

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master in Equity

Case No. 2023-CP-37-00620

Ex Parte: Christopher A. Pierce, Appellant

Foxwood Hills Property Owners Association, Respondent,

v.

Michael D. Jewell, Lori Marcengill, South Carolina Department of Motor Vehicles,
Defendant's,

of which Michael D. Jewell is an Appellant.

Case No. 2025-000223

INITIAL BRIEF OF APPELLANTS

TABLE OF CONTENTS

Table of Authorities..... 2
Statement of Issues on Appeal..... 3
Statement of the Case..... 4
Argument.....7,9,10
Conclusion.....19

TABLE OF AUTHORITIES

CASES

1. Avila v. Standard Oil Co. (1985) 167 Cal.App.3d 441, 446.)

Summary Judgment may not be applied if a genuine issue of material fact remains in dispute. Summary judgment or adjudication is only appropriate when no material issue of fact exists and where the record establishes as a matter of law that a cause of action asserted cannot prevail

2. United States v. Stein, No. 16-10914 (11th Cir. 2018)

Self serving Affidavit creating dispute as to material fact even if self serving

3. Kiekel Vs. Four Colonies HOA Kansas Appellate Court

4. Pelzer Vs. Seabrook Island HOA SC Circuit Court

5. Lovering Vs. Seabrook Island HOA Circuit Court

6. Pierce Vs. Foxwood Hills Property Owners Association Bankruptcy Court

STATUTES AND RULES

1. SCRPC 19
2. SCRPC 56
3. Lis Pendens Statute of South Carolina
4. Seventh Amendment US Constitution Bill of Rights

STATEMENT OF ISSUES ON APPEAL

1. **Motion for Adjudicative Joinder** - South Carolina Rules of Civil Procedure 19. Did Judge Kervin err in his use of judicial discretion to deny intervenor Ex Parte Appellant Pierce from joining the foreclosure lawsuit given he is part owner of the property in the foreclosure lawsuit?
2. **Motion for Jury Demand** - Did Judge Kervin err in denying Appellant Jewell's Motion for Jury Demand, and was it the same as his earlier motion to refer the case back to Common Pleas Court from Master in Equity Court?
3. **Motion For Summary Judgement** - Did Judge Kervin err in failing to recognize that numerous issues of genuine material fact were in dispute between appellant Jewell and Respondent Foxwood Hills Property Owners Association and improperly grant Summary Judgment to Respondent Foxwood Hills Property Owners Association?

STATEMENT OF THE CASE

This case under appeal was a foreclosure case brought by the Respondent Foxwood Hills Property Owners Association ("FHPOA") against Appellant Michael D. Jewell ("Jewell") for the purpose of alleged recovery of dues, fines and associated charges totalling over \$18,000 on Final Judgment January 2, 2025. The case was initiated in August 17, 2023 and continued until December 5, 2024 where upon an Order granting Summary Judgment was issued against Mr. Jewell. Christopher A. Pierce, Ex Parte Appellant ("Pierce") during the same hearing sought to intervene in the case as a party defendant under South Carolina Rules of Civil Procedure ("SCRCP") 19 and was denied admission. A Motion for Jury Demand was also included as introduced by Jewell. Lastly, a Motion to Compel was also to be heard from 6 months prior to the December 5th hearing before the presiding judge in Master in Equity Court, Judge Kirven, but was delayed in order to allow for a sale of the property. However this sale never was transacted due to unknown reasons. Additionally the Motion to Compel was never tabled by the judge.

There were various motions filed throughout the case and initially the case was improperly transferred to Master in Equity Court with a false Affidavit from John Kay, representing FHPOA. This Affidavit indicated that Mr. Jewell had failed to Answer when in fact he had answered and had ongoing correspondence for settlement with Hutchens Law Firm representing FHPOA. The Affidavit was corrected only after Jewell noticed the Clerk of Court in Master in Equity Court.

Later, another false Affidavit was filed by Hutchens Law Firm itemizing charges Jewell owed and signed by Sonya Hale the President of FHPOA. However this Affidavit was also false in that it claimed that Jewell had a mortgage and loan with FHPOA which was not true, as well as various charges that were not supported and will be discussed later.

