVE ANOTHER RECORD ON APPEAL BECAUSE APPELLANT EXCLUDED FROM THE RECORD EIGHT (8) OF THE MATTERS DESIGNATED BY RESPONDENT.

Pursuant to Rule 210(c), SCACR, Appellant must “include all matter designated to be included by any party under Rule 209” Here, Appellant partially excluded five (5) matters and completely excluded three (3) matters from the Record on Appeal despite Respondent’s designations as shown on **Exhibit A**:

1) **Respondent’s Designation Number 1** – Appellant excluded the exhibits to Respondents’ Complaint filed June 9, 2021 (R. Vol I. pp. 173-182). Specifically, Appellant excluded the following exhibits:

- a. **Exhibit A** - Appellant’s Relinquishment of a hound dog mix named “Toby”;
- b. **Exhibit B** - Email from Appellant dated May 11, 2021 threatening to call the Humane Society and PETA;
- c. **Exhibit C** - Email from Respondent’s counsel asking Appellant to cease and desist dated May 29, 2021; and
- d. **Exhibit D** - Spoliation notice from Respondent’s counsel to Appellant.

2) **Respondent’s Designation Number 2** - Appellant excluded the exhibits to the 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 (R. Vol II. pp. 353-358). Specifically, Appellant excluded the following exhibits:

- a. **Exhibit A** - Photograph of Appellant taken on June 5, 2021 holding a sign that “Corporate Greed Killed My Dog Toby;”

- b. **Exhibit B** - Photograph “Slim Jim” with his new owner taken on June 2, 2021;
 - c. **Exhibit C** - Photograph of “Slim Jim” microchip number; and
 - d. **Exhibit D** - Photograph of “Slim Jim” microchip registration form.
- 3) **Respondent’s Designation Number 8** - Appellant excluded the exhibit to Respondents’ Answer and Counterclaim filed July 9, 2021 (R. Vol. I pp. 193-195). Specifically, Appellant excluded the following exhibit:
- a. **Exhibit A** - Email from Appellant dated June 16, 2021.
- 4) **Respondent’s Designation Number 9** - Appellant excluded the exhibits to Respondents’ Motion to Consolidate filed July 9, 2021 (R. Vol. I pp. 47-49). Specifically, Appellant excluded the following exhibits:
- a. **Exhibit A** - Respondent’s Complaint in the matter of Pet Helpers, Inc. v. Janet Frisco, 21-CP-10-2682; and
 - b. **Exhibit B** - Appellant’s Answer in the matter of Pet Helpers, Inc. v. Janet Frisco, 21-CP-10-2682.
- 5) **Respondent’s Designation Number 16** - Appellant excluded the Amended Order on Respondents’ Motion to Consolidate filed January 6, 2022.
- 6) **Respondent’s Designation Number 18** - Appellant excluded the Amended Notice of Appeal filed on January 14, 2022 in Pet Helpers, Inc. v. Janet L. Frisco, Appellate Case No. 2022-000021.
- 7) **Respondent’s Designation Number 19** - Appellant excluded the exhibits to Respondents’ Motion for Sanctions for Appellant’s Failure to Comply with an Order of Discovery filed January 21, 2022 (R. Vol. I pp. 73-76). Specifically, Appellant excluded the following exhibits:

- a. **Exhibit A** - Email from Appellant dated July 25, 2021;
- b. **Exhibit B** - Email from Appellant dated December 17, 2021;
- c. **Exhibit C** - Email from Appellant dated January 18, 2022; and
- d. **Exhibit D** - Email from Appellant dated January 20, 2022.

8) **Respondent's Designation Number 23** - Appellant excluded Respondents' Memorandum in Support of Motion for Partial Summary Judgment filed April 12, 2022 and all exhibits as follows:

- a. **Exhibit A** – Appellant's Answers for Requests for Admission;
- b. **Exhibit B** – Affidavit of Melissa Susko, Director of Pet Helpers, including attachments thereto, to wit - Pet Helpers Dog Surrender Form and Email from Appellant dated May 11, 2021;
- c. **Exhibit C** – Affidavit of John Blaine, Employee of Pet Helpers; and
- d. **Exhibit D** - Email from Appellant dated May 11, 2021.

Based on Appellant's failure to comply with Rule 210(c), SCACR as set forth above, Respondent requests that this Court strike the Record on Appeal and order Appellant to prepare a Record on Appeal that includes all matters designated by Respondent, including exhibits to such matters.

II. THIS COURT SHOULD STRIKE THE RECORD ON APPEAL AND ORDER APPELLANT TO FILE AND SERVE ANOTHER RECORD ON APPEAL BECAUSE APPELLANT INCLUDED MATTERS NOT DESIGNATED BY APPELLANT.

Despite the requirements of Rule 210(c), SCACR, Appellant included matters in the Record on Appeal that Appellant did not designate as shown on **Exhibit B**. Specifically, in the Record on Appeal, Volume I, pages 196 through 209, Appellant included various photos, records, documents, and a police incident report that Appellant did not designate. Based on Appellant's

failure to comply with Rule 210(c), SCACR, Respondent requests that this Court strike the Record on Appeal and order Appellant to prepare a Record on Appeal that excludes the documents and other matters included in Volume I, pages 196 through 209.

CONCLUSION

Based on the foregoing, Respondent hereby moves this Honorable Court for an Order striking the Record on Appeal, Volumes I and II, and compelling Appellant to “include all matter designated to be included by any party under Rule 209” Rule 210(c), SCACR, to strike matters included in the Record on Appeal that were not designated by Appellant, and to stay the time for service and filing of final briefs pending this Court’s ruling on Respondent’s motion.

