

STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Joseph M. Strickland, Presiding Circuit Court Judge

Appellate Case No. 2014-000628

Indictment No.: 2010-CP-40-06592

Bernard Richardson..... Appellant

vs.

Delores Nelson..... Respondent

RECEIVED

APR 24 2014

SC Court of Appeals

**AFFIDAVIT IN OPPOSITION TO MOTION
TO DISMISS AND SUSPEND BRIEFING SCHEDULE**

NOW COMES the undersigned attorney for the Appellant who first being duly sworn and under oath deposes and says:

1. That I began representing the Appellant in the Magistrate Court in Richland County in Eastover, South Carolina;
2. After many delays and postponements, the Honorable Judge Jeff Simons, Eastover Magistrate, referred the case to the Honorable Joseph Strickland, Master-in-Equity for Richland County for his finding of facts and Conclusion of Law;
3. The case was tried before Judge Strickland on June 17, 2013 starting at 9:30 o'clock a.m. until its conclusion.

4. At the end of the case, including closing arguments from both sides, Judge Strickland made his finding of facts and conclusions of law orally from the bench and asked the attorneys for the plaintiff to prepare the Order based on his oral ruling;

5. Sometime in August, 2013, I reviewed an unsigned copy of the Order written by the plaintiff's attorney, (a copy is attached as exhibit A)

6. I was concerned that there was no reference made to the controlling issues in the case, that is, the correct location of Lot 11 in the sub-division in question in Eastover, South Carolina.

7. That issues was resolved with the admission into evidence of the sub-division plat and was the controlling argument by both sides in their closing arguments;

8. As a result of the unsigned order and the inadequate consideration give to the controlling issue in the case, I hand-delivered a letter to Judge Strickland's office on September 25, 2013 outlining my arguments and my presentation at the trial. (a copy of two letter on the same subject is marked Exhibit B)

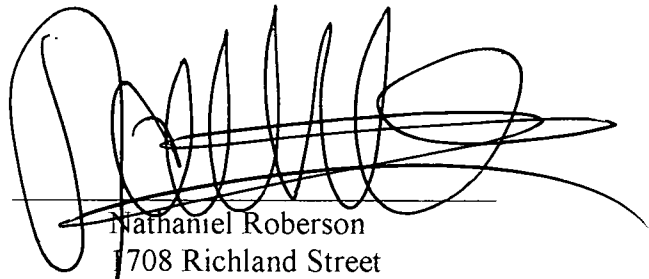
9. I had on several occasions seen Judge Strickland and less opportunity to see the plaintiff's attorney and asked if the Order had been signed to which the answer was no.

10. On November 14, 2013, I received a call from the Receptionist/Secretary of Judge Strickland asking if I had submitted a proposed order (*Not certain of her name*). My reply was no because I was not asked to do so. I told her I would fax my proposed requested addition to the unsigned order and, I instead, printed the items in number 8 above and I hand-delivered them to Judge Strickland Receptionist/Secretary since I was going to the courthouse anyway. since to the judge and I also hand-delivered a copy (*Copies attached hereto*);

11. I asked the Receptionist/Secretary to call me when the Order is signed and I would pick it up.

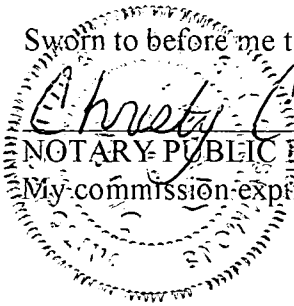
12. I never received the call or the Order that was signed by Judge Strickland;
13. I received a call from the father of the Appellant stating that an Order was served on the sister of the Appellant demanding, among other things, that the property be vacated. This took place on March 18, 2014. I had him fax me the Order and I received it on March 19, 2014.
14. On March 19, 2014, I wrote and faxed to Jude Strickland and asked that he send to me a copy of the Order. I did not hear back from him. (a copy is attached as exhibit C)
15. Having not heard from Judge Strickland, I went to the Clerk of Court's Office to see if a Certificate of Service was in the file to confirm if service of the order had been made on me. I found no such certificate of service and only his signed order.
16. I then filed Notice of Intent to Appeal and served it on the plaintiff's attorney;
17. I also filed a 59 (e) Motion under SCRPC to compliment my hand-delivered notices as exhibits shown above. (see exhibit D)
18. I filed and served the Notice of Appeal on March 21, 2014.
19. I received a letter dated February 26, 2014, addressed to the Clerk of Court of Richland County which did not include Judge Strickland Order and a Certificate of Service (*see attached documents marked exhibit E*). This information was received by March 8, 2014;
20. I contend (without admitting that the appeal is untimely) that neither party is prejudiced given that all parties were on notice and knew that the case would be appealed. (see *Camp v. Camp*, 386 S.C. 571, 689 S.E. 2d 634 (2010) for direction on overly applying technical reading of rules.

