

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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AUG 21 2014

SC Court of Appeals

Case No 2013-CP-36-332

Raymond D. Hobby

Respondent

vs

Mary T. Hobby


Appellant

**APPELLANT'S RETURN
TO RESPONDENT'S MOTION TO STRIKE**

Appellant makes this return to the Respondent's Motion to Strike a portion of the Transcript of Hearing and an Order of the Family Court from the Record on Appeal

1 The motion comes too late. The Record on Appeal has been printed and filed. Respondent has waived the right to make this motion.

2 The Motion to Strike a portion of the Transcript of Hearing conducted by Judge Addy should be denied. The portion of the Transcript sought to be stricken is part of the

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hearing in which Judge Addy heard and ruled on the appeal of the Magistrate's Order Respondent is simply wrong in arguing that it was not presented to Judge Addy This portion of the Transcript contains statements by Judge Addy expressing his desire to get the case resolved

"I want to see this case resolved It has to end at some point in time And the question of subject-matter jurisdiction, of course, is a very, very important one More important, however, is that there be some resolution These parties couldn't live together, they got divorced They entered into this arrangement themselves It isn't working out It has to end --" T p 135, line 22 to T p 136, line 3

Appellant wants to have and show a basis for arguing that Judge Addy, as judges sometimes do, had his focus on ending the various disputes and not on the applicable law

3 Upon information and belief, Judge Addy considered the Family Court Order which Respondent seeks to strike Judge Addy, in his Order, stated

"In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere " T p 18

Appellant asserted that Judge Addy was wrong in his statement

"The Court, apparently in frustration, found

'In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere '

This is factually incorrect The defendant sought relief in the Family Court and plaintiff successfully moved to dismiss The defendant objected to the jurisdiction of the circuit court to proceed under Section 15-17-610 and Judge McMahon agreed This Court, as a matter of caution, suggested re-filing in probate court. Defendant should not be unfairly judged for raising subject matter jurisdiction issues, particularly when certain of those issues have been determined favorably to defendant " T p 154

Judge Addy then issued an Order on Motion for Reconsideration in which he

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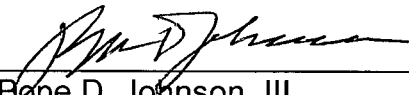
stated

“The final sentence, which begins ‘In every venue . . .’ and which appears in the first full paragraph on page two (2), is deleted. Defendant is correct that jurisdiction was successfully challenged by various parties at various stages of the litigation.” T p 23

To reach this conclusion, Judge Addy had to review the Family Court Order. However, even if he did not look at the Family Court Order, this Court can take judicial notice of the Order. Our courts have also held that it is appropriate to take judicial notice of facts during the course of an appeal. *Palmetto Homes, Inc v Bradley*, 357 S C 485, 593 S E 2d 480 (Ct App 2003), *Cf Masters v. Rodgers Development Group*, 283 S C 251, 321 S E 2d 194 (Ct App 1984) (discussing nature of information necessary to permit judicial notice of fact during appeal)

CONCLUSION

The Respondent’s Motion to Strike should be denied



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Columbia, South Carolina
August 20, 2014

#3

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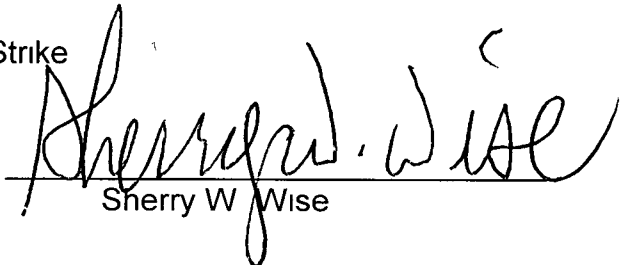
I, Sherry W Wise, of Pope D Johnson, III, Attorney at Law, hereby certify that I have served Benjamin C Bruner, attorney for the Respondent, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 20th day of August, 2014

COUNSEL SERVED:

Benjamin C Bruner
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P O Box 61110
Columbia, SC 29260-1110

PLEADINGS:

Appellant's Return to Respondent's Motion to Strike


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August 20, 2014

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201


RE Raymond D Hobby v Mary T Hobby
Appellate Case No 2013-002434

Dear Ms Kitchings

Enclosed herewith are the original and seven (7) copies of **Appellant's Return to Respondent's Motion to Strike** in the above-referenced action. Please file the original and six (6) copies and clock and return the additional copy to me.

With a copy of this letter to Benjamin C Bruner, attorney for the Respondent, I am serving a copy of the Return upon him.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

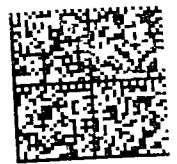
cc Benjamin C Bruner, Esquire

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