

69765

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM DARLINGTON COUNTY  
J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE  
TRIAL COURT CASE NO. 2010-CP-16-0332 and 2007-CP-40-0576  
APPELLATE CASE NO. 2013-001461

RECEIVED

SEP 16 2013

SC Court of Appeals

*Ex Parte:* Douglas N. Truslow, Respondent,  
Tony R. Megna, Appellant

*In re:*  
James Anasti, Plaintiff  
Vs.  
Lance Goodwin, Willis Goodwin, Gina L. Anasti Lee,  
And Richland County of Clerk of Court Defendants

And

*Ex Parte:* Desa Ballard, Respondent,  
Tony R. Megna, Appellant

*In re:*  
Pee Dee Health Care P.A., Plaintiff.  
Vs.  
Estate of Hugh S. Thompson, Defendant.

**MOTION TO STRIKE BY RESPONDENT DESA BALLARD**

Respondent Desa Ballard, *pro se*, moves to strike Item 28 from Appellant's designation of matter, because that pleading was not considered by the trial court

during the proceedings below. Therefore, under the guidelines set forth in Rule 210(c), SCACR, it would be improper to include Item 28 in the record. In support of her motion, Ballard would show:

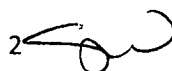
#### ARGUMENT

This is an appeal from orders of Judge Baxley assessing sanctions against Tony R. Megna in favor of Douglas N. Truslow and Desa Ballard after a joint hearing was held before Judge Baxley on May 16, 2012.

Before retaining counsel, Megna submitted a "Synopsis" to Judge Baxley by letter dated March 19, 2012, which is designated at Item 30. At the May 16 hearing, Mr. Megna appeared with counsel, Aimee Zmroczek, and Ms. Zmroczek handed up a Motion to Dismiss (Anasti) on behalf of Mr. Megna. That motion is designated as Item 27.

After the hearing, on or around May 29, 2012, Ms. Zmroczek *sua sponte* mailed to Judge Baxley (but did not file) a Supplemental Memorandum to the Motion to Quash (Anasti); the motion to quash had been filed March 9, 2012 (designation Item 24). It is the inclusion into the record of that Supplemental Memorandum, which is designated by Appellant as Item 28, movant disputes.

Judge Baxley did not request supplemental memoranda following the hearing, and by email to Judge Baxley the day I received the memorandum, I objected to its submission; I also asked for clarification as to whether additional memoranda had been requested. Judge Baxley's law clerk confirmed that

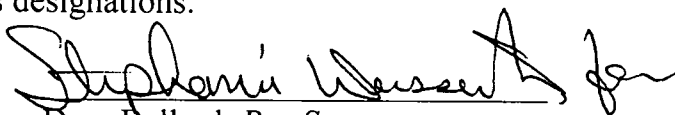


additional memoranda had not been requested<sup>1</sup>. (Exhibit A). A review of the transcript of the proceedings indicates clearly that Judge Baxley considered the record to be closed. (Exhibit B, lines 15-18).

Upon review of the Designations of Appellant, I called the erroneous inclusion of this memorandum in the record to the attention of new counsel for Appellants. (Exhibit C). Appellant's counsel refused to voluntarily withdraw the designation. *Id.*

It is respectfully submitted that the document designated by Appellant as Item 28 was designated in violation of Rule 210(c), SCACR, and should be stricken from the Appellant's Designations.

Therefore, for the reasons set forth herein, I respectfully request that Item 28 be stricken from Appellant's designations.



Desa Ballard, *Pro Se*

(signed in my absence by my partner)

BALLARD WATSON WEISSENSTEIN

Post Office Box 6338

West Columbia, South Carolina 29171

Telephone 803.796.9299

Facsimile 803.796.1066

Email: [desab@desaballard.com](mailto:desab@desaballard.com)

RESPONDENT, *PRO SE*

September 13, 2013

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<sup>1</sup> Mr. Megna's appellate counsel neither represented him at the time of the hearing on May 16, 2012, nor immediately thereafter, and was not privy to the communications with Judge Baxley. I thought perhaps they were unaware of Judge Baxley's communication of May 29, 2012.

**Desa Ballard**

---

**From:** Baxley, J. Michael Law Clerk (Mason W. King) <JBaxleyLC@sccourts.org>  
**Sent:** Tuesday, May 29, 2012 5:01 PM  
**To:** Desa Ballard; Aimee J. Zmroczek; Baxley, J. Michael Secretary (Jamie L. Capell); douglastruslow@truslowlaw.com  
**Cc:** Josey, J. Rene; pjlaw507@bellsouth.net; Mara Ballard  
**Subject:** RE: Response after viewing court submissions

We did not request additional briefs from the parties. This matter continues to remain under advisement, and we will be back in touch with the parties soon.

