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May 01 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

Charles Woods,.....Respondent

v.

Valeria Woods Tuten, Kathy R. Thomas, Robert Thomas, Jr., Robert Thomas, III, Katelyn Thomas, Ellison Thomas, Bryant Thomas, Rebecca Babilon, Pam Woods, Wanda W. Smith, Wayne Smith, Kevin Smith, Trent Smith, Cynara Smith Love, Peggy Powers, Anna Cope, Adell Bishop Gray, Candelaria Rosalia Mayorga, William David Mixon, II, Charles Miller, Betty Miller Revocable Trust, Marion Ralph Smith, Betty Smith, Paulino Juarez Hernandez, Felipa Flores Crus, Alma Gomez, Dionicio Gomez Flores, Eduardo Valencia Benitez, Saul Benitez Castaeda, Ramon Benitez Castaneda, John Doe and Mary Roe,Defendants

of whom Kevin Smith, Trent Smith, Cynara Smith Love, Wayne Smith, and Valeria Woods Tuten are.....Appellants

**RETURN TO APPELLANTS’ MOTION TO STRIKE MATERIAL CITED WITHIN
RESPONDENT’S REPLY TO APPELLANTS’ RETURN TO RESPONDENT’S MOTION
TO STRIKE**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Charles Woods (“Respondent”), by and through his counsel, hereby submits his return to Appellants’ Motion to Strike Material Cited Within Respondent’s Reply to Appellants’ Return to Respondent’s

Motion to Strike (“Motion”). In their Motion, Appellants Kevin Smith, Trent Smith, Cynara Smith Love, Wayne Smith, and Valeria Woods Tuten (“Appellants”) seek four forms of relief. First, they ask that the Affidavit of Karl Twenge, dated April 10, 2025 (“Affidavit”), be “excluded” from Respondent’s Reply to Appellant’s Return to Respondent’s Motion to Strike. (Mot. at 1.) Second, Appellants seek an order that the Affidavit not be included in Respondent’s brief or the record on appeal. (*Id.* at 2.) Third, Appellants request that the appeal be held in abeyance while this Motion is pending. (*Id.*) Fourth, Appellants ask that the Court strike Respondent’s Reply to Appellants’ Return (“Respondent’s Reply”). (*Id.*) All of these grounds fail, and this Motion should be denied.

First and as a “housekeeping matter,” Appellants are not serving Respondent with a full copy of the Motion and its supporting memorandum. The copy of the Motion served on Respondent’s counsel does not comply with the South Carolina Appellate Court Rules, as no proof of service was provided and the memorandum was not signed. (*See* all documents received by Respondent’s counsel, along with a copy of the envelope to Respondent’s counsel, attached hereto as **Exhibit A.**) Realizing mistakes happen, Respondent’s counsel reviewed the Motion as filed on C-Track and discovered that the original Motion includes a proof of service and a signed memorandum. Additionally, the proof of service from C-Track provides that Appellants served Respondent on April 21, 2025; however, the envelope to Respondent’s counsel is postmarked April 22, 2025. (Ex. A.) Similarly, Appellants’ proof of service for their return to Respondent’s motion to strike appeal purports they served Respondent on April 3, 2025; however, the envelope containing Appellants’ return was not postmarked until April 4. (*See* Proof of Service for return, dated Apr. 3, 2025 and envelope for same, postmarked Apr. 4, 2025, attached hereto as **Exhibit B.**)

Respondent's counsel does not think these actions were intentional by the Appellants. However, Respondent raises this issue as the first ground because of its importance. Respondent did not receive a full copy of the Motion and Memorandum from Appellants. Respondent asks this Court to remind Appellants that they must serve on Respondent's counsel full and complete copies of all documents filed with the Court. Similarly, the proof of service must reflect the proper date.

Second, the Motion should be denied because the relief sought is moot. This Court has already granted Respondent's Motion to Strike that was supported by the at-issue Affidavit and Respondent's Reply. The Affidavit was submitted in connection with Respondent's Motion to Strike Appeal, filed with this Court on March 26, 2025. Specifically, the Affidavit was filed as an exhibit to Respondent's Reply, filed on April 10, 2025. This Court granted Respondent's Motion to Strike via Order, filed April 21, 2025. This Court has already addressed the issues raised by the Affidavit and the Respondent's Reply. Thus, the first and fourth grounds of relief sought by Appellants are moot.

