

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

7/20/10

Maite D. Murphy
Circuit Court Judge

Case No. 2011-CP-07-04999

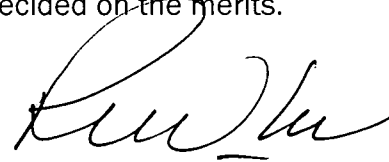
STEFFANI WALTHER and MICHAEL D. WALTHER.....Appellants

v.

EDDIE MAPLE and KATE MAPLE, INDIVIDUALLY and
d/b/a EQUINE MANAGEMENT, LLC.....Respondents.

PETITION TO REINSTATE APPEAL

PLEASE TAKE NOTICE that the Plaintiffs herein, Steffani Walther and Michael Walther, pursuant to Rule 231(a), SCACR, hereby move before the Court of Appeals for an order reinstating the appeal in this case for the reasons appearing in the Affidavit attached hereto, as well as upon the grounds that it is in the interests of justice that the issues in this case be heard and decided on the merits.



Robert V. Mathison, Jr.
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
(843) 785-6503
Email: rmathlaw@aol.com
Attorneys for the Appellants
Steffani Walther and Michael
Walther

April 30, 2010

Hilton Head Island, South Carolina.

RECEIVED
MAY 01 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Maite D. Murphy
Circuit Court Judge

Case No. 2011-CP-07-04999

STEFFANI WALTHER and MICHAEL D. WALTHER.....Appellants

v.

EDDIE MAPLE and KATE MAPLE, INDIVIDUALLY and
d/b/a EQUINE MANAGEMENT, LLC.....Respondents.

AFFIDAVIT

PERSONALLY appeared before me Robert V. Mathison, Jr. (herein sometimes
"the Affiant"), who, first being duly sworn, says under oath the following:

1. My name is Robert V. Mathison, Jr., and I am an attorney licensed to practice law by the state of South Carolina.
2. I am the attorney for the Appellants, Steffani Walther and Michael Walther, and I reside at 21 Bateau Road at Hilton Head Island, in Beaufort County South Carolina.
3. I am 67 years of age, of sound mind, and I make this Affidavit of my own personal knowledge.
4. This is an appeal from an Order dated October 29, 2013, wherein the Honorable Maite D. Murphy dismissed the Plaintiffs' defamation case and granted attorney's fees to the Defendant in the amount of \$9,691.18 as sanctions for the failure by one of the Plaintiffs to appear for her deposition.

5. As appears from my affidavit submitted below (Exhibit I), a copy of which is attached, I believed that the hearing of the motion had been scheduled for October 29, 2013, and, upon learning that it was being held on the day before, I contacted the court to advise of my imminent appearance only to be told that the matter had already been heard.

6. On October 30, 2013, I received from opposing counsel copies of summaries of his time and expenses in the case. Believing that the matter was still under consideration, I went to court and, finding Judge Murphy on the bench, apologized and then inquired about the status of the case.

7. Judge Murphy told me that the matter had been concluded and an order had been entered, though, when I asked her to review my client's affidavit, a copy of which is attached (Exhibit II), she agreed reluctantly to do so.

8. A trip by me the Office of the Clerk of Court revealed that the file for this case was missing, and, accordingly, no copy of the order could be found.

9. Despite repeated visits to the Clerk's office thereafter (at least, four), the file could not be located.

10. However, an email sent to me by opposing counsel on November 18, 2013, which I received the following day, contained the Order dated October 29, 2013, as an attachment.

11. Despite another visit to the Clerk's office, no file to review had been located (though it has subsequently been found).

12. Not knowing what had occurred, in an abundance of caution, I moved for reconsideration under Rules 52 and 59, SCRCP, moved for relief from the judgment under Rule 60(b), SCRCP, and filed a Notice of Appeal to this Court, each of which was dated and served on November 29, 2013.

13. Thereafter, I timely notified the court reporter of the appeal (Exhibit III) and advised Judge Murphy of the appeal and the need for a remand to hear one or both of the

motions.

14. Expecting contact from Judge Murphy's office to advise as to how she wished to proceed or to schedule a hearing, I did not resume my effort to contact the court reporter.

15. On or about January 29, 2014, I received notice that Judge Murphy, without a hearing, had denied the Motion for Reconsideration and not ruled on the Rule 60(b) Motion.

