

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-26-5964

William H. Bailey, Jr.,

Appellant,

v.

City of North Myrtle Beach,
a South Carolina Municipal
Corporation,

Respondent.

**REPLY IN SUPPORT OF MOTION TO CORRECT RECORD
ON APPEAL AND STAY DEADLINE TO SUBMIT FINAL BRIEF
UNTIL RECORD IS CORRECTED**

Christopher W. Johnson
Derwood L. Aydlette, III
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201
(803) 799-9311
Attorneys for Respondent

RECEIVED

SEP 17 2013

SC Court of Appeals

ARGUMENT

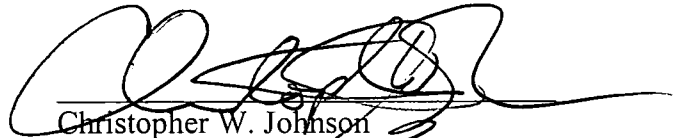
In Appellant's response opposing City's motion to require him to correct the record, Appellant does not challenge that he is responsible for preparation of the record, that he prepared it incorrectly, or that the Verified Complaint – and not the Verified Amended Complaint – was what was offered to the trial judge and referred to in the trial judge's order. Instead, Appellant now asserts for the first time that the City is not entitled to have the Verified Complaint included in the record on appeal because it was not marked or admitted into evidence. Appellant's argument simply seeks to avoid the real issue – his responsibility to properly prepare the record.

“A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.” *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E. 2d 325, 327 (Ct. App. 1984). Accordingly, there was no need to have the Verified Complaint admitted into evidence. Further, the Verified Complaint was before the trial court and referred to by the trial court in its order and by counsel in cross-examination of Appellant – both of which Appellant concedes – without objection by Appellant. Appellant's assertion that the trial court's order merely acknowledges other proceedings between the parties is incorrect. The court's order specifically relies on the Verified Complaint as part of its reasoning: “Plaintiff has also sworn under oath in a verified complaint filed in another action that he was ‘constructively dismissed’ and ‘constructive[ly] discharge[d].’” (R, p. 18). Finally, Appellant's newly found contention that the Verified Complaint was not properly before the trial court is inconsistent with his inclusion of the Verified Amended Complaint in the record on appeal, which document was not referenced at all by any party or the court during the trial.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the City's motion to correct the record, the City's motion should be granted and Appellant should be ordered to correct the record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher W. Johnson", is written over a horizontal line. The signature is stylized and somewhat illegible.

Christopher W. Johnson
Derwood L. Aydlette, III
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Ave., Suite 100
Columbia, S.C. 29201
Tel.: (803) 799-9311

Columbia, South Carolina

September 17, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-26-5964

William H. Bailey, Jr.,

Appellant,

v.

City of North Myrtle Beach,
a South Carolina Municipal
Corporation,

Respondent.

PROOF OF SERVICE

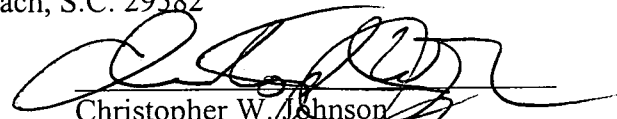
RECEIVED

SEP 17 2013

SC Court of Appeals

I hereby certify that I have this day caused to be served a copy of the Respondent's Reply in Support of Motion to Correct Record on Appeal and Stay Deadline to Submit Final Brief until Record Is Corrected and accompanying affidavit of counsel and exhibits on counsel of record by deposit in the United States mail, first-class postage prepaid, addressed to:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mount Highway
North Myrtle Beach, S.C. 29582



Christopher W. Johnson
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Ave., Suite 100
Columbia, S.C. 29201
(803) 799-9311

September 17, 2013



GIGNILLIAT SAVITZ & BETTIS LLP

STEPHEN T. SAVITZ**
VANCE J. BETTIS *
LINDA PEARCE EDWARDS *
KATHRYN THOMAS *
DERWOOD L. AYDLETTE III**
CHRISTOPHER W. JOHNSON *
CHRISTINA M. SUMMER *
FRED A. WILLIAMS *
MICHAEL C. GREENE

R. HAYNE HODGES III
SPECIAL COUNSEL

JULIAN H. GIGNILLIAT
(1939-2002)

*CERTIFIED SPECIALIST
LABOR & EMPLOYMENT LAW

*CERTIFIED MEDIATOR

VIA HAND-DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

September 17, 2013

Sender's email address:
cjohnson@gsblaw.net

Re: *Bailey v. City of North Myrtle Beach*
Appellate Case No. 2013-000195
C/A No. 2010-CP-26-05964

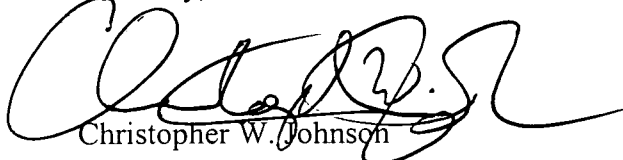
Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of the Respondent's Reply in Support of Motion to Correct Record on Appeal and Stay Deadline to Submit Final Brief until Record is Corrected and Proof of Service of the same. Please file the originals and return the clocked copies to me by our courier.

Should you have any questions, please do not hesitate to contact us.

With highest regards,

Sincerely,



Christopher W. Johnson

CWJ/ehg
Enclosure
ltr-ct-motcorrecord.439.AJ

cc: Kenneth R. Moss, Esq., Counsel for Appellant (w/ encl.)(via U.S. Mail)

RECEIVED
SEP 17 2013

SC Court of Appeals