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Apr 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Curtis Coltrane, Special Referee

Appellate Case No. 2024-002209

Kevin Smith, Trent Smith, Cynara Smith Love,
Wayne Smith, and Valeria Woods Tuten, Appellants,

v.

Charles Woods, Respondents.

**APPELLANT'S MOTION TO STRIKE MATERIAL CITED
WITHIN RESPONDENT'S REPLY TO APPELLANT'S RETURN
TO RESPONDENT'S MOTION TO STRIKE**

Appellants Kevin Smith, Trent Smith, Cynara Love, Wayne Smith, and Valeria Tuten
"Appellants") move this Court pursuant to Rule 269, SCACR, for an order directing that the
following document be excluded from Respondent Charles Woods' ("Respondent") Reply to
Appellant's Return to Respondent's Motion to Strike:

1. Affidavit of Karl Twenge, dated April 10, 2025, with Exhibit B

This document, which provides statements that cannot be verified for truthfulness,

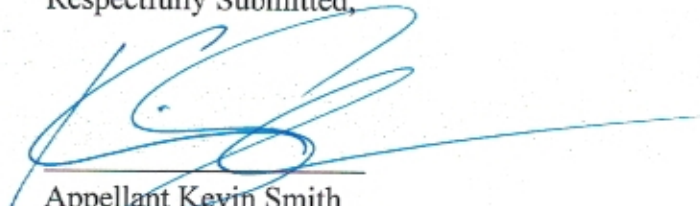
was included solely to besmirch the reputation of Appellant Kevin Smith with the malicious intent to obstruct the right to appeal of all Appellants.

In addition to the exclusion of this document from the Respondent's Reply, Appellants seek an order directing the excluded materials not be referred to nor cited in the Respondent's brief and excluded from the Record on Appeal when it is prepared.

The Appellant's motion is addressed in greater detail in the supporting memorandum filed herewith.

The Appellants respectfully request that all deadlines be held in abeyance until this motion is adjudicated and that the Court strike Respondent's Reply to Appellant's Return.

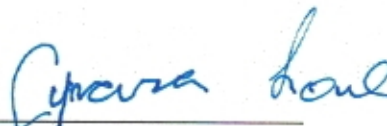
Respectfully Submitted,



Appellant Kevin Smith
10590 Castlebar Glen Dr
Jacksonville, FL 32256
Phone: 813.368.7589
Email: uscsmith@hotmail.com



Appellant Trent Smith
2011 Firetower Rd
Pineland, SC 29934
Phone: 843.726.5288
Email: trentandkimsmith@hotmail.com



Appellant Cynara Love
211 Bulls End
Ridgeland, SC 29936
Phone: 843.726.7400
Email: cnsmith23@hotmail.com



Wayne Smith
1591 Firetower Rd
Pineland, SC 29934
Phone: 843.726.8450
Email: uscsmith@hotmail.com

Valeria V Tuten

Valeria Tuten
166 Elbow Rd
Varnville, SC 29944
Phone: 843.726.3730

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**MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION
TO STRIKE MATERIALS CITED WITHIN RESPONDENTS
REPLY TO APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO STRIKE**

This is an appeal from an order by the Special Referee Curtis Coltrane granting the Respondents' Complaint for adverse possession of property from co-tenant Appellants.

As required by Rule 240(e), SCACR, Appellants Kevin Smith, Trent Smith, Cynara Love, Wayne Smith, and Valeria Tuten ("Appellants") filed a Return to Respondent Charles Woods' ("Respondent") Motion to Strike Appeal. Respondent's Reply to Appellant's Return to Respondent's Motion to Strike included an affidavit of attorney Karl Twenge, dated April 10, 2025, as Exhibit A.

Attorney Twenge states within the affidavit that “After the conclusion of the trial on November 8, 2024, I witnessed Appellant Kevin Smith approach the court reporter and order a copy of the transcript of the November 8, 2024 portion of the trial.” Attorney Twenge offers no evidence to support this statement.

Exhibit B of Mr. Twenge’s affidavit, dated April 10, 2025, includes an invoice that he received from Coastal Court Reporting, Inc. dated November 11, 2024. Using the contact number listed on the invoice, Appellants Kevin Smith, Cynara Love, and Trent Smith contacted employees of *Coastal Court Reporting, Inc.* Lori Pearson, Susan Arnold, and Charles Nussbaum (Owner and President of *Coastal Court Reporting, Inc.*) between April 11, 2025 and April 17, 2025. No employee of *Coastal Court Reporting, Inc.* would provide Appellants the name or contact information of the court reporter present in the November 8, 2024 hearing. Additionally, no contact with the court reporter on behalf of Appellants has been made by employees of *Coastal Court Reporting, Inc.* to verify attorney Twenge’s statement. Appellants would require an order from the Court to disclose identify of the court reporter referenced in the affidavit of attorney Twenge to validate his statement.