16. By that date what had been a chronic condition with my right hip had become acute, constraining me to cut back on my work and to seek medical help.

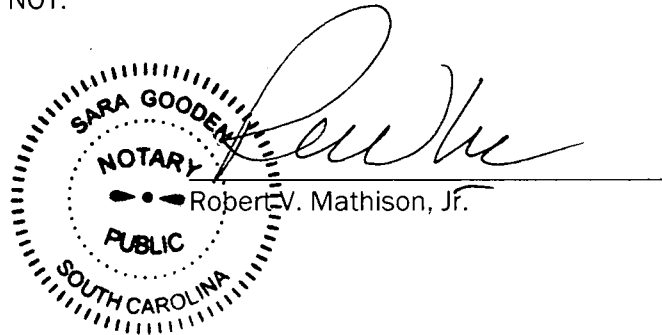
17. After numerous tests and preliminaries, I underwent surgery (total hip arthroplasty) by Dr. James Karegeannes at Memorial Mission Hospital in Asheville, North Carolina, on Friday, March 14, 2014, after which I was in physical therapy and otherwise convalescing for an additional 24 days.

18. Since then, I have been gasping for air attempting to make up for the time I lost over the previous two months.

19. During this period, I should have seen to the preparation of the transcript by the court reporter, but I did not follow through.

20. However, I have now done so and ask that the Court excuse my delay.

FURTHER THE AFFIANT SAYETH NOT.



SWORN to before me this
1 day of May, 2014.

Sara Gooden
Notary Public for South Carolina
My Commission Expires: 12/15/2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

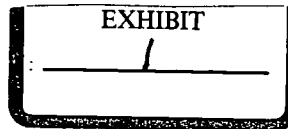
IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-04999)

STEFFANI WALTHER and)
MICHAEL D. WALTHER,)
)
Plaintiffs,)

v.)

AFFIDAVIT OF ROBERT V. MATHISON JR.

EDDIE MAPLE and KATE)
MAPLE, INDIVIDUALLY and)
d/b/a EQUINE MANAGEMENT,)
LLC,)
)
Defendants.)



PERSONALLY appeared before me Robert V. Mathison, Jr., who, first being duly sworn, says under oath the following:

1. My name is Robert V. Mathison, Jr., and I reside at 21 Bateau Road at Hilton Head Island in Beaufort County, South Carolina.
2. I am an attorney licensed to practice law in the state of South Carolina, and, in that capacity, I represent the Plaintiffs in this action.
3. I am 66 years of age, of sound mind and I make this Affidavit of my own personal knowledge.
4. Approximately three weeks before the term of court beginning on October 28, 2013, I reviewed the internet site for the Beaufort County Clerk of Court, and, specifically, that detailing the various rosters for jury cases, non-jury cases and motions to be heard in and by the Court of Common Pleas.

5. I typically perform such a review not less often than once per month, and I place as many as 30 entries on my calendar as a result.

6. Believing the hearing of the Defendants' motion in this case to have been scheduled by the Clerk's office for Tuesday, October 29, 2013, I placed an entry to that effect on my calendar.

7. In order to have an affidavit detailing the reason for Ms. Walter's absence from the last attempt to take her deposition, prior to my departure for the Mountains on Friday, October 25, 2013, I asked Ms. Walther to gather and furnish information pertinent to the assault on her son in California and the duration of her caring for him at the hospital and at his home in California.

8. Upon arriving at my office at 1:10 p.m. on Monday, October 28, 2013, I reviewed my calls and my email, including the information that I had sought from Ms. Walther for use in preparing her affidavit.

9. One email that I had received on Monday from the office of the Honorable Carmen T. Mullen described a motion in which I was counsel for one of the Defendants, and, specifically, a motion for reconsideration of a motion previously decided by Judge Mullen that, evidently, had been discussed at a roster meeting on Monday morning, as it could not be heard by the Honorable Maite D. Murphy during her term of court.

10. Because I did not have that motion noted on my calendar, nor, indeed, the roster meeting for that matter, I reviewed the roster on the Beaufort County Clerk of Court's internet site and saw that the Defendants' motion in this case was scheduled for 1:00 p.m. on Monday, not for 1:00 p.m. on Tuesday.


11. I thereupon collected my file and left the office, calling Judge Mullen's office, which was the only number I had indexed in my mobile telephone to advise that I would be late to the motion but was on the way. That telephone call took place at 1:35 p.m. on Monday, October 28, 2013.

