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**Nov 08 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

\_\_\_\_\_  
APPEAL FROM THE BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2023-001519  
\_\_\_\_\_

James Reid and Sarania Reid,

Respondents,

v.

Carrie Gaston Henderson

Appellant.

\_\_\_\_\_  
RETURN TO APPELLANT'S MOTION RE: NEW EVIDENCE  
\_\_\_\_\_

COME NOW Respondents, in Return to Appellant's Motion re: New Evidence filed  
November 4, 2024.<sup>1</sup>

RETURN/REPLY

Appellant's Motion re: New Evidence seems to suggest there is new evidence that  
Respondents' trial counsel and/or appellate counsel have a conflict of interest. It is unclear what

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<sup>1</sup> On September 23, 2024, Respondent filed a Motion to Strike and/or Dismiss. On October 9, 2024, Appellant filed (but did not serve) a request for an extension of time to file a Return. Upon information and belief, the time to file and serve a Return has expired. Nonetheless, to the extent Appellant's instant motion is intended as a Return to Respondents' Motion to Strike/Motion to Dismiss, Respondents ask the Court to accept this as its Reply.

this conflict is alleged to be, or how it could have affected the trial court's grant of summary judgment. Respondents offer the below in response to their interpretation of Appellant's motion/filing.

1. In re: "New" Evidence: The consideration of new evidence is outside this Court's appellate jurisdiction. "This court's scope of review is limited by the evidence in the record on appeal." *State v. Bonilla*, 429 S.C. 253, 274, 838 S.E.2d 1, 11 (Ct. App. 2019). Rule 210(h), SCACR, provides: "Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact [that] does not appear in the Record on Appeal." This Court is not the forum in which to seek relief based upon new evidence. *See generally*, Rule 60(b)(2), SCRCRCP (providing for the opportunity to seek relief from a judgment based on newly discovered evidence in the circuit court). Moreover, even if this Court were the proper forum for Appellant to make the instant claim, the introduction of new evidence is limited to "newly discovered evidence which by due diligence could not have been discovered in time" to submit to the trial court. *See* Rule 60(b)(2), SCRCRCP. Here, all the "evidence" attached to Appellant's motion appears to be personal records and documents which were in her possession which, with due diligence, could have been timely discovered and/or submitted to the trial court. Thus, the evidence is not "new."

2. In re: Trial Counsel's Alleged Conflict of Interest: Appellant seems to suggest that Respondents' trial counsel has a conflict of interest because she conducted a title search on the subject property in or around 2008. However, even if true, a title search entails nothing more than a review of publicly recorded documents. Without further information the knowledge of publicly available information cannot create a conflict of interest.

3. In re: Appellate Counsel's Alleged Conflict of Interest: Appellant provides no evidence that the below-signed counsel or his law firm has a conflict of interest in representing

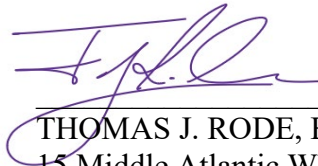
Respondents in this appeal. Moreover, the below signed counsel was retained only for the instant appeal and was not involved in this matter before the trial court. Therefore, whatever conflict Appellant has mistakenly perceived, could not possibly have influenced the trial court's ruling even if such conflict existed—which it does not. As an officer of the Court, the below-signed counsel warrants that neither he nor his law firm is aware of any conflict of interest as it relates to this matter.

### CONCLUSION

Respondents are uncertain how the proposed “new” evidence relates to any purported conflict of interest or how the proposed “new” evidence is relevant to the question of whether to grant Respondents’ Motion to Strike/Dismiss (if that is what is offered for). Further, because Respondents are uncertain of what, if any, error Appellant claims the trial court committed in this matter, Respondents are unable to appreciate what, if any, relevance the purportedly “new” evidence has on this appeal. Therefore, Respondent defers Appellant’s request to the sound discretion of the Court.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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PROOF OF SERVICE

I, hereby certify that the enclosed was served on the parties stated below by depositing a copy of the same in the U.S. Mail:

Carrie G. Henderson *pro se*  
316 East 35<sup>th</sup> St.  
Savannah, GA 31401

This 8<sup>th</sup> day of November, 2024.

THURMOND KIRCHNER & TIMBES, P.A.

BY: Kaitlyn Nobles  
Kaitlyn Nobles  
paralegal to Thomas J. Rode