The undersigned moves based on this Affidavit that the Motion to Dismiss the Appeal and Suspend Briefing be denied and allow the process to continue.



Nathaniel Roberson
1708 Richland Street
Columbia, S.C. 29201
803-252-4449
Attorney for Appellant

Sworn to before me this 24th day of April, 2014


Christy C. Simmons
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires July 11, 2021

EXHIBIT

A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Bernard Richardson)
)
Plaintiff,)
)
v.)
)
Deloris Nelson)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-06592

ORDER

THIS MATTER CAME BEFORE THE COURT for trial on the merits. Present at the trial were the Plaintiff, Bernard Richardson, and his counsel, Ian D. McVey and Hugh M. Cooper. Defendant Deloris Nelson was not present; however, her father, Napoleon Deveaux, was present along with counsel for the Defendant, Nathaniel Roberson. At trial, the Plaintiff testified on his own behalf as did his surveyor, Ben Whetstone. Mr. Deveaux took the stand on behalf of the Defendant. Based upon the evidence present including the exhibits admitted into evidence and the testimony presented by the witnesses, I find, order and conclude as follows:

PROCEDURAL HISTORY

This matter was commenced by the filing of a Summons and Complaint for Trespass in the Magistrate's Court in Eastover, South Carolina. Defendant filed her Answer and Counterclaim wherein she asserted title to the property which is the subject of this Action. Thereafter, the Eastover Magistrate issued an order removing the case to the Circuit Court for Richland County pursuant to S.C. Code Ann. §22-3-20.

By consent of the parties, the matter was referred to the undersigned, and this Court jurisdiction over this matter pursuant to said Consent Order of Reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiff is the owner of the following described real property ("Subject Property") by virtue of that certain deed from Thelma Scott Nance to Bernard Richardson and Brian Richardson dated May 14, 2007 and recorded on June 21, 2007 in the office of the Register of Deeds for Richland County in Book 1327 at page 2201:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the Town of Eastover, County of Richland, State of South Carolina, being shown and delineated on a plat prepared for Bernard Richardson and Brian Richardson by Donald G. Platt, RLS, dated May 14, 2007 and recorded on June 21, 2007 in the office of the Register of Deeds Richland County in Plat Book 1327 at page 2203; said lot having such metes and bounds as shown on said plat, which is being incorporated herein by reference as part of this description.

This being a major portion of the property conveyed to Thelma Scott Nance by Deed of Blanche S. Dickerson, Blondell S. Thornton, Gloria S. Hight and Jeffery D. Scott recorded on August 1, 1988 in the office of the Register of Deeds for Richland County in Deed Book D898 at Page 705.

TMS #: 36802-01-01

2. Defendant claims an interest in the following described property by virtue of a deed from D.F. Deschamps to Emma Rawlinson dated December 17, 1924 and recorded on December 30, 1924 in the office of the Register of Deeds for Richland County in Book CQ at page 84:

All that certain piece, parcel or lot of land in the Town of Eastover, County of Richland, State of South Carolina known as Lot #11 in Block R on a plat of the Ray Subdivision made by J.C. Covington, C.E., November 2nd, 1918 for C.G. Rowland measuring and bounding as follows, to wit: North by Lot #10 on which it measures 180 feet, more or less, South by Lot #12 on which it measures 180 feet, more or less; East by a Fifty (50) foot street on which it measures 70 feet, more or less; and on the West by a Twenty (20) foot street or alley on which it measures 70 feet, more or less.

3. Ms. Rawlinson died intestate leaving behind no will or other form of devise.

4. As is indicated by the Richland County Assessor's office, Defendant is the owner of

that certain mobile home ("Mobile Home") described as 1996 Fleetwood, Serial Number NCFLT41A3544OFE11 which is currently located on the Subject Property.

5. Ms. Nelson claims she is entitled to locate the Mobile Home on the Subject Property by virtue of being a Fourth (4th) generation heir of Ms. Rawlinson.