**Mason William King**  
Law Clerk to the Honorable J. Michael Baxley  
Circuit Court of the Fourth Judicial Circuit  
531 E. Carolina Avenue  
Hartsville, South Carolina 29550  
Telephone: 843.383.4114  
Fax: 843.383.4116  
[jbaxleylc@sccourts.org](mailto:jbaxleylc@sccourts.org)

---

**From:** Desa Ballard [<mailto:desab@desaballard.com>]  
**Sent:** Tuesday, May 29, 2012 3:08 PM  
**To:** Aimee J. Zmroczek; Baxley, J. Michael Law Clerk (Mason W. King); Baxley, J. Michael Secretary (Jamie L. Capell); [baxleyj@sccourts.org](mailto:baxleyj@sccourts.org); [douglastruslow@truslowlaw.com](mailto:douglastruslow@truslowlaw.com)  
**Cc:** Josey, J. Rene; [pjlaw507@bellsouth.net](mailto:pjlaw507@bellsouth.net); Mara Ballard  
**Subject:** RE: Response after viewing court submissions

Judge Baxley:

I'm confused. I was not aware that you had requested additional briefs. Did you request supplemental briefs from the parties? If so, we would like an opportunity to respond.

db

---

**From:** Aimee J. Zmroczek [<mailto:ajzlawfirm@gmail.com>]  
**Sent:** Tuesday, May 29, 2012 2:50 PM  
**To:** [JBaxleyLC@sccourts.org](mailto:JBaxleyLC@sccourts.org); [JBaxleySC@sccourts.org](mailto:JBaxleySC@sccourts.org); [baxleyj@sccourts.org](mailto:baxleyj@sccourts.org); [douglastruslow@truslowlaw.com](mailto:douglastruslow@truslowlaw.com); Desa Ballard  
**Subject:** Response after viewing court submissions

Dear Judge Baxley:

I appreciate you allowing me additional time to provide the Court a comprehensive view of the matters at bar based on evidence as opposed to the rhetoric and emotion of the parties. With the goal of bringing matters to a close with minimal additional conflict, my suggestions to resolve the issues are simple and straightforward. After reviewing the submissions to the court on behalf of the plaintiff, I respectfully request Mr. Truslow's motion for sanctions be denied. The substantive allegations he has made, and the documents he has provided, clearly demonstrate that the matters of which he complains occurred while the Court of Appeals had exclusive jurisdiction of the case. That Court considered and wisely denied his motion by unanimous decision. That ruling was un-appealed to the Supreme Court, is final, and is

## Exhibit A

the law of the case. Moreover, *res judicata* bars the issues Mr. Truslow actually raised and could have raised. Respectfully, we are duty-bound to follow the ruling of the Court of Appeals.

Second, the plain language of the "*Weisenstein emails*" [Court's Exhibit 1] require the dismissal of the Ms. Ballard's motion before this Court. The "*Weisenstein emails*" clearly contradict Ms. Ballard's motion, affidavit and assertions she made at the May 15 hearing.

I have attached and served on all parties via e-mail the following response, which I will also file and mail with the Clerk.

Aimee J. Zmroczek

1 the memo that he presented. I did not receive a copy of  
2 that.

3 **THE COURT:** All right. We will let counsel, Mr.  
4 Truslow, I will let you give that to counsel.

5 **MR. TRUSLOW:** Your Honor, she had not made an  
6 appearance. I have delivered it, and it is voluminous,  
7 delivered it to Mr. Megna and Mr. Matthews. They can  
8 confirm that they got it at their office. It was hand  
9 delivered, and it was hand delivered in an appropriate  
10 time. And, I don't know what she is referring to. If she  
11 never saw my memorandum, I don't know how she could have  
12 ever responded. He can confirm that he has got it.

13 **THE COURT:** Did you get a copy from your client?

14 **MS. ZMROCZEK:** I will verify that.

15 **THE COURT:** So noted. Then ladies and gentlemen,  
16 with that we will close this record for today. Thank you  
17 for your attendance. And the Court will be back in touch  
18 at a future time. This meeting is adjourned.

19 (WHEREUPON, this hearing was concluded at  
20 4:48 p.m. on Tuesday, May 15, 2012.)