Hutchens Law Firm improperly answered the Discovery request he filed only answering about 10% of the requirements in the Discovery. This led to Jewell filing a Motion to Compel, which was never heard by Master in Equity Court for reasons unknown.

Jewell also filed a Motion for Jury Demand because he felt he would have better adjudication of the facts in the case with a body of his peers.

Pierce filed a motion for Adjudicative Joinder seeking to join in the case as a party defendant having recently acquired a 1/3 property interest. Pierce was denied admission to the case as a party defendant because the judge believed he had joined too late in the case to be joined.

However Pierce believed he had this right and the decision was arbitrary and an abuse of judicial discretion.

FHPOA filed a Motion For Summary Judgment through their attorney John Kay alleging that there was no genuine issue of material fact in dispute in accordance with SCRCP 56 in the case and that Summary Judgment was appropriate. They offered a false affidavit to support their claim as mentioned above. Jewell responded with his own affidavit. This motion was originally scheduled in May 2024, but was delayed due to settlement proposal and attempted sale of the

property.

Lastly , Jewell filed a Notice of Appeal timely On or about February 1, 2025 after receiving a Final Order sent January 2, 2025. Since that time both he and Pierce have been preparing their appeal brief involving the case.

Jewell was also the sole owner of property at 428 Odessa Ave, Westminster, SC upon the start of the Circuit Court action 2023CP3700620 in August 2023. In October 2024 Jewell decided to sell a 1/3 interest in the property to Pierce for \$500 and a promise of additional work and capital for renovation of the property. On December 5th, 2024 a motion for Adjudicative Joinder was brought by Pierce seeking to protect his interests under SCRCP 19A2 (ii). Pierce sought to join as a party defendant in order to protect his interest. The trial judge denied his joining based on a Lis Pendens that had been filed by FHPOA upon initiation of the lawsuit in September 2023. Pierce argues that a Lis Pendens, which indicates the property is subject to a legal action does not preclude him from joining in the action. See Transcript pages 3-10. Pierce believes a liberal interpretation for joining under South Carolina Supreme Court opinion should allow him to join clearly to protect his interests, as well as language in SCRCP 19. Those interests can only be protected by Pierce joining the case to defend his interests in his property. Nothing in the Lis Pendens statutes requires that he give up his interests in this property.

Jewell filed a motion for Jury Demand also presented at the December 5th, 2024 hearing. This motion was denied as Transcript pages 10-14 indicates. The reasoning of the court was that a timely request had not been made under SCRCP 38 and that under state law, equitable courts do

not provide for inclusion of a jury. Jewell argues that US Constitution gives him the right for a jury under the Seventh Amendment.

Lastly, a Motion For Summary Judgment was made by FHPOA through their attorney John Kay. The primary argument made was that there was no genuine material issue of fact in dispute under SCRCP 56 and that therefore Summary Judgment was appropriate. Both litigants Jewell and FHPOA offered Affidavits. Jewell offered his Affidavit which clearly disputed Plaintiff's Affidavit and clearly established that numerous issues of fact were in dispute. Therefore Summary Judgment cannot be granted, see United States v. Stein, No. 16-10914 (11th Cir. 2018). In this case the judge makes clear that the Affidavit offered in opposition to Plaintiff's Summary Judgment motion is evidence to establish a dispute as to material fact. He states the following, "Self serving Affidavit creating dispute as to material fact even if self serving." Therefore Summary Judgment should have been denied, not granted.

ARGUMENT

Motion for Adjudicative Joinder - South Carolina Rules of Civil Procedure 19. Did Judge Kervin err in his use of judicial discretion to deny intervenor Ex Parte Appellant Pierce from joining the foreclosure lawsuit given he is part owner of the property in the foreclosure lawsuit?