During a phone conversation with Kevin Smith and Cynara Love, April 17, 2025, at 10:30am EDT, Charles Nussbaum (Owner and President of *Coastal Court Reporting, Inc.*) stated that no record of a transcript order by Kevin Smith or any Appellant is available. Attorney Twenge states within the affidavit that “A few days later, I called the court reporter’s office. I was informed that Mr. Smith canceled his request for a transcript of the November 8, 2024 portion of the trial.” Mr. Twenge offers no evidence to support this statement.

During a phone conversation with Kevin Smith and Cynara Love, April 17, 2025, at 10:30am EDT, Charles Nussbaum (Owner and President of *Coastal Court Reporting, Inc.*) stated that he has no recollection of a conversation with Mr. Twenge at any time, in which Mr. Twenge was informed of request cancellation. Mr. Nussbaum stated that no record of Kevin Smith cancelling an order for transcript is available.

Attorney Twenge has submitted a sworn affidavit with statements that cannot be confirmed as truth. *Coastal Court Reporting, Inc.* has refused to disclose the name or contact information of the court reporter to verify this statement. The statements are clearly intended to smear the integrity of Appellant Kevin Smith

Attorney Bess DuRant demonstrates the malicious intent of the affidavit by referencing attorney Twenge's unsubstantiated claim within Reply to Appellants Return to Respondent's Motion to Strike (page 2, footnote 1), in which she states "Interestingly, Appellant Kevin Smith did order a copy of the November 8, 2024 transcript". There is no evidence of an order by any appellant. The intent of the affidavit by attorney DuRant is to slander Kevin Smith's integrity by insinuating Kevin Smith has not been truthful.

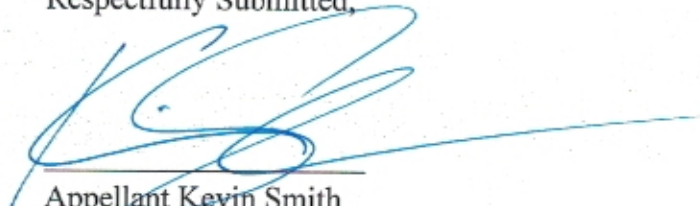
The affidavit provides no evidence to support attorney Twenge's statement and research to substantiate the statement has proven to be futile as the President of *Coastal Court Reporting, Inc.* has indicated. Attorney Twenge and Attorney DuRant should be held to the highest standard of integrity, which certainly does not allow for submission of unsubstantiated statements with the sole malicious intent to besmirch the reputation of an Appellant while attempting to deny the right of appeal.

If Appellant Kevin Smith were to make an unsubstantiated statement to the court, perjury would no doubt be investigated. Attaching Esquire to one's name should not grant any exception to this same standard.

Respondent presented attorney Twenge's unsubstantiated affidavit, not within the Respondent's filed motion, but rather within the Reply to Appellants Return, to deny Appellant an opportunity to respond through a return. This questionable tactic should be noted and considered by the Court.

Per rule 260 SCACR, where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. Appellants respectfully request that attorney Karl Twenge's affidavit dated April 10, 2025 be stricken from reference and the Reply to Appellant's Return be determined frivolous in nature. Appellants pray the court impose such sanctions as deemed necessary.

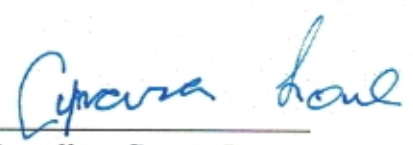
Respectfully Submitted,



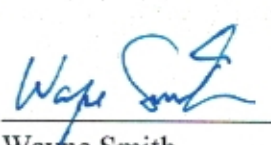
Appellant Kevin Smith
10590 Castlebar Glen Dr
Jacksonville, FL 32256
Phone: 813.368.7589
Email: uscsmith@hotmail.com



Appellant Trent Smith
2011 Firetower Rd
Pineland, SC 29934
Phone: 843.726.5288
Email: trentandkimsmith@hotmail.com



Appellant Cynara Love
211 Bulls End
Ridgeland, SC 29936
Phone: 843.726.7400
Email: cnsmith23@hotmail.com



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Valeria V Tuten

Valeria Tuten
166 Elbow Rd
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Phone: 843.726.3730

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PROOF OF SERVICE

I, Appellant Kevin Smith, do hereby certify that on April 21, 2025, I served a copy of **APPELLANT'S MOTION TO STRIKE MATERIALS CITED WITHIN RESPONDENTS REPLY TO APPELLANTS' RETURN TO RESPONDENT'S MOTION TO STRIKE** in the above-captioned case on **Bess Jones DuRant** by First Class mail addressed to Bess J. DuRant, Sowell and DuRant, 1325 Park St. Ste 100, Columbia, SC 29201.



Appellant Kevin Smith
10950 Castlebar Glen Dr
Jacksonville, FL 32256
Phone: 813.368.7589
Email: uscsmith@hotmail.com

April 21, 2025
Jacksonville, Florida