6. As a threshold matter, none of the heirs of Ms. Rawlinson have any claim to the Subject Property. Any claim they may have is to Lot 11 as indicated above which is located directly to the North of the Subject Property and does not encompass any portion of the Subject Property.

7. Further, Defendant has no claim to Lot 11. According to the testimony of Mr. Deveaux, Defendant's mother is a descendant of Emma Rawlinson and still living. As such, any interest Ms. Nelson may have in Lot 11 has not yet vested.

8. Therefore, I find the Plaintiff has prevailed on the merits as is entitled to the relief requested in the Complaint and a finding that Defendant and any others claiming through her is trespassing on the Subject Property.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is the owner in fee simple along with Brian Richardson of the Subject Property free and clear of any claims of the heirs of Emma Rawlinson.

2. Defendant has no claim or interest in the Subject Property.

3. Defendant shall remove the Mobile Home and all personal belongings and structures within fifteen (15) days of the entry of this Order.

4. Any tenants of the Defendant, persons claim through her or any others occupying the Subject Property shall likewise vacate the Subject Property within fifteen (15) days of the entry of this order taking with them all their belongings.

5. The Sheriff of Richland County is directed to take such steps as are necessary to effectuate the intent of this Order and place the Plaintiff in peaceable possession of the Subject Property.

6. The Clerk of Court and Register of Deeds shall index said order in the records for Richland County so as to reflect the Plaintiff's fee simple ownership of the Subject Property.

AND IT IS SO ORDERED.

Joseph M. Strickland
Master-in-Equity for Richland County

August ____, 2013
Columbia, South Carolina

EXHIBIT

B

November 14, 2013

Via Facsimile

**TO: Judge Strickland (#576-1865)
Master-in-Equity for Richland County**

**Ian D. McVey (#404-6902)
Attorney for Plaintiff**

FROM: Nathaniel Roberson

**RE: Richardson v. Nelson
Case No.: 2010-CP-40-6592**

Gentlemen:

Plaintiff called a surveyor and had him qualified as an expert. He testified that he and two (2) other surveyors agreed that a starting point for the measurement was the middle of the railroad track across the street from the original subdivision and the plot of the subdivision is in evidence.

Defendant objected to the starting point being the middle of the railroad track that has no basis for such calculations. Further, that the original subdivision plat had iron stakes alongside the street in front of the railroad track.

The defendant's reasoning was stated to be that any starting point of measurement other than the stakes alongside the street would serve to misrepresent the ownership of property in the subdivision so as to justify the property claimed the plaintiff.

The judge over-ruled the object and the plaintiff's claim to his property was the basis for his ruling that the defendant was occupying plaintiff's land.

It is also incorrect to state defendant has no interest in the subject property to which she never claimed interest.

Lastly, the defendant's father testified that the defendant's mother has paid the taxes on the property for more than ten (10) years. The defendant's mother is a heir to the original owner and is in possession of the property with her mother's permission.

September 25, 2013

HAND-DELIVERED

**TO: Judge Strickland
Master-in-Equity for Richland County**

FROM: Nathaniel Roberson

**RE: Richardson v. Nelson
Case No.: 2010-CP-40-6592**

Gentlemen:

Plaintiff called a surveyor and had him qualified as an expert. He testified that he and two (2) other surveyors agreed that a starting point for the measurement was the middle of the railroad track across the street from the original subdivision and the plot of the subdivision is in evidence.

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The judge over-ruled the object and the plaintiff's claim to his property was the basis for his ruling that the defendant was occupying plaintiff's land.

It is also incorrect to state defendant has no interest in the subject property to which she never claimed interest.

Lastly, the defendants father testified that the defendants mother has paid the taxes on the property for more than ten (ten) years. The defendants mother is a heir to the original owner and is in possession of the property with her mother's permission.

These facts need to be added to your order so the record might reflect the basis for your ruling.

Thanks for your consideration.

With kind regards, I am

Very truly yours,

Nathaniel Roberson

EXHIBIT

C



Nathaniel Roberson

Attorney At Law
1708 Richland St.
Columbia, S.C. 29201

Office: (803) 252-4449
E-Mail: RobersonLawFirm@sc.rr.com

Home: (803) 865-0163

Fax (803) 252-6266

March 19, 2014

Via Facsimile #576-1865 & US Mail

The Honorable Joseph Strickland
Master-in-Equity
Richland County Judicial Center
1701 Main St.
Columbia, S.C. 29201

RE: *Richardson v. Nelson*
Case No: 2010-CP-40-6592

Dear Judge Strickland:

My client called me last night (March 18, 2014) and informed me that he had received an Order removing him from the property in question.