STANDARD OF REVIEW

Abuse of Judicial Discretion

Motion For Adjudicative Joinder

As indicated in the facts of the case, Pierce filed a Motion for Adjudicative Joinder under SCRCP 19 for Hearing December 5, 2024. Basically this involves the challenge to the the joining by John Kay referring to the first part of the requirements which is not relevant because it says either or in terms of rule 19 and the important part is that I need to join because without my presence I would risk having my property interests compromised by failure to protect them in court, and that's exactly what happened with Mike Jewell representing himself. I lost my interest, he lost, causing me to lose an interest in the property and a judgment being put on the property so therefore I must be included to protect my interests under SCRCP 19 a2(i) ("he claims an interest related to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect the property"). The importance of having my interest protected by me being included my personal interest in the property are protected by me being included in the lawsuit and there's no indication of any Lis Pendens law that would preclude me from joining after a year as indicated by opposing counsel. On page 9 of Transcript the judge states "well the problem is the Lis pendans is filed and there's a reason those things are filed in connection with the foreclosure proceedings and the statute basically provides that anybody who acquires an interest in the property after with expenses filed takes subject to the action and really don't have to be party. The issues in the case involved assessments against this property it doesn't really matter who owns it it's a matter of whether the assessments are owed or not and it enforcement to take action against that property by selling it so your motion is denied and you have have a seat back in the back." I disagree with the judges opinion I think it's an opinion it's not based on law it's based on a view, abuse of

judicial discretion stating that I cannot join after a year it's arbitrary and capricious and is a poor judicial decision. I should be joined absolutely I met the requirements of rule 19 a (2). In that I must be included because in order to protect my interest to the property otherwise it'd be an adverse decision without my being there and that's exactly what happened.

I ask the Appeals Court to allow me to join and then to remand the case back to the Circuit Court where upon I have a right to a Final Hearing in Master in Equity Court and I can present my case as to protection of my property interest of 33.3% in the property. I would further add that FHPOA lawyer John Kay's assertions and speculation about my reasons for joining are irrelevant. speculative and without merit. Mr Jewell deeded a third of his property to me and I wish to protect my interest it's as simple as that. I ask the Appeals Court to reverse on the Final Order issued January 2, 2025. Thank you for your consideration of my position.

ARGUMENT

Motion for Jury Demand - Did Judge Kervin err in denying Appellant Jewell's Motion for Jury Demand, and was it the same as his earlier motion to refer the case back to Common Pleas Court from Master in Equity Court?

Standard of Review

De Novo

Motion For Jury Demand

This Motion is heard in pages 10-14 of the transcript.

Judge Kervin argues that he already had a motion to move the case back to Circuit Court and that's different than asking for a jury but in reality it is asking for a jury because in Common Pleas Court he can ask for a jury and he never had that opportunity because he was moved into Master on in Equity Court based on a false affidavit filed by the plaintiff's attorney John Kay. Transcript page 12 ll 18-21 seem to indicate that the judge can refer a case for jury. Therefore he should have that opportunity that he never had because there was a false affidavit filed. Transcript Page 13 ll 3-6. Jewell was referred to Master in Equity Court with a false affidavit filed by FHPOA John Kay stating he was in Default for not Answering when in fact he was not and had clearly Answered FHPOA Complaint. Had Kay not filed the false Affidavit Jewell would have had the right to ask for Jury Trial while still in Common Pleas Court. His due process rights were clearly violated. He also asserts rights under the Seventh Amendment US Constitution.

ARGUMENT

Motion For Summary Judgement - Did Judge Kervin err in failing to recognize that numerous issues of genuine material fact were in dispute based on SCRC 56 between appellant Jewell and Respondent Foxwood Hills Property Owners Association and improperly grant Summary Judgment to Respondent Foxwood Hills Property Owners Association?

Standard of Review

De Novo

Summary Judgment

Failure by Judge to Table Motion to Compel

In both Appellant's Response to Summary Judgment and Affidavit Jewell makes clear that he needs the Motion to Compel to be heard before the Summary Judgment hearing (see exhibits) in order to be made aware of all the facts surrounding the case since there are numerous issues of genuine material fact in dispute. Additionally, most (about 90%) of the Discovery questions were left unanswered by the Respondent (see Defendant's Second Amended Discovery Request). Questions 7, 8, 13 were critical to his defense as were others. Specifically to defend against the specific charge amounts. Without this Discovery answered Jewell was at a serious disadvantage during the Summary Judgment hearing and could not properly defend himself during the Summary Judgment hearing. Jewell's due process rights were violated and the result was the Respondent prevailed in his Summary Judgment motion. This was a clear due process violation and Jewell needed to have the Motion to Compel rescheduled in a separate hearing where upon he would have then been able to have all facts and Discovery available to him. He feels that only then can he properly defend in a Summary Judgment hearing. His due process rights clearly violated as not all the facts were known to him from his Discovery. Therefore any hearing for Summary Judgment is completely out of order by Judge Kervin. The Summary Judgment hearing should never have even been scheduled until a Motion to Compel hearing was scheduled separately before the Summary Judgment hearing.

