

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26- 05964

Appellate Case No. 2013-000195

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SC Court of Appeals

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

APPELLANT’S MOTION TO SUPPLEMENT RECORD ON APPEAL

Appellant William H. Bailey, Jr., by and through the undersigned counsel, moves pursuant to Rule 240, SCACR, for an Order allowing the filing of a Second Supplement to the Record on Appeal.

The grounds for this Motion are that the Respondent, before filing its Final Brief in the present matter, filed an Answer in Case No. 4:12-cv-02502 in United States District Court, Florence Division, Senter vs. Hatley *et al.*, in which the Respondent directly contradicted its arguments now being made before the South Carolina Court of Appeals.

In its Final Brief dated December 19, 2013, the Respondent repeatedly alleged that the Appellant retired – *e.g.* page 30 of Respondent’s Final Brief, paragraph 3 (“*Here, there is ample evidence that the Appellant retired in lieu of being fired.*”).

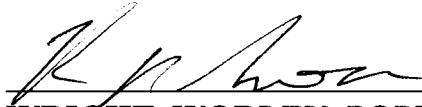
However, in the United States District Court case cited above, the Respondent City plead in its Answer to the Complaint that “[the City] *admits Bailey was suspended and ultimately terminated for lying regarding the theft of his weapon, as alleged in paragraphs 66 and 67. . .*” That Answer was filed on September 26, 2013, nearly three months before the Final Brief of the Respondent was filed in the present matter. 4:12-cv-02502-RBH-KDW: Docket Entry Number 43.

Attorney Derwood L. Aydlette, III is co-counsel for the Respondent in the present matter and his signature is on the Respondent’s Final Brief. He also appeared and signed the City’s Answer in the United States District Court. The Appellant in the present case is not a party to the United States District Court case and had no prior knowledge of the pleading filed there until the date of this Motion.

The Appellant respectfully requests the Court to allow the attached pleading filed by the Respondent in the United States District Court on September 26, 2013 as a Supplement to the Record on Appeal.

**** signature page follows ****

Respectfully submitted,



**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901

Email: kennethmoss@wwpemlaw.com

Attorneys for Appellant

North Myrtle Beach, South Carolina

June 17, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26-05964

Appellate Case No. 2013-000195

William H. Bailey, Jr. *Appellant,*
v.
City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

APPENDIX TO THE RECORD ON APPEAL

Kenneth R. Moss, Esq., SC Bar # 15520
**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901
Email: kennethmoss@wwpemplaw.com
Attorneys for Appellant

Derwood L. Aydlette, III, Esq., SC Bar # 13011
Christopher W. Johnson, Esq., SC Bar # 68524
GIGNILLIAT, SAVITZ & BETTIS, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Tel: (803) 799-9311
Attorneys for Respondent

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

Jeffrey George Senter,)	
)	C.A. No. 4:12-cv-02502-RBH-KDW
Plaintiff,)	
)	
v.)	ANSWER OF CITY OF
)	NORTH MYRTLE BEACH
Marilyn Hatley, Personally and as Mayor of)	
the City of North Myrtle Beach, David Hatley,)	
City of North Myrtle Beach, Melissa and)	
Tracy Edge, and the North Myrtle Beach)	
Aquatic Fitness Center,)	
)	
Defendants.)	
_____)	

The defendant City of North Myrtle Beach answers the Complaint as follows:

FOR A FIRST DEFENSE

I. The Complaint fails to state a claim upon which relief may be granted.

FOR A SECOND DEFENSE

II. The defendant pleads the provisions of the Tort Claims Act, S.C. Code §§ 15-78-10, *et seq.*, including all of the immunities, limitations, and defenses granted or preserved therein.

FOR A THIRD DEFENSE

III. Some of Plaintiff's claims are barred by applicable statutes of limitations.

FOR A FOURTH DEFENSE

IV. Plaintiff has failed to mitigate his damages, and his claims are thus precluded or limited under the doctrine of avoidable consequences.