I had him to fax the Order to my office and it appears that it was filed in the Office of the Clerk of Court on February 10, 2014.

This is a great surprise to me as I have not received a copy of the Order from your office and was therefore unable to affect my Appeal and my 59(E) challenges since the time has expired to file the same.

Specifically, I have not filed an Appeal because I have not been served with a copy of your Order.

Please serve me with a copy of the Order so that I can protect my client's rights as I have maintained all along. I will appeal your ruling from the bench.

With kindest regards, I am.

Very truly yours,


Nathaniel Roberson

NR/ckh

ROBERSON FAX

LAW OFFICE OF NATHANIEL ROBERSON
1708 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
OFFICE: 803-252-4449
FAX: 803-252-6266

FACSIMILE TRANSMITTAL SHEET

TO: Judge Strickland Master-in-Equity	FROM: Nathaniel Roberson
COMPANY: Richland County Judicial Center	DATE: 3.19.14
FAX NUMBER: 576-1865	NO. OF PAGES (INCLUDING COVER) 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: 252-4449
RE: Case No: 2010-CP-40-6592	TIME: 2:50 p.m.

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

MESSAGE:

If you do not receive all of the pages in this fax, please call (803) 252-4449 immediately

The information contained in this transmission is intended for the use of the addressee. This fax contains legal, confidential information. Any misuse of this information is strictly prohibited. If you have received this fax in error, please call the sender immediately and return the original to the above address. Thank you.

ROBERSON FAX

LAW OFFICE OF NATHANIEL ROBERSON
 1708 RICHLAND STREET
 COLUMBIA, SOUTH CAROLINA 29201
 OFFICE: 803-252-4449
 FAX: 803-252-6266

FACSIMILE TRANSMITTAL SHEET

TO: Judge Strickland Master-in-Equity	FROM: Nathaniel Roberson
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RE: Case No: 2010-CP-40-6592	TIME: 2:50 p.m.

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

03/19/2014 15:13 8032526266

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P.001

 *** TX REPORT ***

JOB NO.	MODE	NO.	DESTINATION TEL/ID	START TIME	PAGE	RESULT
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EXHIBIT

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STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

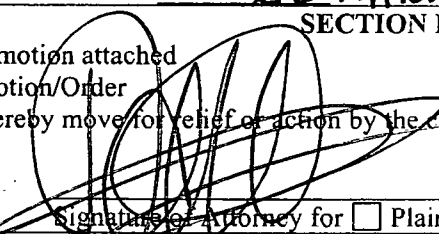
IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

CASE NO.: 2010 -CP- 40-6592

Bernard Richardson)
Plaintiff,)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.)
Delanos Nelson)
Defendant.)

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>NATHAN FEEBER</u> , Bar No. <u>64129</u> Address: <u>1708 Richland St. Columbia</u> Phone: <u>252 4449</u> Fax <u>252 6866</u> E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>59(e) SCRC</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant Date submitted <u>3-28-2014</u> , 20 <u>14</u>	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: <u>59(e) rule</u>	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED
2014 MAR 28 PM 12:31
RICHLAND COUNTY

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Bernard Richardson)
)
Plaintiff(s),)
)
vs.)
)
Deloris Nelson)
)
Defendant(s))

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2010-CP-40-6592

**DEFENDANT'S MOTION
PURSUANT TO
RULE 59 (e) SCRCP**

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2014 MAR 28 PM 12:30

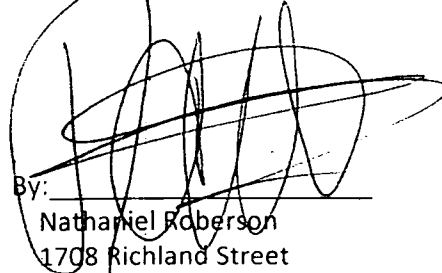
RICHLAND COURT
FILED

TO THE DEFENDANTS ABOVE-NAMED AND IAN MCVEY, ESQUIRE, THEIR ATTORNEY: YOU WILL PLEASE TAKE NOTICE that the defendant, Deloris Nelson, by and through her undersigned counsel, will move before the Honorable Joseph M. Strickland at 10:00 a. m. o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an Order of the court altering or amending his Order of February 7, 2014 which was filed on February 10, 2014 by recalling and setting the same aside. The motion will be based upon, but not limited to the following:

1. That the plaintiff was allowed to elicit an expert opinion from his witness that he conferred with two (2) real estate officers and they came to the conclusion to measure the property lines at a place they agreed upon with no legal or factual basis there for.
2. That the judge's order does not include the testimony of the defendant's father that his wife and mother of the defendant is the surviving heir of the original owner (Ms. Rawlinson) and they have paid the taxes and maintained the property for over five (5) years. The defendant is on the property with permission of her mother heir.
3. That the defendant/occupant of the property in question of the property was occupied at the property was purchased by the plaintiff and no consideration was given to the original sub-division plat that is in evidence.

