

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY
COURT OF COMMON PLEAS

Doyet A. Early, III, Circuit Court Judge

Case No. 2006-CP-5-34

Motion Denied
For the Court
MAY 7, 2012

Connie Carson, as Personal Representative
of the Estate of Beryl Harvey, Appellant,

v.

CSX Transportation, Inc.,Respondent.

Case No. 2006-CP-5-107

Connie Carson, as Personal Representative
of the Estate of Beryl Harvey, Appellant,

v.

CSX Transportation, Inc.,Respondent.

MOTION TO REQUIRE REPORT OF TRIAL

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA:

The respondent respectfully moves the Court to consider requiring a
report from the trial judge, the Honorable Doyet A. Early, III, as to the content of

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SOUTH CAROLINA SUPREME COURT

Defendant's Exhibit 134. As grounds for the motion, the respondent would show as follows:

1. When the appellant served her Designation of Matter to be included in the Record on Appeal pursuant to Rule 209(b), SCACR, the appellant included in her designation Defendant's Exhibit 134.

2. The appellant prepared, served, and filed the Record on Appeal, which included as Defendant's Exhibit 134 a one-page document, namely, page 4 of the notes of appellant's expert witness, Gary Huett. The respondent reviewed the Record on Appeal as served and filed, verifying that the Record accurately contained the matter designated by either party, including Defendant's Exhibit 134.

3. At about 2:00 p.m. on February 8, 2012, being the afternoon before oral argument, the appellant served by fax and filed with the Court a Motion to supplement the Record on Appeal by adding all the pages of the notes of Mr. Huett in addition to page 4 of those notes.

4. At about 4:30 p.m. the respondent faxed to the Court its Return to the Motion. The substance of respondent's Return is quoted in the footnote.¹

¹ "Prior to trial and the trial court's rulings regarding the admissibility of post-accident cutting, Defendant originally labeled Exhibit 134, consisting of five pages of notes of Appellant's Expert, as indicated in Appellant's Motion. However, during the course of trial, the trial court ultimately excluded any evidence of post-accident cutting pursuant to South Carolina Rules of Evidence 401, 403, and 407. As a result, only page 4 of Exhibit 134 as originally marked was tendered into evidence and is included in the Record on Appeal. ROA 1611. This was the only page used during the cross-examination of Appellant's expert, Gary Huett. ROA 840. Other pages of this exhibit would have run afoul of the trial court's order. Indeed, during Mr. Huett's direct examination, he made a vague reference to the issue of post-accident cutting. ROA 824. At that

5. By Order entered on the afternoon of February 8th, the Court granted the appellant's Motion to supplement the Record.

6. In oral argument, the appellant was adamant that all five pages of Mr. Huett's notes were in evidence as Defendant's Exhibit 134.

7. The respondent is equally adamant that only page 4 of those notes was in evidence as Defendant's Exhibit 134.

8. Rule 212(a), SCACR, authorizes the Court to "require a report of the trial . . . or of any matter relative thereto, to be made by the trial judge These matters shall become part of the Record on Appeal."

9. Respondent moves the Court to consider requiring a report from Judge Early as to the content of Defendant's Exhibit 134 after such hearing and inquiry as his Honor deems appropriate.

Respectfully submitted,

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juncture, the trial court excused the jury and admonished Mr. Huett not to mention any subsequent remedial measure, including any cutting of the vegetation or trees subsequent to the accident. ROA 825. Since Exhibit 134 in its entirety was never tendered at the trial court level, even for appellate purposes, it cannot properly be included in the Record on Appeal. As a result, Respondent respectfully objects to Appellant's Motion to Include Exhibit 134 in its Entirety in the Record."

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Attorneys for Respondent

February 13th, 2012.

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DOYET A. EARLY, III, Circuit Court Judge

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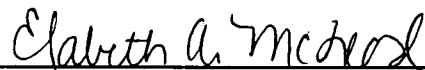
Respondent.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Respondent, CSX Transportation, Inc., certifies that I have this 13th day of February, 2012, served copies of the **Motion to Require Report of Trial**, upon counsel by causing it to be deposited in the United States mail, first-class postage prepaid, addressed to:

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