FOR A FIFTH DEFENSE

V. Plaintiff's has an available remedy for his wrongful discharge claim, thus preempting it.

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FOR A SIXTH DEFENSE

VI. Plaintiff's exclusive and preemptive remedy for any injury he claims arose out of and in the course and scope of his employment is under the South Carolina Workers' Compensation Act, and any such injuries as alleged in the Complaint, if substantiated, would be barred pursuant to S.C. Code § 42-1-540.

FOR A SEVENTH DEFENSE AND BY WAY OF ANSWER

VII. A. Each allegation of the Complaint not hereinafter expressly admitted is denied.

B. Defendant responds to the allegations of the Complaint as follows:

1. Defendant City admits the allegations of paragraphs 1 through 9, 11, 13, 14, 60, 86, 100, 112, and 143; admits that it issues an employee handbook, as alleged in paragraph 12; admits that Joel Davis resigned from employment with defendant City in April 2008, as alleged in paragraph 26; admits that Plaintiff complained in 2008 about William Bailey inquiring into his personal life and that Chris Noury advised Plaintiff that the City did not discipline employees for personal matters unrelated to their duties as City employees, as alleged in paragraph 29; admits defendant Tracy Edge requested in 2008 that Plaintiff be terminated, which request was explicitly rebuffed by Noury, as alleged in paragraph 30, and as further evidenced by Plaintiff's continued employment with defendant City through October 2010; admits Plaintiff filed a worker's compensation claim in 2009, as alleged in paragraph 53; admits that Sgt. Downey and Plaintiff conversed regarding the advancement of the wildfires, as alleged in paragraph 54; admits there was intense media coverage of the Barefoot fires, as alleged in paragraph 55; admits that portions of Plaintiff's dashcam videos aired on local television more than a year before his termination, as alleged in paragraph 57; admits Plaintiff's dashcam videos

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were released pursuant to the South Carolina Freedom of Information Act, as alleged in paragraph 58; admits Plaintiff was not restricted in his right to speak to the media, as alleged in paragraph 59; admits Bailey was suspended and ultimately terminated for lying regarding the theft of his City-issued weapon, as alleged in paragraphs 66 and 67; admits Plaintiff was still employed by defendant City as of May 2010, as alleged in paragraph 68; admits it engaged the services of the USC Institute for Public Service and Policy Research and that that entity's report speaks for itself, as alleged in paragraph 69; admits that Michael Baldasarre received a telephone call from defendant Melissa Edge, as alleged in paragraph 87, but is unable to respond to the remaining allegations of that paragraph as it is unclear as to whom Plaintiff is referring; admits Plaintiff was involved in a videotaped verbal confrontation with defendant Melissa Edge on or about September 14, 2010, as alleged in paragraphs 95 and 96; admits that the purported call log and or video recording speaks for itself, as alleged in paragraph 97; admits that any official records of the City speak for themselves, as alleged in paragraph 98; admits Baldasarre, Rick Buddelmeyer and Plaintiff met on or about September 15, 2010, that Plaintiff stated he had prepared no paperwork on the incident as of that date, and that Plaintiff wanted to discuss defendant Melissa Edge's mental condition which Buddelmeyer felt was not an issue for the City to address, as alleged in paragraph 101; admits it received legal advice from its outside counsel, as alleged in paragraph 103; admits that any newspaper articles speak for themselves, as alleged in paragraph 104; admits Plaintiff was still employed by the City on or about September 17, 2010, as alleged in paragraphs 106 through 108; admits defendant Marilyn Hatley enjoyed a birthday dinner with City Manager Mike Mahaney on September 21, 2010, as alleged in paragraph 113; admits that Plaintiff met with Mahaney and Buddelmeyer on or about September

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27, 2010, and that a tape recorder intended to record the meeting was not operational as alleged in paragraph 124; admits that defendant Melissa Edge has denied the truth of her videotaped statements of September 14, 2010, as alleged in paragraph 126; admits Plaintiff was told to resign or he would be fired, as alleged in paragraph 127; admits it received a FOIA request from Greg McCollum and that the request was initially denied, as alleged in paragraph 129; admits Plaintiff grieved his employment, as alleged in paragraphs 134 and 135; admits Plaintiff viewed his dashcam video of his confrontation with defendant Melissa Edge, as alleged in paragraph 138; and admits Plaintiff was advised that the City intended to release the dashcam video, as alleged in paragraph 140.