Third, Respondent sees no need to include the Affidavit in his brief or designation of matter for the record on appeal. The Affidavit was not before the lower court, and therefore, this Court cannot consider it in the appellate briefs. *See* Rule 210(c), SCACR.

Fourth, this Court should not hold this appeal in abeyance because the issues raised in Appellants' Motion have already been addressed in this Court's Order, filed April 21, 2025. In fact, the April 21, 2025 Order holds that this appeal is in abeyance until this Court's "learning of Appellants' receipt of the November 8 transcript." (Order at 2.) There is no need to hold this appeal in abeyance any longer than what the Court has already allowed. Rule 240(b), SCACR, provides, in pertinent part, that "[u]nless otherwise provided by these Rules, or ordered by the

appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition.” This Motion does not raise any issue that warrants the stay of this appeal beyond what the Court has already granted.

Fifth, the Motion is brought pursuant to Rule 269, SCACR, which is entitled “Frivolous Appeals, Petitions, Motions, or Returns.” (Mot. at. 1.) It is unclear exactly what “appeal, petition, motion, or return” of Respondent is “frivolous or taken solely for the purposes of delay, or is not in compliance with [SCACR].” *See* Rule 269, SCACR. Presumably, Appellants are trying to claim the Affidavit is frivolous. This Court, however, granted Respondent’s Motion to Strike (supported by the Affidavit) so it is difficult to understand how the Affidavit is frivolous or presents grounds under Rule 269, SCACR.

One point to clarify is that the undersigned did not submit the Affidavit to impugn Appellants. (Memo at 3.) The Affidavit was submitted to address any confusion that a court reporter was not present and that a transcript could not exist. As represented by Appellants in their return to Respondent’s motion to strike, “Respondent argues that Appellants did not order a complete transcript of Final Hearing. Appellants did, in fact, order a Transcript from Special Referee. The matter is clear. Plaintiff refused [the] court order to provide a Court Reporter for hearings conducted by Special Referee. *No court reporter was present and no transcript is available for Special Referee Hearings.*” (Appellants’ Return to Resp’t’s Mot. to Strike Appeal and Require Filing of Am. Initial Br. of Appellant at 3, filed Apr. 3, 2025 (emphasis added).) The record needed to be corrected.

CONCLUSION

For all of the above reasons, this Court should deny Appellants' Motion. Additionally, Respondent asks this Court to instruct Appellants that they must follow the South Carolina Appellate Court Rules.

SOWELL & DuRANT, LLC

s/Bess J. DuRant

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Attorney for Respondent Charles Woods

May 1, 2025
Columbia, South Carolina

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of whom Kevin Smith, Trent Smith, Cynara Smith Love, Wayne Smith, and Valeria Woods Tuten are.....Appellants

Exhibit A

***RETURN TO APPELLANTS’ MOTION TO STRIKE MATERIAL
CITED WITHIN RESPONDENT’S REPLY TO APPELLANTS’
RETURN TO RESPONDENT’S MOTION TO STRIKE***

Documents received by Respondent’s counsel of Appellants’ Motion to Strike Material Cited within Respondent’s Reply to Appellants’ Return to Respondent’s Motion to Strike, along with a copy of the envelope to Respondent’s counsel

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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,

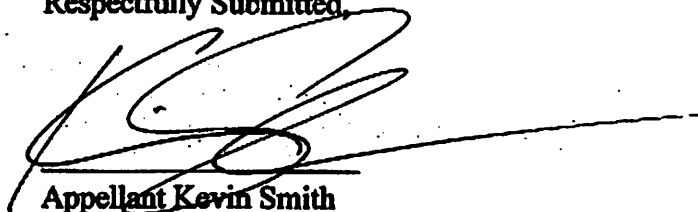
was included solely to besmirch the reputation of Appellant Kevin Smith with the malicious intent to obstruct the right to appeal of all Appellants.

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.

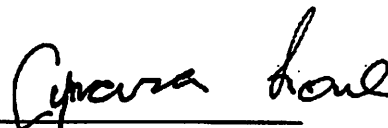
Respectfully Submitted,



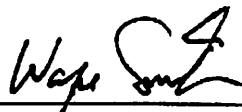
Appellant Kevin Smith
10590 Castlebar Glen Dr
Jacksonville, FL 32256
Phone: 813.368.7589
Email: uscsmith@hotmail.com



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



Appellant Cynara Love
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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**

April 21, 2025

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Curtis Coltrane, Special Referee

Appellate Case No. 2024-002209

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v.