Defendant Affidavit Clearly Disputes the Facts of Respondent

Appellant Jewell's Affidavit clearly contradicts material facts made in Respondent's Affidavit. Yet the hearing judge appears to ignore his Affidavit while accepting respondents's Affidavit. South Carolina Rules of Civil Procedure 56 clearly state that a Defendant party may not dispute Summary Judgement on allegations alone but must use sworn Affidavit(s) to contradict plaintiff in order to be successful in defeating the motion. Jewell clearly met this standard in his challenge, yet Judge Kervin seemed to ignore both his Affidavit and Response to Summary Judgment pleadings. This opinion is supported by federal court in, United States v. Stein, No. 16-10914 (11th Cir. 2018) Judges opinion, "Self serving Affidavit creating dispute as to material fact even if self serving." Additionally the following case law also supports that if a genuine issue of material fact remains in dispute that Summary Judgment cannot be granted. Clearly many facts in defendant's Affidavit are in direct contradiction to that of Plaintiff as indicated Avila v. Standard Oil Co. (1985) 167 Cal.App.3d 441, 446.) Therefore trial judge erred in failure to recognize that this affidavit being sworn evidence directly contradicts Plaintiff and therefore numerous genuine issues of material fact remain in dispute as specified in Defendant's Affidavit. Summary Judgment should have been denied, since Jewell satisfied requirements under SCRCPP 56 (e) and Judge Kervin apparently disregarded Defendant's Affidavit.

Inconsistent Application of Judicial Discretion

During the Summary Judgment hearing Jewell consistently challenges fines and the procedures involved in assessing those fine, yet the judge, for example, seems to ignore his challenges to

finer and other charges. Jewell met with Foxwood Hills Property Owners Association Board members in a good faith attempt to resolve these disputes (an acceptable method of appeal). The judge and opposing counsel disputed that he met the standards for appeal of the charges in that he didn't file a written appeal. Yet during these meetings he did both orally and in writing challenge the charges. Several witnesses observed this. Yet, the judge simply accepts that he had not met the standard for appeal based on Respondent's attorney stating that Jewell had not, while offering no proof whatsoever as it is his burden to do so. Transcript P.31-32. Meanwhile in a similar case in a neighbor nearby, Wayne Raffaldt 2023CP3700703, he challenged the fines and the same judge, Judge Kirven ruled that the fines were to be removed based on the Worksheet he prepared during Final Hearing. Jewell considers this to be abuse of judicial discretion that a similar defendant challenging the dues had over \$28,000 in frivolous fines removed while Jewell's almost \$6000 would not be removed. This seems unfair and is arbitrary and capricious in application of judicial discretion. Jewell asks that fines and other charges be removed similarly to what happened with Mr. Raffaldt and that clearly the frivolous application of fines qualifies as a genuine issue of material fact in dispute and therefore Summary Judgement should have been denied.

Inconsistent amounts due

Page 14 and page 16 of Plaintiff Affidavit offer conflicting amount of total dues due on page 14 it's about \$16,003.72 on page 16 it's 16,983.72. on the final order it's \$18,000 and that's a moving

target for the defendant who doesn't know what the real amount due is and they also provide summaries of what the dues are owed not individual itemized dues and other charges so defendant is left wondering what he really in fact does owe.. And there is a genuine issue of material fact in dispute based on that.

Question of ownership and jurisdiction of bankruptcy ruling and final decree

Defendant doesn't know whether or not the property was owned by Stacy Beckett when she was listed on the bankruptcy final decree in fact Mr Jewell believes that he was the owner at that time yet she was listed therefore he's not required and bound by the bankruptcy final decree which demands that he pay budget base billing and by law based dues and he doesn't feel he's responsible for that.

