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**Oct 02 2025**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

The Honorable Bentley D. Price,  
Circuit Court Judge

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Appellate Case No. 2024-000350

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Michele Graham, ..... Appellant,

v.

Adrienne Ciaburri and Mark Ciaburri, ..... Respondents.

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**RESPONDENT’S RESPONSE TO SECOND SUPPLEMENTAL MOTION TO STRIKE**

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Appellant filed with the Court a Motion to Strike Respondent’s “Memorandum in Support of Attorney’s Fees” from inclusion in the Record on Appeal due to the document never being filed with the circuit court. This conclusion goes against established caselaw in the State of South Carolina as well as the South Carolina Rules of Civil Procedure.

Respondent’s in the matter while in front of the circuit court presented their “Memorandum in Support of Attorney’s Fee’s” as a Court’s exhibit and arguments were made orally in support of attorney’s fees. The circuit court did in fact grant attorney’s fees by an Order signed February 28, 2024.

Appellant contends that Respondent’s Memorandum should be struck because it was never filed. However, the record on appeal repeatedly mentions said Memorandum and in fact includes

the Order granted by the circuit court based on said Memorandum and oral arguments made by Respondent's counsel. Furthermore, a large basis of Appellant's filing of this case revolves around the awarding of attorney's fees by the circuit court.

In *Camden Investment Co v. Gibson*, 30 S.E.2d 305, the Plaintiff appealed based on a ruling by the lower court. The appellant's attorneys served a proposed transcript of record and neglected to include as a part of the trial proceedings the official transcript of testimony and the exhibits offered and received in evidence at trial in essence unintentionally leaving all of these exhibits out of the record on appeal. The Court was asked to address if they could amend the record by Motion to allow the testimony and exhibits into the record on appeal.

The Court found that "...it would be tantamount to denying the appellant's right to appeal to hold that the testimony and exhibits were improperly allowed as a part of the transcript of record, since the determination of the issues depends upon the testimony and exhibits. *Id.* At 182. They further state that "[i]t is necessary that the rules of the court and statutes be followed in perfecting an appeal, but it would be sacrificing substance for form to hold that appellant's right to have the testimony and exhibits included was lost simply because, through an apparent oversight, its attorneys failed to provide for the inclusion of same in the transcript of record...". *Id.* At 183.

While not perfectly in line with what Appellant argues here, the rationality follows that something introduced as an exhibit at the trial of this case that has led Appellant to appeal being excluded would sacrifice substance for form when the determination of the issue requires that the Respondent's "Memorandum in Support of Attorney's Fees" be included. Furthermore, without the Memorandum, this Honorable Court lacks context tantamount to a decision that would allow understanding as to why attorney's fees have already been awarded. This Memorandum was also

included in Respondent's initial designation of the record, even further distinguishing this case from *Gibson* and bolstering the argument for inclusion of the Memorandum.

Outstanding Appellant's arguments related to the lack of a filed version of the Memorandum, it was argued in front of the Court of Common Pleas and provided as a court's exhibit in the same and relies on Rule 210(c), SCACR. In contrast to Appellant's arguments, Rule 210(c) SCACR states that any information presented to the lower court is ripe for the record on appeal. Whether or not filed, this Memorandum and its arguments are firmly a part of the record. Rule 209 of the South Carolina Appellate Court Rules allows a party to designate any transcript, pleading, order, exhibit, or other material that they wish be included on the record. Furthermore, Rule 210 of the South Carolina Appellate Court Rules allows the production of any part of the record presented to a lower court or tribunal and expands on this by saying that when any portion of an exhibit or document is included in the record, the entirety of that exhibit or document should be included. Appellant has conceded that Respondent's "Motion for Sanctions and Award of Attorney's Fees and Costs Pursuant to SCRCR 65(f)(2)" is firmly a part of the record but has failed to attach the Memorandum that stands in support of said Motion.

Lastly, Appellant filed a Motion with the Court on October 8, 2024 where she directly states that one of the Orders under appeal is the February 28, 2024 Order granting attorney's fees to Respondent's. Appellant admits in her own Motion that a portion of the materials she wishes to strike from the Record on Appeal correlate directly with her reasoning for filing this appeal with the Court. Due to this alone, all materials which Respondent's wish to include on the record relating directly to an appellate issue should be included. In that Motion, she requested of the Court that seventeen (17) items be excluded from the Record on Appeal and certainly could have added Respondent's Memorandum to her list at that time. Appellant now wishes to relitigate issues that

she could have brought before the Court in her initial Motion to remove items from the Record of Appeal.

#### CONCLUSION

Respondent's respectfully request that the Court deny Appellant's Motion to Strike their Memorandum from the Record on Appeal.

*s/ Edward R. Corvey*

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**PROOF OF SERVICE**

I, Matt Hussnatter, hereby certify that I have served the *Respondent's Response to Second Supplemental Motion to Strike* via e-mail address on October 2, 2025, on the following recipient:

Michele Graham – Appellant  
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Respectfully Submitted,

S/ Matt Hussnatter

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October 2, 2025  
Charleston, South Carolina