STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-46-02008

EILEEN CRITCHER, ... Appellant,

vs.

SUSAN CRITCHER RHODES,
individually and as Personal Representative
of the Estate of Roy G. Critcher,
WANDA C. AKERS and
BELINDA CRITCHER THOMAS, ... Respondents.

AMENDED INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. WAS SUMMARY JUDGMENT WARRANTED IN LIGHT OF THE INCOMPLETE DISCOVERY?
2. WAS THE APPELLANT'S AFFIDAVIT IN OPPOSITION TO SUMMARY JUDGMENT HEARSAY?
3. IS THE RESPONDENTS' USE OF THE STATUTE OF LIMITATIONS PRECLUDED BY EQUITABLE ESTOPPEL?
4. IS THE RESPONDENTS' USE OF THE STATUTE OF LIMITATIONS PRECLUDED BY EQUITABLE TOLLING?

STATEMENT OF THE CASE

On May 27, 2011, Ms. CRITCHER filed suit against the Estate of Roy G. Critcher, alleging her equitable interest in $ 1,500,000.00. By Order filed January 23, 2012, that case was dismissed due to untimely filing of suit on the claim.

On June 1, 2012, Ms. CRITCHER filed this action against the heirs of the Estate. By her Amended Complaint, she alleged conspiracy, breach of fiduciary duty, conversion, fraud and constructive fraud, and sought the declaration of a constructive trust. The suit sought her equitable portion of the couple's joint property.

The Respondents' answered with a general denial, joined with a Rule 12 Motion to dismiss certain parts of the Amended Complaint.[1] No Scheduling Order was issued in this action.

The Respondents filed their Motion for Summary Judgment dated March 8, 2013. The Appellant served its discovery requests on May 7, 2013. To date, the Appellant's discovery remains unanswered.

Hearing on the Respondents' Summary Judgment Motion on May 16, 2013 resulted in the lower Court's Order filed June 24, 2013 dismissing all causes of action. Appellant's Motion to Alter or Amend was served on July 12, 2013. Hearing on that Motion was held on August 15, 2013. The lower Court's Order denying Appellant's Motion was filed August 21, 2013. Notice of Appeal was served on September 21, 2013.

1 The Amended Complaint improperly named the Estate,which party had been precluded by the Order of the Probate Court. RECORD ON APPEAL, Order of the Probate Court, p.__. Counsel for Appellant acquiesced in a dismissal of any allegations as to the Estate. This was not followed by an actual amendment of the caption.

STATEMENT OF FACTS

The Appellant, EILEEN CRITCHER, was, since August 12, 1973 and until his death, the second wife of Roy G. Critcher. Roy G. Critcher died on September 1, 2010. Roy G. Critcher's daughters by his first marriage, SUSAN CRITCHER RHODES, WANDA C. AKERS and BELINGS CRITCHER THOMAS, are heirs under his will.

During the marriage and until her retirement in 1988, EILEEN CRITCHER was employed. The Appellant and her husband maintained a joint checking account. The Appellant's earnings and, later, her social security benefits, were deposited into that joint account.

EILEEN CRITCHER and her husband jointly owned their home in Charlotte, North Carolina. This property was purchased and maintained with the funds of both spouses. This property was sold in 1980 and the net proceeds deposited into their joint checking account.

EILEEN CRITCHER and her husband jointly owned real property in Benson, North Carolina, which was maintained with the funds of both spouses. This property was sold in June, 1998 and resulted in net proceeds of $219,137.73, which were deposited into their joint checking account.

In or about 1980, Roy G. Critcher and EILEEN CRITCHER purchased a home in Lake Wylie, South Carolina. To Appellant's knowledge, that purchase was made from the joint funds referenced above, but titled to Roy G. Critcher alone.