Mr Jewell goes on to describe that Stacy Beckett did not own property when the lawsuit was filed or the final decree issued in the bankruptcy filing. Transcript Pages 15-17, 19. So the issue of ownership and whether or not he is bound by Bylaws is in dispute. Summary Judgment not possible when a genuine issue of material fact is in dispute.

Dispute of the fines charged related to condition of the property

On page 20 of transcript defendant discusses the condition of his property and describes that he kept the yard in consistent good condition not only that that everybody in the area appreciated his

yard on Facebook he had numerous, comments of appreciation for his yard. Mr Jewell offered to show pictures to the court of the condition of the yard which is in good quality. His only caveat is that the yard conditions suffered due to the tropical storm Helene that passed through the area. He was also waiting on FEMA relief assistance. Jewell makes clear that his yard was in good condition in his affidavit which is sworn evidence and that he had numerous supporting friends and people on Facebook that agreed his yard was in good condition. Only the POA in the area was disputing the condition of the yard. The belief is that since he believes his yard wasn't in good condition that's a genuine material issue of a fact that is in dispute and that he has brought this up in his affidavit and had support of friends and other the thought otherwise the condition was was good therefore as this is disputed factually this argument alone should defeat the summary judgment argument in that it's disputed about the yard condition materially disputed. Mr Jewel also went through a process where he met with the Board of FHPOA to discuss the fines and dues and other charges and attempted to appeal the decision by these security people labeling his yard to be in violation of the covenants or restrictions. Furthermore he is disputing that they have any right to charge him for fines because the restrictions on his property do not allow a charge of \$33.33/day that charges in the Bylaws and the charge for a restriction violation in the bylaws it requires a lawsuit to be filed specifically relating to it but not any monetary damages charged against him and since the bylaws and restrictions are in dispute the restrictions should supersede the bylaws and they're trying to alter the restrictions with their their by law charge of \$33.33 they are restricted from charging this amount since it's not in the restrictions. The judge also indicates that Mr Jewell owes \$16,900 that's different than what has been said in other sections of the summary judgment matter.

Mr Jewel also on page 21 brings up further conflicts of charges that are all over the place for the total amount he owes and disputes factually what amount is truly due to the POA.

He also indicates clearly in the middle of the paragraph that he went down there and tried to meet with the Board to talk to them to explain the issue of the fines and disputes on the dues so he attempted to follow a recognized appeal process of executive session to meet with board members to try to resolve it's disputes on both fines and dues and other amounts charged.

Dues in dispute

Jewell offered to pay his fees for dues but he never indicated that he received any amenities and indicates, "how am I supposed to pay for something that I ain't never been offered" so it's clear from his testimony that the POA never offered him any amenities so since he was never offered anything he never paid for anything. Since it's a contract both sides have to perform and since the POA didn't offer amenities he's not under any obligation to pay for something he did not receive. He further indicates on page 21 that the proper remedy for restriction violation halfway down the page is to handle by taking me to court not by fining me everyday he clearly identifies the process in the restrictions versus the bylaws. And that the restrictions preempt the bylaws . This based on Kiekel vs Four Colonies HOA, Pelzer vs. Seabrook Island, Lovering vs. Seabrook Island, and

Christopher Pierce vs FHPOA.

Appeal process

On page 24 and 25 of the transcript the judge makes clear that there's an appeals process to follow and he believes that Mr Jewell did not follow this process however he did and then he actually tried to meet with board members to discuss it and he did file a written appeal but he did in writing meeting with a board member and submitted written documentation to the board about him disputing the amounts charged including dues fines and other charges. Mr Jewell did contact the board and try to meet with them to resolve the matters and question including dues fines and other charges on several occasions and has witnesses including affidavits to corroborate these meetings and discussion.

Charging dues and assessments by POA

Court view on the right to charge assessments stating they do however have specific charges are in dispute by Mr Jewell. Although defendant Mr Jewell recognizes the POA does have some rights to charge dues and assessments providing the meeting their part of the contract in providing amenities. And Mr Jewell disputes that they've provided amenities for the payments required. Mr Jewell specifically questions the actual charges and whether they're accurate but does not necessarily disagree with that they have some rights to charge based on the governing documents. But most of it is in dispute because he's being over charged. The POA does not have

a blanket right to charge anything they want and they violated the the integrity of restrictions and bylaws being the restrictions being primary over the bylaws they've been trying to put by laws in place that override the restrictions and that's the violation of law case law well settled Kiekel versus Four Colonies HOA and appellate cases in South Carolina including Seabrook Island versus Pelzer and Lovering versus Seabrook Island POA. Lastly Christopher Pierce versus Foxwood Hill's POA in US bankruptcy Court. In that case Pierce prevailed.