12. Approximately ten minutes later, the secretary in Judge Mullen's office called to advise that my message had been delivered to Judge Murphy's Law Clerk, but that the matter had already been heard and decided.

13. I therefore returned to my office and completed the Affidavit for Ms. Walther, which was subsequently filed and, after a copy was furnished to opposing counsel, was presented to the Court.


14. I received a copy of the Order dated October 29, 2013, via email from opposing counsel on Monday, November 18, 2013.

FURTHER the Affiant sayeth not.



Robert V. Mathison, Jr.

SWORN to and subscribed
before me this 29 day of November, 2013.



Notary Public for Pennsylvania
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

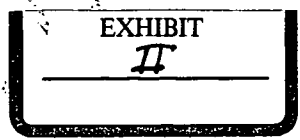
IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-04999)

STEFFANI WALTHER and)
MICHAEL D. WALTHER,)
)
Plaintiffs,)

v.)

AFFIDAVIT OF STEFFANI WALTHER

EDDIE MAPLE and KATE)
MAPLE, INDIVIDUALLY and)
d/b/a EQUINE MANAGEMENT,)
LLC,)
)
Defendants.)



PERSONALLY appeared before me Steffani Walther (herein sometimes "The Affiant"), who, first being duly sworn, says under oath the following:

1. My name is Steffani Walther and I am the primary plaintiff in this action.
2. I am 59 years of age, of sound mind, and I reside at 5 Ghost Pony Road, at Bluffton, in Beaufort County, South Carolina.
3. I make this affidavit on my own personal knowledge.
4. A significant problem in scheduling my deposition has resulted from a failure to communicate about suitable dates prior to sending out deposition notices.
5. That was the case with the so-called Fourth Notice of Deposition, which called for my deposition to be taken on August 28, 2013.
6. Although my attorney had scheduling conflicts, as did my husband, Michael, which were called to the attention of Defendants' counsel on the date that we

learned of the most recent notice (see Exhibit A), August 7, 2013, I did not have a conflict on that date, when it was initially proposed.

7. However, on August 26, 2013, I received notice that my son, Pedram Davoud, had been assaulted (with the intent to kill) on August 25, 2013, in Orange County, California.

8. My son's injuries were so extensive that he had been transferred in serious condition from Placentia Linda Hospital to the University of California at Irvine Emergency Department (where he is photographed in Exhibit B), at which time he was placed under the care of Dr. Robert Katzer.

9. I immediately made plans to attend my son, and, with the assistance of my husband, I was able to purchase an airline ticket on the afternoon of August 26, 2013, as appears from Exhibit C.

10. I stayed with my son in California--both before and after he underwent extensive surgery for his injuries.

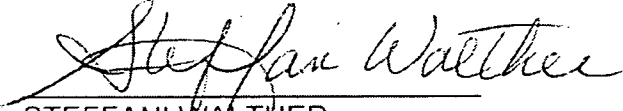
11. I did not return to Bluffton until August 31, 2013, after my son's condition had become stable and I had assured that he had adequate home care.

12. Accordingly, on August 28, 2013, I was not available for a deposition in Beaufort County, South Carolina.

13. I am informed and believe that the Defendants' attorney was advised by email that the deposition would not take place, as appears from Exhibit D.

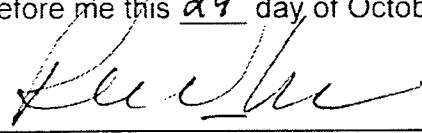
14. The Defendants' attorney may be unaware of my circumstances as described above because he refused to call my attorney as requested, as also appears from Exhibit D.

FURTHER THE AFFIANT SAYETH NOT.



STEFFANI WALTHER

SWORN to and subscribed
before me this 29 day of October, 2013.



Notary Public for South Carolina
My Commission Expires: 5/2/2016.

From: Phil Florence <phil@theflorencelaw.com>
To: rmathlaw <rmathlaw@aol.com>
Subject: Re: Walthers v. Maple
Date: Wed, Aug 7, 2013 4:07 pm

Robert,
Apologize for the mistake on the cover letter but the notices are clear on the date of August 28, 2013, which is in accordance with the order of Judge Dukes. I would agree to take the depositions earlier than August 28, 2013, but certainly no later than that date. If you have issues complying with the court's order then you will need to file the appropriate motion to obtain relief from the court's order. If Plaintiffs insist on refusing to appear for their scheduled depositions, I will promptly file the appropriate motion for sanctions including a request for attorneys fees and dismissal with prejudice. Robert, this has gone on long enough and it is time to comply.