From time to time, EILEEN CRITCHER and her husband moved funds from the joint checking account to a joint savings account. Later, Roy G. Critcher added SUSAN CRITCHER RHODES as signatory to both the joint checking account and a saving account. During the same period, Ms. RHODES systematically withdrew funds from both joint accounts and placed them in her name. The Appellant alleges such withdrawals were known to, and approved by, Roy G. Critcher. There is no evidence that Ms. RHODES made no contributions to the said joint accounts.

The Appellant alleges that the withdrawals were part of a combination by Roy G. Critcher with either Ms. RHODES or all his daughters, and was intended to deplete Mr. Critcher's property and Estate, and to deprive her thereof.

The Appellant alleges that she trusted Mr. Critcher to handle their joint financial affairs, and had no reason to doubt his honesty or his intention to protect her rights in their joint holdings.

Ms. RHODES took no action to make Ms. CRICHER aware of her withdrawal of funds. In or about August, 2008, Ms. CRITCHER became aware that the savings account was in her husband's name alone. Ms. CRITCHER then demanded, under threat of divorce, that her name be added to the savings account and the other property held by Mr. Critcher. In response, Roy G. Critcher promised to add her name to the savings account and property held by him. Her name was, in fact, added to the said savings account and a new will drawn which, she was assured, both by Mr. Critcher and their attorney, would treat her fairly. Her name was never added to the house in Lake Wylie.

After the death of Roy G. Critcher and in or about January, 2011, EILEEN CRITCHER received the Inventory and Appraisement from his Estate. From that document, she learned that no accounting was made for her contributions to the Estate or for the withdrawals made by Ms. RHODES.

On May 27, 2011, Ms. CRITCHER filed suit against the Estate of Roy G. Critcher, alleging her equitable interest in $ 1,500,000.00. By Order filed January 23, 2012, that case was dismissed due to untimely filing of suit on the claim.

On June 1, 2012, Ms. CRITCHER filed this action against the heirs of the Estate. By her Amended Complaint, she alleged conspiracy, breach of fiduciary duty, conversion, fraud and constructive fraud, and sought the declaration of a constructive trust. The suit sought her equitable portion of the couple's joint property.

The Respondents' answered with a general denial, joined with a Rule 12 Motion to dismiss certain parts of the Amended Complaint.[2] No Scheduling Order was issued in this action.

The Respondents filed their Motion for Summary Judgment dated March 8, 2013. The Appellant served her discovery requests on May 7, 2013. To date, the Appellant's discovery remains unanswered.

Hearing on the Respondents' Summary Judgment Motion on May 16, 2013 resulted in the lower Court's Order filed June 24, 2013 dismissing all causes of action. At the hearing, Appellant's counsel argued the lack of discovery and stated her inability to supply a timely Affidavit. Appellant's Motion to Alter or Amend was served on July 12, 2013. Hearing on that Motion was held on August 15, 2013. At hearing, the issues of discovery and the Affidavit were

2 The Amended Complaint improperly named the Estate,which party had been precluded by the Order of the Probate Court. RECORD ON APPEAL, Order of the Probate Court, p.___. Counsel for Appellant acquiesced in a dismissal of any allegations as to the Estate. This was not followed by an actual amendment of the caption.

again raised, and a copy of the Affidavit, attached to the Motion, argued. The lower Court's Order denying Appellant's Motion was filed August 21, 2013. Notice of Appeal was served on September 21, 2013.

ARGUMENTS

INCOMPLETE DISCOVERY

The Appellant argued by counsel at the hearing on Defendant's Summary Judgment motion that discovery was incomplete. RECORD ON APPEAL, Transcript, May 16, 2013, p.11, l.1-7; Transcript, August 15, 2013, p.4, l.1 – p.7, l.12. She notes that there is no Scheduling Order in this Case setting a limit on the date of for such discovery. RECORD ON APPEAL, *Id.* and generally. The Appellant's discovery in this case has never been answered. RECORD ON APPEAL, Plaintiff's Discovery Requests and generally.

