

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William E. Lawson, Special Referee

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CASE NO: 2011-CP-26-4758

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SC Court of Appeals

M05a3

Monroe E. Cook and Lynn S. Cook ..... Appellants

v.

Nealy Lynn Taylor ..... Respondent

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RESPONDENT'S MOTION TO STRIKE

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Pursuant to Rule 210(h), SCACR, and the case law cited in Respondent's Memorandum in Support of her Motion to Strike, the Respondent requests that Argument I contained on pages 1 through 3 of the Reply Brief of Appellants be stricken. The grounds for the Motion to Strike is that the facts alleged in Argument I do not appear in the Record on Appeal, was not raised to or ruled upon the Trial Court, is a new argument that was not argued in Appellant's Initial Brief and is an argument that is being raised for the first time in the Appellant's Reply Brief.

Respectfully submitted.

*Signature block on next page.*



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*Attorneys for Respondent.*

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MEMORANDUM IN SUPPORT OF  
RESPONDENT’S MOTION TO STRIKE

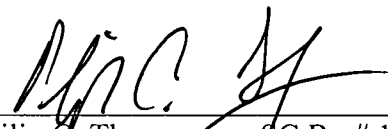
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Argument I contained in the Reply Brief of Appellants titled The Respondent attacks Appellants’ trial counsel, is an argument that a new trial should be granted because the Appellant’s trial lawyer was offered a job at the Respondent’s trial lawyer’s law firm prior to the trial of this case, went to work for the Respondent’s trial lawyer’s law firm after the case was tried, and the Appellants do not like that. This issue was not argued by the Appellants in the Initial Brief of the Appellants. As such, this Court cannot consider that issue. *State v. Wakefield*, 323 S.C. 189, 473 S.E.2d 831 (Ct. App. 1996) (rehearing denied in 1996; cert denied 1997) (“all issues must be argued in the initial briefs”); *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997) (rehearing denied 1998) (“An Appellant may not use the reply brief to argue issues not argued in the

Appellant's initial brief.") and citing 4 C.J.S. Appeal and Error §619 (1993) ("A point raised for the first time in the reply brief will not be considered by the Appellant Court.")

Also, nowhere in the Record on Appeal are there any facts or arguments on this issue. Therefore, this issue is not preserved for review. *State v. Wakefield*; *State v. Carlson*, 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005) (rehearing denied 2005) ("Arguments not raised to or ruled upon by the Trial Court are not preserved for Appellant review."). Since there are no facts in the Record on Appeal on this issue, the Appellant Court cannot consider it. Rule 210(h), SCACR.

Based on the foregoing, the Respondent respectfully requests and moves this Court to strike Argument I contained on pages 1 through 3 of the Reply Brief of Appellants.



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***Attorneys for Respondent.***

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AFFIDAVIT OF RESPONDENT'S COUNSEL

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PHILIP C. THOMPSON, first being duly sworn, deposes and states as follows:

1. The undersigned is over the age of eighteen (18) and competent to make this affidavit.
2. The undersigned was admitted to the South Carolina Bar in May of 1996 and has continuously practiced in the State of South Carolina since that time.
3. The undersigned has reviewed the documents that both the Appellants and Respondent have designated to be matters to be included in the Record on Appeal and can find no mention of the issue of Appellant's trial counsel being offered a job or going to work for the Respondent's attorney's law firm.

*Signature block on next page.*



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*Attorneys for Respondent.*

Sworn to before me this 25<sup>th</sup> day of  
November, 2013.

Stephanie Hall (L.S.)

Notary Public for South Carolina

My Commission Expires: 2-2-2017

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM Horry COUNTY

Court of Common Pleas

William E. Lawson, Special Referee

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Appellate Case No. 2013-000926

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MONROE E. COOK & LYNN S. COOK.....Appellants,

v.

NEALY LYNN TAYLOR .....Respondent.

\_\_\_\_\_

PROOF OF SERVICE

\_\_\_\_\_

I, Stephanie Hall, an employee for Thompson & Henry, P.A., attorneys for the Respondent, Nealy Lynn Taylor in the above-captioned action and/or actions, certify that I have this 25<sup>th</sup> day of November, 2013 mailed a copy and/or copies of the following:

- 1. Motion to Strike,
- 2. Memorandum in Support of Motion to Strike, and

3. Affidavit of Respondent's Counsel

to the undersigned at his/her/their address(es) of record, with sufficient postage attached thereto, as follows:

Gene M. Connell, Jr., Esquire  
The Courtyard, Suite 209  
1500 U.S. Highway 17 North  
Surfside Beach, SC 29587-4547

  
Stephanie Hall

Conway, South Carolina

**THOMPSON  
& HENRY, P.A.**

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PHILIP C. THOMPSON  
PTHOMPSON@THOMPSONLAW.COM

November 21, 2013

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RE: Monroe E. Cook and Lynn S. Cook v. Nealy Lynn Taylor  
Appellate Case No.: 2013-000926

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's Motion to Strike, Memorandum in Support of Motion to Strike, Affidavit of Respondent's Counsel and Proof of Service along with our firm check in the amount of \$25.00 for filing.

Please file the original and 7 copies, and return a filed copy to me in the self addressed, stamped envelope I also enclose herewith.

By copy of this letter, we hereby serve the above stated documents on Appellants through their counsel of record.

With kindest regards, I am

Yours very truly,  
**THOMPSON & HENRY, P.A.**

  
Philip C. Thompson

PCT/sbh  
cc: Gene M. Connell, Jr., Esquire  
Nealy Taylor  
Enclosures as noted.

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NOV 27 2013

SC COURT OF APPEALS