Sent from my iPhone

On Aug 7, 2013, at 3:17 PM, "rmathlaw@aol.com" <rmathlaw@aol.com> wrote:

Mr. Florence,

The date of the depositions set forth in your letter does not coincide with that set forth in the notice. My assumption, due to the impracticability of the first date, is that you mean to take the depositions on August 28, 2013.

I am scheduled for another matter on that date, though, at this point, that matter could be rescheduled. I plan to be in Columbia on August 29 for a football game that I am certain holds no interest for a Citadel graduate. I also am involved in an ongoing hearing before the Securities Commissioner in Columbia that is supposed to resume on a date not yet selected during the same week.

My preference, therefore, is to hold the depositions on the following Wednesday, Thursday or Friday (09/04, 05 or 06).

I have forwarded the letter and notice to my clients with a request that they advise me of their availability.

Best regards.

Rob Mathison.

Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
843-785-6503 rmathlaw@aol.com

-----Original Message-----

From: Phil Florence <phil@theflorencelaw.com>
To: rmathlaw <rmathlaw@aol.com>
Sent: Wed, Aug 7, 2013 12:10 pm
Subject: Walthers v. Maple

Robert,
Attached for service upon you, please find the Fourth Notices of Deposition of the Plaintiffs in the above referenced matter.

Phillip Florence, Jr.

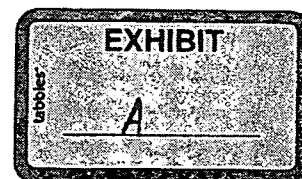






EXHIBIT
B

Michael Walther

From: American Airlines@aa.com <notify@aa.globalnotifications.com>
Sent: Monday, August 26, 2013 1:05 PM
To: MICHAEL@WALTHEREDGE.COM
Subject: E-Ticket Confirmation-IQYIBC 26AUG

American Airlines  Reservations [Return Miles](#) [My Account](#) [Deals](#) 



Michael D Walther,


Thank you for choosing American Airlines / American Eagle, a member of the oneworld® Alliance. Below are your itinerary and receipt for the ticket(s) purchased. Please print and retain this document for use throughout your trip.

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You can now Manage Your Reservation on aa.com, where you can check in and purchase additional items to customize your journey. A variety of seating options are also available for purchase to enhance your travel with features such as convenient front of cabin location, extra legroom and early boarding.


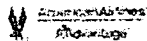

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

[Buy Trip Insurance »](#)

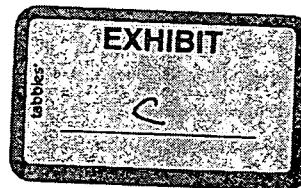

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From: rmathlaw <rmathlaw@aol.com>
To: phil <phil@theflorencelaw.com>
Subject: Re: Walthers v. Maples
Date: Tue, Aug 27, 2013 7:33 pm

Mr. Florence,

There will be nobody at my office tomorrow, which will render a needless trip by you even less understandable.

Should you have any question, please call me on my mobile number (843-384-7115), as I requested last week.

Rob Mathison.

Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
843-785-6503 rmathlaw@aol.com

-----Original Message-----

From: Phil Florence <phil@theflorencelaw.com>
To: rmathlaw <rmathlaw@aol.com>
Cc: david <david@coastalcourt.com>
Sent: Tue, Aug 27, 2013 4:08 pm
Subject: Re: Walthers v. Maples

As you know, tomorrow is the court ordered deadline for Plaintiffs to make themselves available for their deposition. I have not consented to an extension of time and you have not filed any motion with the court requesting relief from the court order. I sent you a full response to your email requesting an extension of time on the court ordered depositions. I intend on showing up at your office tomorrow to make a full record in support of a motion for sanctions. You are welcome to also put your assertions on the record. Therefore, I will be at your office tomorrow with a court reporter to make a full and detailed record.