Appeals Process at FHPOA

Now on transcript page 28, 31 it's discussed of whether there's a formal appeals process in place at FH POA and in the bylaws with the court asking John k if there's a appeals process John Kay says there is but fails to cite where it is in the in the bylaws and he's required to do so as the plaintiff to make his case. He states that there is a appeals process in place and then states there was not any appeal by Mr Jewell. I doubt he has the knowledge of where or what the appeals process even is. And he wouldn't know whether or not Mr Jewell filed one in fact Mr Jewell did file with the executive session and meeting with the board to appeal all the issues involving his dues and assessments and fines. So in fact Mr Jewel has disputed the fines and other charges such as dues and he does state that there are genuine material issues of fact in dispute as to what the proper numbers are for those dues and assessments and they were challenged properly in an appeals process. Transcript P.21 ll14-22

Attorney fees

On page 35 Mr Jewell of transcript brings up that in the plaintiff's affidavit number 15 that Sonya Hale the president indicates that she's going to pay the attorney fees. Now the judge is saying later that they can charge the attorney fees based on the bylaws and covenants that they can charge those fees but yet the president of the association Sonya Hale makes clear in her affidavit to Mr Jewell that she's willing to pay the attorney's fees. The judge later disputes that however it's unclear as to who who's going to pay the attorney fees in fact it seems more likely that Mr Jewel should not pay the attorney's fees based on that affidavit. So this is a clear issue of material fact that is in dispute and that therefore summary judgment is not appropriate in that that's a genuine issue of material fact that is indispute and it needs to be fully adjudicated in a final hearing. There are also references to payments for attorney fees in SCRCP 78 and the FHPOA Bylaws. Neither text allows for Jewell to pay attorney fees. So attorney fee payments remain in dispute.

Conclusion

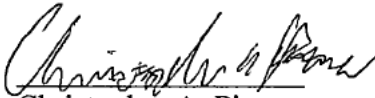
Appellant Pierce asks that the court to grant his motion to be joined as a party Defendant in the foreclosure case consistent with the liberal policy for joinder as defined by the South Carolina Supreme Court and that the case be remanded back to Judge Kervin in Master in Equity Court for a Final Hearing where upon Ex Parte Appellant Pierce will be allowed to participate in the

hearing and protect his 1/3 interest in the property consistent with language in SCRCP 19

Appellant Jewell asks the court to deny Respondent FHPOA's Motion For Summary Judgment and to remand case back to Master in Equity Court where upon Jewell may argue all merits of the case in a Final Hearing.

Appellant Jewell asks that Appellate Court grant his motion for Jury Demand and allow him to have a jury for his Final Hearing in Master in Equity Court.

Thank you For Your Consideration.



Christopher A. Pierce
605 White Owl Ln
Seneca, SC 29678

51

Michael D. Jewell
428 Odessa Ave
Westminster, SC 29693

Submitted April 6, 2025

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master in
Equity

Case No. 2023-CP-37-00620

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Foxwood Hills Property Owners Association, Respondent,

v.

Michael D. Jewell, Lori Marcengill, South Carolina Department of Motor Vehicles,
Defendant's,

of which Michael D. Jewell is an Appellant.


CERTIFICATE OF SERVICE

I have deposited in first class mail a copy of INITIAL BRIEF OF APPELLANTS,

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL

to: John Kay, Hutchens Law Firm, P.O. Box 8237 Columbia, SC 29202 on

April 6, 2025


Christopher Pierce Michael Jewell
605 White Owl Ln. 428 Odessa Ave
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864-557-1258 29693

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SC Court of Appeals

April 6, 2025

Dear Court of Appeals,

Please find Initial Brief included with Designation of Matter to be Included in the Record of Appeal and Certificate of Service.

Thank you for filing these items.



Chris Pierce

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