21 -- END OF TRANSCRIPT --

**Desa Ballard**

---

**From:** Ariail E. King <aek@lbglegal.com>  
**Sent:** Wednesday, September 11, 2013 5:01 PM  
**To:** Desa Ballard  
**Cc:** James M. Griffin  
**Subject:** RE: Your designations

**Categories:** Purple Category

Desa, Jim and I have looked into this, but as far as we can tell, there is no order striking the memo, and while the email indicates that the judge did not ask for it, it does not indicate that it was rejected. Thus, we believe it was an appropriate designation.

Ariail E. King  
Attorney at Law  
Lewis, Babcock, & Griffin, L.L.P.  
P.O. Box 11208  
Columbia, SC 29211  
803-771-8000  
Fax 803-733-3534  
Email: aek@lbglegal.com  
website: <http://www.lbglegal.com>

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---

**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Monday, September 09, 2013 7:16 PM  
**To:** Ariail E. King; James M. Griffin  
**Cc:** douglastruslow@truslowlaw.com; Mara@desaballard.com; Terrie Stafford  
**Subject:** Your designations

You have designated Ms. Zmorczek's memo of 5-29-2012 (Item 28). That was rejected by Judge Baxley. Please advise if you will voluntarily remove that from your designations.

db

Desa Ballard  
Ballard Watson Weissenstein  
Telephone 803.796.9299  
Facsimile 803.796.1066

E-mail: [desab@desaballard.com](mailto:desab@desaballard.com), copy to [terrie@desaballard.com](mailto:terrie@desaballard.com)

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Fax: 843.383.4116  
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## Exhibit C

Second, the plain language of the "*Weisenstein emails*" [Court's Exhibit 1] require the dismissal of the Ms. Ballard's motion before this Court. The "*Weisenstein emails*" clearly contradict Ms. Ballard's motion, affidavit and assertions she made at the May 15 hearing.

I have attached and served on all parties via e-mail the following response, which I will also file and mail with the Clerk.

Aimee J. Zmroczek

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM DARLINGTON COUNTY  
J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE  
TRIAL COURT CASE NO. 07-CP-40-0576 AND 40-CP-16-0332  
APPELLATE CASE NO. 2013-001461

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Ex Parte: Douglas N. Truslow,	Respondent,
Ex Parte: Tony R. Megna,	Appellant,
In re:	
James Anasti,	Plaintiff,
v.	
Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, And nd Richland County Clerk of Court,	Defendants.

And

Ex Parte: Desa Ballard,	Respondent,
Ex Parte: Tony R. Megna,	Appellant,
In re:	
Pee Dee HealthCare, P. A.,	Plaintiff,
v.	
Estate of Hugh S. Thompson,	Defendant.

---

PROOF OF SERVICE

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I, Mara T. Ballard, the undersigned employee of Desa Ballard, PA d/b/a  
Ballard Watson Weissenstein, do certify that I have served a copy of the

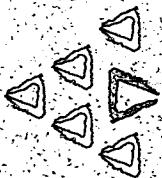
Respondent Desa Ballard's Motion to Strike on September 13, 2013, by causing a copy of same to be deposited in the US Mail, proper postage prepaid addressed as follows:

Mr. Douglas N. Truslow, Esquire  
Post Office Box 1465  
Columbia South Carolina 29202

James M. Griffin, Esquire  
Ariail E. King, Esquire  
Lewis Babcock & Griffin, LLP  
1513 Hampton Street  
Columbia South Carolina 29201

  
Mara T. Ballard

West Columbia, South Carolina  
September 13, 2013



**Ballard  
Watson Weissenstein**  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III  
Stephanie Weissenstein  
*Attorneys at Law*

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

Friday, September 13, 2013

69765

*Via U.S. Mail*

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED  
SEP 16 2013  
SC Court of Appeals

Re: *Ex Parte: Desa Ballard, Ex Parte: Tony R. Megna in re: Pee Dee healthCare v  
Thompson*  
Case No. 2013-001461

Dear Ms. Kitchings:

Please find enclosed for filing an original and seven (7) copies of Respondent Ballard's Motion to Strike in the above referenced matter. Also enclosed is our Proof of Service upon all known counsel of record and our motion filing fee of \$25.00. Please return one (1) file stamped copy to us in the enclosed self-addressed, stamped envelope.

Because the resolution of this motion may affect the content of the Initial Brief of Respondents, I would ask that the time limits for filing Initial Briefs of Respondent be held in abeyance until this motion is decided.

Thank you in advance for your time and attention to this matter. With kindest regards,  
I am,

Sincerely yours,

Desa Ballard

c: *(Via US Mail and Email)*  
James M. Griffin, Esquire  
Ariail E. King, Esquire  
Douglas N. Truslow, Esquire