The motion will further be based upon the pleadings, correspondence, case law, the arguments of counsel, legal memorandum, and such other evidence as the court may allow.

Nathaniel Roberson

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

By:

Nathaniel Roberson
1708 Richland Street
Columbia, S.C. 29201
Telephone: (803) 252-4449

Columbia, South Carolina

3-28, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Bernard Richardson)
)
Plaintiff(s),)
)
vs.)
)
Deloris Nelson)
)
Defendant(s))

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2010-CP-40-6592

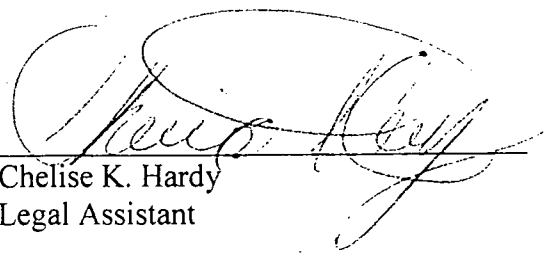
CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.
2014 MAR 28 PM 12:34
RICHLAND COURT
FILED

This is to certify that I, Chelise K. Hardy, have this day served the foregoing **Defendant's Motion Pursuant to Rule 59 (e) SCRPC** in connection with the above-captioned case, by placing said document in the United States Mail with proper postage affixed thereto, upon the following person(s) at the following address(es):

Ian McVey, Esquire
Callison, Tigh & Robinson, LLC
PO Box 1390
Columbia, S.C. 29202

The Honorable Joe Strickland
P.O. Box 192
Columbia, S.C. 29202


Chelise K. Hardy
Legal Assistant

Columbia, South Carolina
March 28, 2014

EXHIBIT

E

COPY

CALLISON TIGHE

Tamekia A. Hunter - Paralegal
803-404-6900 ext. 3024
tamekiahunter@callisontighe.com

February 26, 2014

The Honorable Jeannette McBride
Clerk of Court for Richland County
P.O. Box 2766
Columbia, SC 29202

RE: Bernard Richardson vs. Deloris Nelson
Case No. 2010-CP-40-6592
Our File No. 5564.001

Dear Ms. McBride:

Enclosed herewith please find the original and one (1) copy of the **Certificate of Service**, in the above-referenced matter. Please file the original and return the clocked-in copy to me in the self-addressed envelope provided.

By copy of this correspondence to counsel for Defendant, I am verifying that on February 11, 2014 I served a clocked copy of Judge Strickland's Order regarding the trial on the merits on counsel.

Of course, should you have any questions or comments, please do not hesitate to contact me.

With kind regards, I am

Yours very truly,

CALLISON TIGHE & ROBINSON, LLC



Tamekia A. Hunter,
Paralegal to Ian D. McVey

TAH/
Enclosures
cc: (w/encls.) Nathaniel Roberson, Esquire
cc: (w/encls.) The Honorable Joseph M. Strickland
cc: (w/encls.) Hugh Cooper, Esquire

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No.: 2010CP4006592

Bernard Richardson)

Plaintiff,)

CERTIFICATE OF SERVICE

v.)


Deloris Nelson)

Defendant.)

I, Tamekia A. Hunter, an employee of Callison Tighe & Robinson LLC, Attorneys for the Plaintiff, do hereby certify that I have served a **clocked** copy of the **ORDER** signed by Judge Strickland dated February 7, 2014 and filed February 10, 2014 in this matter on Counsel for the Defendant by causing copies to be placed in the United States Mail, first-class postage affixed, addressed as follows, on **February 11, 2014**:

PARTIES SERVED:

**Nathaniel Roberson, Esquire
Roberson Law Firm
1708 Richland Street
Columbia, SC 29201**



Tamekia A. Hunter,
Paralegal to Ian D. McVey, Esquire

February 26, 2014
Columbia, South Carolina