Charles Woods, Respondents.

**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.



Kevin Smith
10590 Castlebar Glen Dr S
Jacksonville, FL 32256

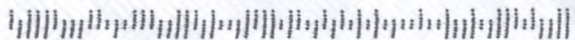
JACKSONVILLE FL 320

22 APR 2025 PM 4 L



BESS J DURANT
SOWELL AND DURANT
1325 PARK ST, STE 100
COLUMBIA, SC 29201

29201-319425



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of whom Kevin Smith, Trent Smith, Cynara Smith Love, Wayne Smith, and Valeria Woods Tuten are.....Appellants

Exhibit B

RETURN TO APPELLANTS' MOTION TO STRIKE MATERIAL CITED WITHIN RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S MOTION TO STRIKE

**Proof of Service for Appellants' Return, dated Apr. 3, 2025 and
envelope for same, postmarked April 4, 2025**

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Wayne Smith, and Valeria Woods Tuten,

Appellants,


v.

Charles Woods,

Respondent.

PROOF OF SERVICE

I, Appellant Kevin Smith, do hereby certify that on April 3, 2025, I served a copy of **APPELLANTS' RETURN TO RESPONDENT'S MOTION TO STRIKE APPEAL AND REQUIRE FILING OF AMENDED INITIAL BRIEF OF APPELLANT** 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 3, 2025
Jacksonville, Florida

Smith
211 Bulls End
Ridgeland SC 29936


(Return to motion
Strike Appeal)

U.S. POSTAGE PAID
FCM LG ENV
RIDGELAND, SC 29936
APR 04, 2025

\$4.01
S2324K500146-8

29201

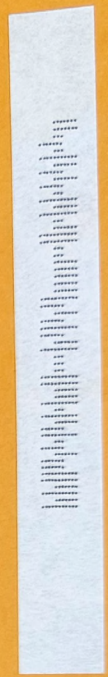
Retail



RDC 99



Bess DuRant, Esq.
1325 Park Street.
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Columbia SC 29201



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of whom Kevin Smith, Trent Smith, Cynara Smith Love, Wayne Smith, and Valeria Woods Tuten are.....Appellants

PROOF OF SERVICE

I certify that on May 1, 2025, I have caused the service of the **Return to Appellants’ Motion to Strike Material Cited Within Respondent’s Reply to Appellants’ Return to Respondent’s Motion to Strike** on the Other Counsel of Record and Pro Se Parties by depositing a copy of the same in the United States Mail, postage prepaid, to the addresses listed below:

Kevin Smith
10590 Castlebar Glen Dr.
Jacksonville, FL 32256
Pro Se Appellant

Cynara Love
211 Bulls End
Ridgeland, SC 29934
Pro Se Appellant

Wayne Smith
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Pineland, SC 29934
Pro Se Appellant

Valeria Tuten
166 Elbo Rd
Early Branch, SC 29916

Valeria Tuten
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Varnville, SC 29916
Pro Se Appellant

Anna Cope
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West Liberty, Kentucky 41472
Pro Se Defendant

Candelaria Mayorga
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Bluffton, South Carolina 29910
Pro Se Defendant

Charles Miller
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Bluffton, South Carolina 29910
Pro Se Defendant

Marion Ralph Smith
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Pro Se Defendant

Trenton Smith
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Pro Se Appellant

Harold Fred Kuhn, Jr.
Kuhn Law Firm, LLC
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Beaufort, SC 29901
Attorney for Defendant Paulino Juarez Hernandez

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Peggy Powers
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Pro Se Defendant

William D. Mixon, II
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Betty Miller Revocable Trust
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Pro Se Defendant

Betty Smith
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Pro Se Defendant

Cesar Hernandez
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Hilton Head, South Carolina 29926
Pro Se Defendant

Paulina Juarez Hernandez
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Pro Se Defendant

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Pro Se Defendant

Felipa Crus
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Dionico Gomez Flores
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Pro Se Defendant

Ramon Benitez Castaneda
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Pro Se Defendant

Saul Benitez Castaneda
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Pro Se Defendant

SOWELL & DuRANT, LLC

s/Bess J. DuRant

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Attorneys for Respondent Charles Woods

Columbia, South Carolina
May 1, 2025