

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2012-CP-26-06987

Appellate Case No. 2013-000971

RECEIVED

OCT 18 2013

SC Court of Appeals

Helicopter Solutions, Inc.
d/b/a Helicopter Adventures Respondent,

v.

Richard Hinde and Horry County Zoning Administrator, Defendants,
of whom Richard Hinde is Appellant.

**APPELLANT'S REPLY TO RESPONDENT'S RETURN
TO APPELLANT'S REPLY TO RESPONDENT'S RETURN
ON MATTERS TO BE INCLUDED IN THE
RESPONDENT'S AMENDED DESIGNATION OF MATTER**

Appellant Richard Hinde, by and through his undersigned counsel, files this Reply for the purpose of clarifying that the Transcript of Hearing before the Board of Zoning Appeals was not part of the Certified Record filed with the Horry County Clerk of Court of October 18, 2012, and is, therefore, not properly a part of the Record to be designated by the Respondent on Appeal.

It is undisputed that the original sealed Transcript of Hearing was transmitted to the Horry County Clerk of Court in the underlying civil action, and it was clock stamped by the Clerk of Court by clock stamping a post-it note and affixing it to the outside of the sealed envelope containing the Transcript. It is also undisputed that the original sealed Transcript of Hearing remains sealed in the Clerk of Court's file, as attested to in Affidavits submitted by both parties to this action. There are references in the Transcript of Hearing before the Circuit Court on December 11, 2012 to matters that were submitted and statements made to the Board of Zoning Appeals, but the Transcript of the proceedings before Board of Zoning Appeals was not itself moved into evidence at the Circuit Court by any of the parties.

In the Respondent's October 9, 2013 Return, Mr. Baroody's asserts the "contents of the box" transmitted to the Horry County Clerk of Court on October 18, 2012 at 10:48am include "the complete record of the Board" according to the Transmittal of Certified Record on Appeal and Affidavit signed by Alicia Shelley and filed October 18, 2012 at 10:48am in the underlying civil action. Mr. Baroody attached his Affidavit to the Respondent's October 9, 2013 Return, attesting in paragraph 3 as follows:

3. The Horry County Board of Zoning Appeals provided me with a CD-ROM containing a complete copy of the Certified Record on Appeal to the Circuit Court transmitted by delivery on October 18, 2012. That disk contained a complete copy of the transcript of the hearing before the Horry County Board of Zoning

Appeals of September 10, 2012 and 1127 pages
of Exhibits thereto provided to me. . . .

The first page of the Transcript provided to Mr. Baroody on CD-ROM by the Board of Zoning Appeals (attached as Exhibit A to Mr. Baroody's October 9, 2013 Affidavit; attached hereto as "**Exhibit 1**"), differs from the original sealed Transcript of Hearing transmitted to the Clerk of Court. On the first page of the Transcript provided on CD-ROM to Mr. Baroody, which Mr. Baroody asserts is part of the Certified Record on Appeal attested to by Alicia Shelley, the word "**EXHIBIT'S**" is clearly visible on line 25. The first page of the original sealed Transcript of Hearing, contained in the box in the Clerk of Court's Exhibit Room (attached hereto as "**Exhibit 2**") is devoid of any notation on line 25. This was attested to by Renee Baxley in paragraph 8 of her Affidavit, attached to *Appellant's Reply to Respondent's Return on Matters to be Included in the Respondent's Amended Designation of Matter* filed served on October 7, 2013.

Moreover, Respondent's counsel has mistakenly and inappropriately represented to this Court that the Appellant's *sole purpose* in filing a Motion for More Definite Statement of Matter "is to reduce the number of pages of the Record on Appeal in order to limit it to one volume, presumably to limit the costs associated with a larger Record on Appeal." Although Appellant's counsel is certainly mindful of expenses being incurred by his client, the Appellant's *sole reason* for filing a Motion for More Definite Statement of Matter was to have the Respondent more clearly

identify the material to be included, pursuant to Rule 209(b), SCACR, and to designate only the portions of material which may be properly included in the Record on Appeal pursuant to Rule 210(c), SCACR.

In support of Appellant's Reply to Respondent's Return, the Affidavits of Kenneth R. Moss and Richard Hinde are attached as Exhibits 3 and 4, respectively. Attached to each Affidavit as Exhibit B is a "screen shot" of the CD-ROM received by Appellant and his counsel, individually.

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901, ext. 103

Email: kennethmoss@wwpemplaw.com

North Myrtle Beach, South Carolina
October 16, 2013

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In the Court of Appeals

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of whom Richard Hinde is Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the *Appellant's Reply to Respondent's Return to Appellant's Reply to Respondent's Return on Matters to be Included in the Respondent's Amended Designation of Matter* in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

David B. Miller, Esq.
Benjamin A. Baroody, Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
Tel: 843/448-2400 Fax: 843/448-3022
bbaroody@bellamylaw.com
Attorneys for Respondent Helicopter Solutions, Inc.

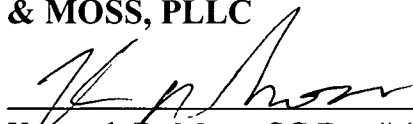
– and –

Emma Ruth Brittain, Esq.
Thomas & Brittain, P.A.
P.O. Box 1290
Myrtle Beach, SC 29578
Tel: 843/692-2628 Fax: 843/692-0928
erbrittain@myrlaw.com

Attorney for Defendant Horry County Zoning Administrator

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901, ext. 103
Email: kennethmoss@wwpemplaw.com

North Myrtle Beach, South Carolina
October 16, 2013

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW

628A SEA MOUNTAIN HIGHWAY
NORTH MYRTLE BEACH, SOUTH CAROLINA 29582
Telephone (843) 281-9901 - Fax (843) 281-9903

O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH++
RICK W. SCOTT*
MARTHA HENLEY SLEDGE*
MELANIE C. NICHOLSON ***
KELLY SANSONE-GALLEY***
NAPOLEON B. BAREFOOT, JR. *
ELIZABETH W. EMBREY**
BOYD T. WORLEY*
D.F. McGOUGAN, JR.
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** licensed in NC & SC

*** Certified Family Court Mediator, Guardian *ad Litem*

October 16, 2013

**VIA U.S. CERTIFIED MAIL # 7012 1640 0002 5135 4221;
RETURN RECEIPT REQUESTED**

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

OCT 18 2013

SC Court of Appeals

Re: Helicopter Solutions, Inc., d/b/a Helicopter Adventures, *Respondent*,
vs. Richard Hinde and Horry County Zoning Administrator, *Defendants*
Of whom Richard Hinde is *Appellant*
Civil Action No. 2012-CP-26-06987
Appellate Case No. 2013-000971
Our file no. SC-5530-001

Dear Ms. Kitchings:


Please find enclosed for filing in the above-referenced appeal, one (1) unbound original and six (6) copies of *Appellant's Reply to Respondent's Return to Appellant's Reply to Respondent's Return on Matters to be Included in the Respondent's Amended Designation of Matter*, and Proof of Service of same.

I have included an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

Honorable Jenny Abbott Kitchings
October 16, 2013
Page 2

With best regards, I am

Sincerely yours,



Kenneth R. Moss

KRM/tm

Enclosures as stated

cc: (via first-class U.S. Mail)

David B. Miller, Esq./Benjamin A. Baroody, Esq.

Emma Ruth Brittain, Esq.

Client (*via email only*)