The original Reporters on our Rules concluded their Note Concerning Reporter's Notes, located before the discussion of Rule 1, S.C.R.C.P., as follows:

> "The reporters caution that guidance as to interpretation and application of the rules is much better sought in the wealth of precedent found in the decisions of the federal courts and in the courts of the many states which have adopted similar rules of procedure since 1938."

There is, in fact, only limited South Carolina precedent relating to the operation of some of these Rules. In light of this lack, and the Note, the Appellant herein cites precedent from MOORE'S FEDERAL PRACTICE as to this issue.

The Commentators of MOORE'S point out:

> The [Federal] district courts have a duty under [Federal] Rule 56(f)to insure that the parties have been given a reasonable opportunity to make their record complete before ruling on a motion for summary judgment. To this end, it has been said that Rule 56(f) should be liberally construed.
> [MOORE'S FEDERAL PRACTICE, [950 Release 16-11/99], CIVIL RULES, § 56.10[8]; *footnotes omitted; matter in brackets added for clarity*.]

This Court has discussed the requirement for full recognition of the relevant facts, and therefore full discovery, at length:

> Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333; *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000);

Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct.App. 2001); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App. 2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App. 1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App. 2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct.App. 2000); *see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).
[*Schmidt* v. *Courtney*, 357 S.C. 310, ___, 592 S.E.2d 326, 331 (Ct.App. 2003).]

In the case at hand, Counsel for Appellant explained the lack of deposition evidence to counter the Respondents' basis for a limitations defense. RECORD ON APPEAL, Transcript, August 15, 2013, p.8, l.14 – p.9, l.3. It was further explained why, despite efforts to that end, a counter-Affidavit (though later submitted) was not available at the time. RECORD ON APPEAL, Transcript, May 16, 2013, p.11, l.1-7; Transcript, August 15, 2013, p.4, l.1 – p.7, l.12. Counter evidence to the Respondents' position is stated in the unverified Amended Complaint. RECORD ON APPEAL, Amended Complaint, Para.s 26 - 33. The Appellant's attempt to obtain evidence on her own behalf is clear from the record.[3] RECORD ON APPEAL, Plaintiff's Discovery Requests and generally. No prejudice exists to deny the Appellant the right to assemble evidence that would fully state her case.

In this regard, the Appellant notes the language of the Court's Order dismissing the possibility of new evidence. RECORD ON APPEAL, Order of August 16, 2013, p.4, 1st Para. This finding cannot be sustained. The Appellant specifically argued for the need to supplement her deposition, citing the partial nature of the Respondents' counsel's questioning. RECORD ON APPEAL, Transcript, August 15, 2013, p.8, l.19 – p.9, l.3. In addition, her deposition referenced

3The Appellant acknowledges that she could not produce her Affidavit to show why she could not respond at the original hearing. Counsel did, however, state her grounds in open Court and produced her Affidavit in Opposition during the hearing on the Motion to Alter or Amend. Rule 6(b), S.C.R.C.P. allows for the enlargement of time in which to accomplish an action, and the Appellant has shown good grounds therefor.

the need for expert examination of the family finances to determine a more exact amount of her loss. RECORD ON APPEAL, Plaintiff's Responses to Interrogatories, Response to 3., p.3; Deposition of Critcher, p.69, l.14 – 25; p.73, l..13 – p.74, l.25; Order of August 16, 2013, p.4, 1st Para. As stated, the Respondents have never responded to the Appellant's discovery requests. The need for further discovery should have been clear to the lower Court.

The Appellant has exercised due diligence in assembling her evidence, or, to state the matter differently, any failure on her part to assemble the same is not due to a lack of due diligence. The Appellant was entitled to a reasonable completion of her discovery prior to a ruling on Summary Judgment. The lower Court has failed to afford her that right, and has, to that extent, abused its discretion in the grant of Summary Judgment. That Court should be reversed.