Sent from my iPhone

On Aug 27, 2013, at 3:47 PM, "rmathlaw@aol.com" <rmathlaw@aol.com> wrote:

Mr. Florence,

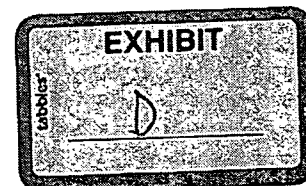
I just received a call from David Nussbaum at Coastal Court Reporting, who advised that a woman from your office named Mary Ann had contacted him earlier today in an effort to schedule two depositions for tomorrow at my office. As you know from our previous email correspondence, the August 28 date that you sought was not practicable for me, and you have declined to discuss available dates, most recently last week, when you refused to return my voice mail on this subject.

I so advised Mr. Nussbaum.

Please contact me, lest there be further misunderstanding about these depositions, which will not take place tomorrow.

Rob Mathison.

Law Offices of Mathison & Mathison
Post Office Box 5271



Hilton Head Island, SC 29938
843-785-6503 rmathlaw@aol.com

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HILTON HEAD ISLAND, S.C. 29938-5271
TELEPHONE: (843) 785-6503
FACSIMILE: (843) 785-6170
EMAIL: rmathlaw@aol.com

ROBERT V. MATHISON, JR.

KERRY F. MATHISON

December 9, 2013

Ms. Mona Manley
Certified Court Reporter
Post Office Box 557
Mount Pleasant, SC 29465



Re: Steffani Walther, et al. v. Eddie Maple, et al.
Case No. 2011-CP-07-04999

Dear Ms. Manley:

My understanding is that you were the court reporter for a term of court held in Beaufort, South Carolina, and commencing on October 28, 2013, before the Honorable Maite D. Murphy. Motions were on the docket for that day, and I need a transcript of the Motion for Sanctions that was brought by the Defendants and hear at or after 1:00 p.m. on October 28, 2013.

An appeal has been taken in this case.

Please send the original and one copy of the transcript to me, together with your statement for the cost of preparation.

Thanking you and with kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "RVM". The signature is fluid and cursive.

Robert V. Mathison, Jr.

RVM:bh

cc: The Honorable Jenny Abbott Kitchings
The Honorable Jeri Ann Rosenau
Phillip Florence, Jr., Esquire

LAW OFFICES
MATHISON & MATHISON
POST OFFICE BOX 5271
HILTON HEAD ISLAND, S.C. 29938-5271
TELEPHONE: (843) 785-6503
FACSIMILE: (843) 785-6170
EMAIL: mathlaw@aol.com

ROBERT V. MATHISON, JR.

KERRY F. MATHISON

December 9, 2013

The Honorable Maite D. Murphy
Circuit Court Judge
5200 East Jim Bilton Blvd.
St. George, South Carolina 29477



Re: Steffani Walther, et al. v. Eddie Maple, et al.
Case No. 2011-CP-07-04999

Dear Judge Murphy:

Enclosed for your review are the following:

1. A copy of the Plaintiffs' Motions under Rules 52(b), 59(e) and 60(b), SCRPC.
2. A copy of the Affidavit of Steffani Walther.
3. A copy of the Affidavit of Robert V. Mathison, Jr.

An appeal has been taken in this case, and the hearing of one or more of the motions enclosed may require a remand of the case..

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to be "R. Mathison, Jr.", written in a cursive style.

Robert V. Mathison, Jr.

RVM:km
Enclosures

cc: The Honorable Jeri Ann Rosenau
Phillip Florence, Jr., Esquire
Mr. and Mrs. Michael Walther

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MAY 01 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
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Maite D. Murphy
Circuit Court Judge

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STEFFANI WALTHER and MICHAEL D. WALTHER.....Appellants

v.

EDDIE MAPLE and KATE MAPLE, INDIVIDUALLY and
d/b/a EQUINE MANAGEMENT, LLC.....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Petition to Reinstate Appeal on
counsel for the Respondents by depositing copies of same in the United States
mail, postage prepaid, on May 1, 2014, at Hilton Head Island, South Carolina,
addressed to the following:

Phillip Florence, Esquire
Florence Law Group, LLC
Post Office Box 22497
Charleston, SC 29413-2497



Robert V. Mathison, Jr.
Mathison & Mathison
P. O. Box 5271
Hilton Head Island, SC 29938
(843) 785-6503
Attorney for the Appellants
Steffani Walther and Michael
Walther

RECEIVED

MAY 01 2014

SC Court of Appeals