

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William E. Lawson, Special Referee

CASE NO: 2011-CP-26-4758

RECEIVED

DEC 31 2013

SC Court of Appeals

Monroe E. Cook and Lynn S. Cook Appellants

v.

Nealy Lynn Taylor Respondent

RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO STRIKE

The Appellants in their Return to Respondent's Motion to Strike are trying to disguise their argument contained in Argument I of their Reply Brief and continue to attempt to bring up a subject through the back door, which they could not bring through the front door, being their Initial Brief, and did not bring up at trial. Argument I is nothing more than an attempt by the Appellants to draw the Court's attention away from the real issues in the case by alleging facts that are not supported by the record, that being that Appellants' trial counsel came to work for Respondent's trial counsel after the trial of this case. That is clearly inadmissible, unacceptable and improper pursuant to the case law and statutory law cited in Respondent's Memorandum in Support of her Motion to Strike. That

is also evident from Appellants' Return to Respondent's Motion to Strike from the total lack of authority supporting their return.

It is also misleading to the Court for the Appellants to state that Respondent is arguing that Appellants' trial counsel was incompetent when all the Appellants can argue is Respondent's responses to Appellants' assertions that Appellants' trial counsel was incompetent. Appellants argue that Respondent raised several issues for the first time in her Initial Brief. However, it was Appellants who raised those issues for the first time in their Initial Brief, apparently because Appellants' current counsel believes that Appellants' trial counsel should have tried the case differently. Some issues addressed by Appellants in Appellants' Return to Respondent's Motion to Strike as being raised for the first time by Respondent, but which were actually raised for the first time by Appellants in their Initial Brief include the failure to argue a directed verdict (Initial Brief of Appellant, p. 7), and failure to argue a constructive trust (Initial Brief of Appellant, pp. 11 & 14).

It is notable that the Appellant is unable to cite any authority in their return to support their position. The only authority they cite is Townes Assoc., Ltd. V. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (S.C. 1976) for the rule that in an appeal of an action in equity tried without a jury, this Court may make findings in accordance with its own view of the preponderance or greater weight of the evidence. However, those findings must be made on the record or on the facts contained in the record. As stated in Respondent's Motion to Strike and her Memorandum in Support of her Motion to Strike, there simply are no facts in the record regarding Appellants' trial counsel going to work for Respondent's trial counsel's law firm after the trial of this case.

Appellants argue that a Motion to Strike is a drastic remedy. That may or may not be true depending on the circumstances. However, in this case, the need to strike Argument

I of the Appellants' Reply Brief is absolutely necessary to enforce Rule 210(h), SCACR since there are no facts in the Record on Appeal to support Argument I, and the case law cited in Respondent's Memorandum in Support of Motion to Strike. It is also absolutely necessary to strike Argument I as that argument is an intentional attempt by the Appellants to mislead the Court, through both their Reply Brief and Return to Respondent's Motion to Strike, as to what the real issues are in the case which are supported by the record.

Respectfully submitted.



Philip C. Thompson, SC Bar# 11062
Thompson & Henry, P.A.
1300 Second Avenue, 3rd Floor
Post Office Box 1740 (zip: 29528)
Conway, South Carolina 29526
Telephone (843)248-5741
Facsimile (843)248-6396
pthompson@thompsonlaw.com

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

William E. Lawson, Special Referee

RECEIVED

DEC 31 2013

SC Court of Appeals

Appellate Case No. 2013-000926

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

v.

NEALY LYNN TAYLORRespondent.

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 30th day of December, 2013 mailed a copy and/or copies of the following:

- 1. RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S MOTION TO STRIKE

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.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 2952

PHILIP C. THOMPSON
PTHOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

December 30, 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:

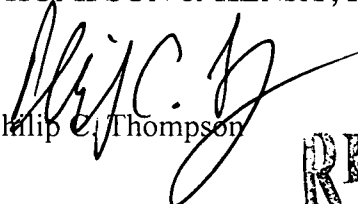
Enclosed please find the original and seven (7) copies of Respondent's Reply to Appellants' Return to Respondent's Motion to Strike and Proof of Service for filing.

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, I 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

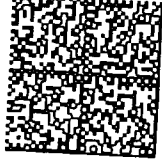
PCT/sbh
cc: Gene M. Connell, Jr., Esquire
Nealy Taylor
Enclosures as noted.

RECEIVED

DEC 31 2013

SC Court of Appeals

UNITED STATES POSTAGE
PITNEY BOWES
\$ 002.320
02 1P
0000808898 DEC 30 2013
MAILED FROM ZIP CODE 29526



FIRST CLASS MAIL

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

RECEIVED
DEC 9 1 2013
S.C. COURT of Appeals

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