THE AFFIDAVIT IS NOT HEARSAY

The Court below refuses the admission of the Appellant's Affidavit on the grounds that the recitation of the Appellant's now-deceased husband is hearsay. That description is inaccurate. Rule 801(d)(2), S.C.R.Evid., provides, in relevant part, as follows:

> (d) Statements Which Are Not Hearsay. A statement is not hearsay if -
>
> ...
>
> (2) Admission by Party-Opponent. The statement is offered against a party and is . . . (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

The Appellant has clearly plead conspiracy between the deceased and one or more of the named Respondents. The exception quoted above removes her evidence of the assurances of her late husband from the scope of hearsay evidence.

It has been explicitly recognized that a promise not to invoke the statute of limitations need not be in writing, but can be oral. 51 AM.JUR.2D *Limitation of Actions* § 393 (2002). By the same logic, an oral misrepresentation will serve to estop the Respondents herein from their use of the statute in this case.[4]

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4 In this regard and as a side issue, the Appellant takes strong issue with the lower Court's characterization of the Appellant's Affidavit as inconsistent with her deposition testimony. RECORD ON APPEAL, Order of August 16, 2013, p.3, Para. e; Transcript, August 15, 2013, p.8, l.14 – p.9, l.3 . No such inconsistency exists. Counsel for Respondents never inquired as to events after 2008, and the Appellant did not, therefore, address them in her responses. RECORD

EQUITABLE ESTOPPEL

The Commentators of AMERICAN JURISPRUDENCE 2D note as follows:

> Equitable estoppel bars a defendant from pleading the running of statute of limitations if the plaintiff is induced to refrain from bringing a timely action by the defendant's fraud, misrepresentation, or deception.
> [51 AM.JUR.2D *Limitation of Actions* § 399 (2002).]

The same Commentators, stating the principle in another manner, state:

> [I]t has also been held that, if a party against whom a cause of action has accrued in favor of another prevents that other person, by actual fraudulent concealment, form obtaining knowledge of the cause or action, or the fraud is of such a character as to conceal itself, the statute or limitations begins to run from the time the right of action is discovered or by the exercise of ordinary diligence might have been discovered.
> [51 AM.JUR.2D *Limitation of Actions* § 183 (2002).]

In the case at hand, the Appellant has both plead in her Amended Complaint [RECORD ON APPEAL, Amended Complaint, Para.s 26 - 33.] and stated in her Affidavit [RECORD ON APPEAL, Affidavit of Critcher, p.__] that she was assured by her late husband that the couple's accounts would bear her name. She only learned that this was not the case in or about January, 2011, some eighteen months prior to this filing of this action.

The use of such actions as are evidenced of the deceased has been used to invoke the doctrine of equitable estoppel and deny the application of the statue of limitations. AMERICAN JURISPRUDENCE 2D states:

> The doctrine of equitable estoppel may deprive a defendant of the defense of the statute of limitations if the plaintiff is induced to delay timely action by the promises of the defendant or the defendant's agent to . . . perform or otherwise carry out the obligation or duty in question. For example, if a defendant promises that the injury will be repaired and the plaintiff reasonably relies on these assurances to his or her detriment, the defendant will be estopped from asserting a statute of limitations defense.
> [51 AM.JUR.2D *Limitation of Actions* § 391(2002).]

The same logic must apply when the deceased acted, as an agent or co-consprirator of the named Respondents.

ON APPEAL, *Id.*

This principle of equitable estoppel or, more properly, equitable tolling, has been recognized by our Supreme Court:

> South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. See S.C. Code Ann. § 15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *id.* § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane).
>
> In addition to these statutory tolling mechanisms, however, "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. Limitations of Actions § 115 (2005). " Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Ocana* v. *Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004).
>
> Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez* v. *Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ' to ensure fundamental practicality and fairness.'" *Id.* at 736 (*citation omitted*). . . .
>
> It has been observed that "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Ocana*, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application. *See, e.g.*, *Irby* v. *Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) ("Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies."); *Abbott* v. *State*, 979 P.2d 994, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." (footnotes omitted)); *Kaplan* v. *Morgan Stanley & Co.*, __ Vt. __, __, [987 A.2d 258, 264] (2009) (2009 WL 2401952) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.") (citing *Beecher* v. *Stratton Corp.*, 170 Vt. 137, 743 A.2d 1093, 1098 (1999)); *cf. Machules* v. *Dep't of Admin.*, 523 So.2d 1132, 1134 (Fla. 1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).
>
> In our view, the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling." The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable

to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hausman* v. *Hausman*, 199 S.W.3d 38, 42 (Tex.App. 2006). Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.
[*Hooper* v. *Ebenezer Sr. Services and Rehabilitation Ctr.*, 386 S.C. 108, 115-117, 687 S.E.2d 29, 32-33 (2009); recent citationing added.]

The Appellant has produced evidence of such fraud, misrepresentation or deception as entitles her to invoke the doctrine of equitable tolling.

The Appellant would also note the existence of her prior suit to enforce the same right in Probate Court. RECORD ON APPEAL, Order of the Probate Court, p.__. Under the favorably cited language of the Alaska Court in *Irby, supra*, she may also plead her attempt to invoke another legal remedy as equitably tolling the statute of limitations. This conclusion is in line with other precedent:

During the period of the restraint incident to other legal proceedings that are of such a character that the law forbids one of the parties to exercise a legal remedy against another, the running of the statute of limitations is postponed, or, if it has commenced to run, is suspended.
[51 AM.JUR.2D *Limitation of Actions* § 207 (2002), citing, *inter alia*, *Huang* v. *Ziko*, 132 N.C.App. 358, 511 S.E.2d 305 (1999).]

While the Probate litigation, involving the same parties, continued, the Appellant could not proceed with a separate cause of action such as here. Again, the time of that litigation cannot be considered as within the time allowed by the relevant statute of limitations.

CONCLUSION

The Respondents' arguments, as followed by the lower Court, come down to a failure on Appellant's part to adequately or timely present her objections to the summary judgment motion. Even assuming such inadequacy, the Appellant's consistency in her position, and the good faith in which she acted, should be clear.

There is evidence of wrong-doing on the part of the Appellant's deceased husband. That wrong-doing benefited his heirs and deprived the Appellant. It prevented a more timely action on the Appellant's part to assert her rights. The Respondent are not entitled to benefit from

inequitable actions on the part of the deceased.

Respectfully submitted,

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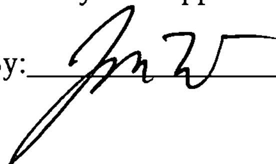
By: 

February 5, 2014

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-46-02008

EILEEN CRITCHER, ... Appellant,

vs.

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individually and as Personal Representative
of the Estate of Roy G. Critcher,
WANDA C. AKERS and
BELINDA CRITCHER THOMAS, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certify that this final Brief of Appellant complies with Rule 210(b), S.C.A.C.R.

January __, 2014

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BELINDA CRITCHER THOMAS, ... Respondents.

PROOF OF SERVICE

I certify that, on the date below, I have served the Amended Initial Brief of Appellants on the following counsel of record:

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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some

person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

February 5, 2014

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February 5, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
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Re: Eileen Critcher, Appellant,
v. Susan Critcher Rhodes,
Wanda C. Akers, and
Belinda Critcher Thomas, Respondents.

Case No. 2012-CP-46-02008

Dear Ms. Kitchings:

In response to the objection of opposing counsel, I enclose herewith the original and one (1) copy of the Appellant's Amended Initial Brief, together with Certificate of Service for the same in the above referenced case..

By copy of this letter, I am serving counsel for the Respondent with copies of the said Amended Initial Brief and Designation of Matter, as evidenced by the Certificate of Service.

If the circumstances of this Amended Initial Brief, in the judgment of the Court, require a Motion to file out of time or other comparable procedure, please advise.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,

John Martin Foster

jmf/
enclosures
cc: Client File

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