Respectfully submitted,

FUTERAL & NELSON, LLC

/s/Stephan V. Futeral

Stephan V. Futeral

SC Bar ID 66427

534 Johnnie Dodds Blvd., Suite 202

Mount Pleasant, South Carolina 29464

(843) 284-5500 Phone (843) 284-5501 Fax

sfuteral@charlestonlaw.net

Attorney for Respondent

and Third-Party Defendant

Dated: June 3, 2024

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Jul 11 2023

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

Pet Helpers, Inc..... Respondent,

v.

Janet L. Frisco..... Appellant,

v.

Melissa Susko Third-Party Defendant.

**RESPONDENTS' SECOND AMENDED DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 209, SCACR, Respondents propose that the following be included in the Record on Appeal:

1. Respondents' Complaint filed June 9, 2021
2. 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
3. *Ex Parte* Injunction and Restraining Order filed June 11, 2021
4. Respondents' Motion for Partial Summary Judgment filed on June 16, 2021 and Exhibits



5. Injunction and Restraining Order filed June 17, 2021
6. Appellant's Complaint filed June 17, 2021
7. Appellant's Answers to Requests for Admission dated July 7, 2021
8. Respondents' Answer and Counterclaim filed July 9, 2021
9. Respondents' Motion to Consolidate filed July 9, 2021
10. Affidavit of Blaine John filed July 28, 2021
11. Order on Respondents' Motion to Reconsider Granting 2nd Order for Injunction filed October 12, 2021
12. Appellant's 1st Motion to Amend filed October 19, 2021
13. Form 4 Order of Contempt filed November 5, 2021
14. Appellant's Second Objection to Respondents' Motion for a Partial Summary Judgment filed December 8, 2021
15. Appellant's Supplement for Second Objection to Respondents' Motion for a Partial Summary Judgment filed December 8, 2021
16. Amended Order on Respondents' Motion to Consolidate filed January 6, 2022
17. Order on Motions filed January 11, 2022
18. Amended Notice of Appeal Amended filed on January 14, 2022 in Pet Helpers, Inc. v. Janet L. Frisco, Appellate Case No. 2022-000021
19. Respondents' Motion for Sanctions for Appellant's Failure to Comply with an Order of Discovery filed January 21, 2022 and Exhibits
20. Appellant's 2nd Motion to Amend Answer Captioned Return to Defendant's Motion to Amend Answer Pursuant [sic] to SCRCF Rule 15(B) and Counterclaim for Malicious Prosecution filed February 28, 2022

21. Order Dismissing Appeal filed March 2, 2022 re: Pet Helpers, Inc. v. Janet L. Frisco, Appellate Case No. 2022-000021
22. Appellant's 3rd Motion to Amend Captioned Motion for Leave to Supplement Answer filed March 24, 2022
23. Respondents' Memorandum in Support of Motion for Partial Summary Judgment filed April 12, 2022 and All Exhibits
24. Third-Party Respondent Melissa Susko's Affidavit in Support of Motion for Partial Summary Judgment filed on April 12, 2022
25. Appellant's Memorandum in Opposition to Motion for Summary Judgment filed on April 21, 2022
26. Appellant's Affidavit filed April 21, 2022
27. Entire transcript from hearing held on April 22, 2022
28. Order on Motions filed May 5, 2022

I certify that this Second Amended Designation of Matter contains no matter which is irrelevant to this appeal.

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
(843) 284-5500 Phone (843) 284-5501 Fax
sfuteral@charlestonlaw.net
Attorney for Respondents

Dated: July 11, 2023

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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



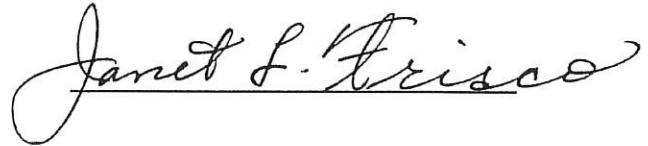
Appellant proposes the following be included in the Record of Appeal and certifies that this designation contains no matter which is irrelevant to the appeal:

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' 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 PERSUANT 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. AFFADAVIT 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 cursive script that reads "Janet L. Frisco". The signature is written in black ink and is positioned to the right of the date.

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

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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The Honorable Bentley D. Price

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

Pet Helpers, Inc.....Respondent,

v.

Janet L. Frisco.....Appellant,

v.

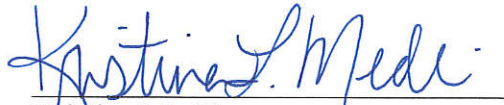
Melissa Susko Third-Party Respondent.

PROOF OF SERVICE

I certify that I have served the *Respondent's Motion to Strike Record on Appeal* by delivering the same via email and United States Regular Mail, postage prepaid, on June 3, 2024, addressed to the Appellant as follows:

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

FUTERAL AND NELSON, LLC



Kristina Medlin
Paralegal to Stephan V. Futeral, Esq.

Dated: June 3, 2024



Futeral & Nelson LLC

534 Johnnie Dodds Blvd., Suite 202
Mount Pleasant, South Carolina 29464
Tel: 843-284-5500 I Fax: 843-284-5501
charlestonlaw.net

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SC Court of Appeals

June 3, 2024

Ms. V. Claire Allen, Deputy
South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street
Columbia, South Carolina 29201

RE: Pet Helpers, Inc. v. Janet Frisco v. Melissa Susko
Appellant Case No.: 2022-000775

Dear Ms. Allen:

Enclosed please find our firm's check in the amount of \$50.00 for the filing fee related to *Respondent's Motion to Strike Record on Appeal* which was emailed to this Court for filing today, June 3, 2024. If there are any questions or should the Court need anything further, please let us know.

With kind regards, I am,

Sincerely,

Kristina Medlin
Paralegal to Stephan V. Futeral

KM/kgf

Enclosure

cc: Janet Frisco (via email and US Mail)