

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Barbara Gaines.....Respondent,

v.

Joyce Ann Campbell.....Appellant.

Case No. 2012-CP-23-1971

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

Appellant's Motion to Remand is based on "*the [alleged] fact that most of the exhibits were used at trial [sic], and in closing arguments, are now missing from the Clerk's office.*" Motion, p. 1 (italics added). The Record on Appeal's Index, however, lists only two (2) Exhibits as "Missing" or "Still Missing": an MRI Report, and "Medical Art"¹. The Medical Art is in the Record on Appeal at page 20, and the MRI was never offered as an Exhibit in the Court below.

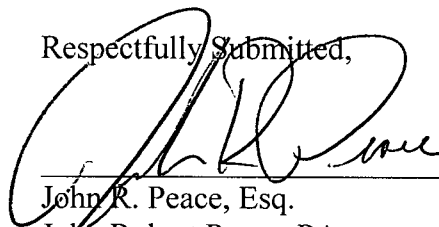
¹The Medical Art is allegedly "missing" twice, as it was marked as Exhibit #2 to Dr. Mina's *de bene esse* deposition and later re-marked as a Trial Exhibit. See Record on Appeal "Index", entries for pages 20 (Appellant's Index states "Exhibit is Still Missing") and page 164 (Appellant's Index States "Exhibit is Missing"). Actually, R., p. 164 is the point in the Transcript where Dr. Harding's video *de bene esse* deposition was played for the jury. The Medical Art was offered as an Exhibit during Dr. Mina's video *de bene esse* deposition. See R., p. 352, line 22. As Exhibit #2 to Dr. Mina's *de bene esse* deposition, the Medical Art should also appear at R., p. 415, but that numbered page is otherwise blank.

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Therefore, this Court should deny Appellant's "*Motion to Remand to Reconstruct Exhibits*".

Appellant's Motion does not provide a citation to the Record on Appeal as to when the MRI report was offered as an Exhibit by either party in the Circuit Court. On the contrary, the several Indexes of Exhibits included in the Record on Appeal do not include the MRI report as an Exhibit in this case. (See Transcript of Record, "Index" at R., pp. 22-23; "Index" at R., pp. 144-145; "Index of Witnesses and Court Exhibits" at R., p. 170; "Index of Witnesses and Exhibits" at R., p. 293). The "Index" (R., p. 325) to Dr. Christie Mina's *de bene esse* deposition lists two Exhibits: #1- Dr. Mina's CV (R., p. 414) and #2- Medical Art (R., p. 415 is blank; see R. p. 20). The "Index" to Dr. Lisa Harding's *de bene esse* deposition lists no Exhibits. (R., p. 417). Because the MRI report was never offered as an Exhibit in the Court below, the MRI report is properly "missing" from Record on Appeal. Therefore, this Court should deny Appellant's "*Motion to Remand the Case to the Lower Court so as to Reconstruct*" an exhibit that was not offered in the Court below.

Respectfully Submitted,



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September 21, 2014

Attorney for Respondent Barbara Gaines

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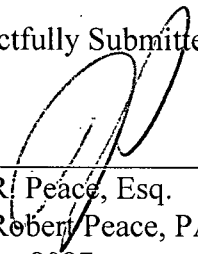
Joyce Ann Campbell.....Appellant.

Case No. 2012-CP-23-1971

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Appellant's Motion to Remand to be Included in the Record on Appeal by depositing a copy of it in the U.S. Mail, postage prepaid, on September 22, 2014, addressed to attorney of record, Marcus K. McGarr, Esq., 108 Whitsett Street Greenville, SC 29601.

Respectfully Submitted,



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Attorney for Respondent Barbara Gaines

September 22, 2014

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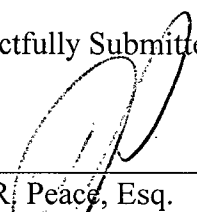
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September 22, 2014

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September 22, 2014

Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Gaines v. Campbell
C.A. # 2012-CP-23-1971
Court of Appeal Case Tracking #2013-002367

To Whom It May Concern:

Please find enclosed for filing the original and one (1) copy of the Respondent's Return to Appellant's Motion to Remand to be Included in the Record on Appeal in the above case, along with the original and one copy of the associated Proof of Service.

Please return the clocked copies of the Respondent's Return to Appellant's Motion to Remand to be Included in the Record on Appeal, and the Proof of Service in the enclosed, self-addressed, stamped envelope.

With kindest regards, I remain,

Sincerely yours,

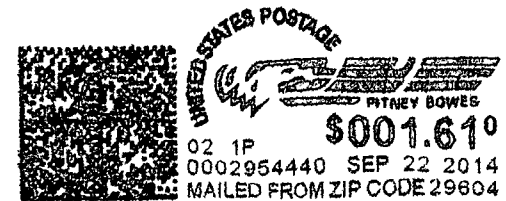

John R. Peace

JRP

Enclosures

cc: Barbara Gaines
Marcus K. McGarr, Esq.

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First Class Mail

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