2. Defendant City lacks information sufficient to form a belief as to the truth of the allegations of paragraphs 15 through 25, 27, 28, 31 through 41, 44 through 52, 56, 61, 63, 70 through 75, 77, 85, 88, 90, 91, 93, 102, 110, 111, 115 through 121, 123, 125, 128, 137, 139, 141, and 142, 144, 145, 147, 149, 150.

3. All other allegations of the Complaint are denied as false, immaterial to the claims against this defendant, and/or in violation of the requirements of Rule 8(a), FRCP.

WHEREFORE, having fully answered the Complaint, the defendant requests that this action be dismissed and that it be awarded its costs, attorney fees and such other and further relief as the Court may grant.

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September 26, 2013

Answer of City wpd

Certificate of Service

I hereby certify that on the above date, I caused to be served on counsel of record a true and correct copy of this document by efilng.

s/Derwood L. Aydlette, III
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.

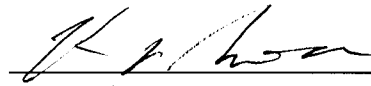
s/Derwood L. Aydlette, III
_DERWOOD L. AYDLETTE, III (DCID #5036)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201
Phone: (803) 799-9311 / Fax: (803) 254-6951
Email: daydlette@gsblaw.net

ATTORNEYS FOR DEFENDANT CITY OF
NORTH MYRTLE BEACH

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appendix complies with Rules 212(b), 212(c) , and 240, SCACR.

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901
Email: kennethmoss@wwpemplaw.com
Attorneys for Appellant

North Myrtle Beach, South Carolina
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PROOF OF SERVICE

I certify that I have served a copy of **Appellant's Motion to Supplement Record on Appeal** in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Derwood L. Aydlette, III, Esq.
Christopher W. Johnson, Esq.
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Attorneys for Respondent

*** signature page follows ***

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Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read "K.R. Moss", is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901

Fax: (843) 281-9903

Attorneys for Appellant

North Myrtle Beach, South Carolina

June 17, 2014

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW
628A SEA MOUNTAIN HIGHWAY
NORTH MYRTLE BEACH, SOUTH CAROLINA 29582
Telephone (843) 281-9901 - Fax (843) 281-9903

O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH
MARTHA HENLEY SLEDGE •
MELANIE C. NICHOLSON ♦
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BOYD T. WORLEY*
PRESTON B. HILTON*
RICHARD S. "RICK" PARROTTE*

D.F. McGOUGAN, JR.
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OTHER OFFICES
SURFSIDE BEACH, SC
SUPPLY, NC
TABOR CITY, NC
WHITEVILLE, NC
WILMINGTON, NC

*licensed only in NC
**licensed in NC, DC & SC
*** licensed in NC & SC
• licensed in NC, Of Counsel

♦ Certified Family Court Mediator, Guardian *ad Litem*

June 17, 2014

**VIA CERTIFIED MAIL # 7007 0710 0003 9853 9368;
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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

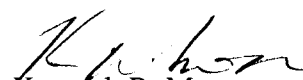
Re: William H. Bailey, Jr., *Appellant* vs. City of North Myrtle Beach, a
South Carolina Municipal Corporation, *Respondent*
Appellate Case No. 2013-000195

Dear Ms. Kitchings:

Please find enclosed for filing one (1) unbound original and six (6) copies of the Appellant's Motion to Supplement Record on Appeal, Proof of Service of same, and a check in the amount of \$25.00 for the filing fee. I have enclosed an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

With best regards, I am

Sincerely yours,


Kenneth R. Moss

KRM:cd
Enclosures as stated
cc: Derwood L. Aydlette, III, Esq.
Christopher W. Johnson, Esq

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SC Court of Appeals

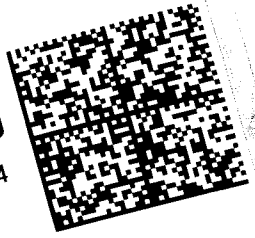
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