

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Common Pleas
Union County

Honorable Daniel D. Hall

Jane and John Smith individually and as Guardians of H.A. and H.A. individually,
Appellants,

v.

South Carolina Department of Social Services, South Carolina Department of
Children’s Advocacy, Tammy Gay Causey Dalsing, Edward Anthony Dalsing,
Respondents

Of whom Darryl & Ruth Armstrong is the Appellant.

Appellate Case No. 2023-001049

In the interest of a minor child.

MOTION FOR LEAVE TO MOVE FOR NEW TRIAL AND ALTERNATIVE RELIEF

Appellants, Jane and John Smith, Jane and John Smith individually and as Guardians of H.A. and H.A. individually, hereby motion this Court for leave to move for a new trial and alternative relief. The Smith’s so move because the record cannot be accurately reconstructed.

Grounds for Motion:

The summary judgment hearing was held in May 2023. It took more than one year for the record to attempt to be transcribed. (Transcript-2). Finally Legal Eagle made what appeared at first glance to be a transcription of the record. However, on August 6, 2024, Counsel for Appellant received an email from Legal Eagle stating the following:

“[a]nother party asked us to revisit this transcript due to the number of inaudibles (*sic*) in the transcript.”

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Legal Eagle then provided a corrected version of the transcript with substantially different content than what was previously provided. (Transcript -3) This was after Legal Eagle had already sent one corrected version due to the date of the hearing being wrong. (Transcript -1)

Upon further questioning, the undersigned learned that Attorney for Respondent Foster Parents (the Dalsings) reached out to Legal Eagle to inform them the transcript had “lots of notations of ‘inaudible’...and [other] portions of the transcript simply did not make sense, meaning that words were *misheard*.” (Emphasis added).¹ did gaping holes and numerous inaudible portions, such that the substance of the argument was unable to be ascertained. In turn, Legal Eagle then proceeds to use some different software to attempt to get a clearer version of the recording. Upon information and belief, Legal Eagle never reached out to the original court reporter, Ms. Felicia Smith, to get her input into the transcription. (see attached email to Legal Eagle to which no response has been received).

Between Transcript -2 and Transcript -3, the number of pages increased from 84 (-2) to 104 (-3). An additional twenty (20) pages off the same recording. And yet several lines from Appellant’s arguments, even entire lines, remain completely inaudible. See *e.g.* p. 37, line 25 from Transcript -3. The trial court had just asked a question and Appellant’s counsel gave a response to which the trial court indicated in return, “well why is that?” It is apparent by the discussion that this entire response by Appellant is bleeped out. In

¹ Email dated July 31, 2024 from Christopher Smith.

addition, in the Transcript -3, many parts of Respondent's answers are now more substantive than in Transcript -2. ²

In *Clements v Young*, 310 S.C. 73, 425 S.E.2d 63, (1992), there was a similar problem with recreating the record from an Administrative Law proceeding. In that case, the Appellant-*Clements*-moved to reconstruct the record. The Supreme Court granted the request and remanded the case to the special referee for an order reconstructing as much of the record as necessary for appeal. Likewise, in the case at hand, we have a transcript of the proceedings, however, it is twenty (20) entire new pages from the 2nd version to the 3rd version. Any way you slice it, that's a lot of verbiage that was just not picked up on the first go round at the least, or guessed at on the second bite, at best. Appellant deserves due process in the form of this Court knowing exactly what arguments were made and the responses as well as the trial court's ruling *and* reasoning. Unlike *Clements* when the case came back to this Court after remand back to the administrative court-where everyone agreed on the reconstruction of the record;a the Appellants in our instant case do not agree that the challenged transcript accurately reflects the record and statements made.

The Appellants request a remand to the trial court for a new trial and alternatively for the determination of whether the transcription was in error. Appellants, further request that the time be stayed to file Appellant's initial brief which is currently due August 15, 2024, not only to give this Court time to rule on this motion, but also to draft an initial brief which now complies with the new version of the transcript received.

Respectfully submitted,

² Substantive, but questionable whether accurate.

s/Melinda Butler

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August 12, 2024