

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-1971
Appellant Case No. 2013-002367

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SEP 30 2014

SC Court of Appeals

Barbara Gaines

Respondent,

v.

Joyce Ann Campbell

Appellant.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO THE APPELLANT'S MOTION
TO REMAND THE CASE TO THE LOWER COURT SO AS TO RECONSTRUCT THE
EXHIBITS USED AT TRIAL

The Respondent would reply to the Appellant's return by noting the following:

1. Appellant's first Motion to Remand the Case was filed on July 25, 2014;
2. Appellant filed yet another Motion to Remand on August 20, 2014; and,
3. Appellant filed bound, final copies of the following documents: Appellant's Initial Brief; Record On Appeal; and, Appellant's Reply Brief to the Court, on August 27, 2014.

In other words, there would be no incentive for an Appellant to move for a matter to be remanded, especially given that he had already filed his final documentation, unless trial exhibits were, in fact, missing.

Indeed, please find enclosed a file notation from the Greenville County Clerk of Court's office, wherein the lack of an exhibit sheet and the lack of exhibits introduced during the August 5-6 trial dates is noted. Again, there would be no incentive for a clerk's office to make such a file notation, if the same were not accurate.

At this point, contrary to the version of facts set forth in Respondent's Return, the Record On Appeal clearly states that Plaintiff's Exhibit, Medical Art, was recreated, but still missing. Indeed, it states that Plaintiff's Exhibit, MRI, is still missing. Furthermore, the Record states that Dr. Christie Mina's video testimony is still missing. Please note that the exhibit numbers were not included in the Index, secondary to the fact that the Exhibits Sheet used at trial remains nonexistent.

In essence, Respondent's reliance upon exhibits sheets contained within deposition transcripts is moot, as those sheets would have nothing to do with the exhibits that were actually introduced during the course of the trial.

In conclusion, some of exhibits were initially received by the clerk's office. However, a number of those exhibits were not received by the clerk's office, at that time. Indeed, a number of exhibits are still missing. As such, it is impossible for one to create a proper Record on Appeal, as one cannot include evidence that, at this point, does not formally exist.

Despite the above, enough exhibits have surfaced, or, in the alternative, been recreated, so as to allow the Court to hear this matter absent a Remand. The Court would simply render its decision absent an MRI, and absent the live tone of Dr. Mina's testimony. As such, at this point, remanding the case to reconstruct these missing exhibits would demand greater effort than the benefit received could justify. As a result, Appellant would respectfully abandon his Motions to Reconstruct, and simply ask that Respondent's Final Briefs be forwarded to the Court.¹

I SO MOVE.

September 26, 2014

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¹Appellant's abandoning his Motions to Reconstruct is in no way an admission that exhibits were not missing, and/or are not still missing. It is simply done in furtherance of legal and judicial economy.

Other Counsel of Record:

John R. Peace, Esq.
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F: (864) 271-3130
Attorney for Respondent

Exhibits for Aug 5th 6
are not in this envelope

Caroline Niskell to come
to clerk of Court and
submit not Exhibited

#13118

only
① April Herron's
exhibits on
Wed Aug 7, 2013

② strike sheet

2012 CP-23-1971

Barbara Gaines

vs

Joyce Ann Campbell

8-7-13

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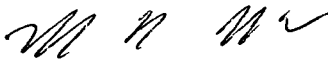
Joyce Ann Campbell

Appellant,

PROOF OF SERVICE

I certify that I served the Appellant's Reply to Respondent's Return to the Appellant's Motion to Remand the Case to the Lower Court so as to Reconstruct the Exhibits use at Trial on Barbara Gaines by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to her attorney of record, John Robert Peace, Esq. at his Post Office Box at P.O. Box 8087, Greenville, SC 29604 on September 26, 2014.

September 26, 2014



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September 26, 2014

The Honorable Jenny Abbott Kitchings
Clerk for the South Carolina Court of Appeals
Po Box 11629
Columbia, SC 29211

RE: Case Name: Barbara Gaines v. Joyce Ann Campbell
Appellate Case No.: 2013-002367

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of Appellant's Reply to Respondent's Return, Appellant's Motion to Remand the Case to the Lower Court so as to Reconstruct the Exhibits used at Trial, as well as the same number of Proofs of Service.

I would appreciate you filing the originals of these documents, clocking the additional copy, and returning the same to me in the enclosed, self-addressed, stamped envelope provided for your convenience.

Furthermore, please note, by copy of this letter, that I am placing Counsel for Plaintiff/ Respondent on notice that the originals of these documents have been filed with the Court.

As always, I thank you and your staff for all the help and assistance you repeatedly provide with regard to these matters.

Sincerely,



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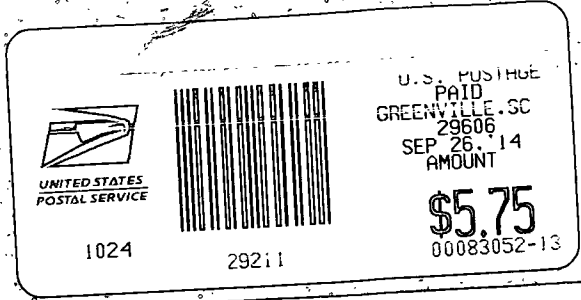
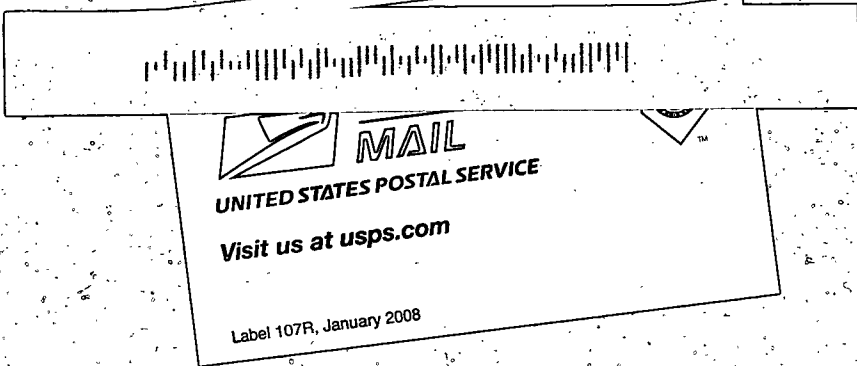
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SC Court of Appeals

MKM/meg
Enclosures

cc: John Robert Peace, Esq.
Joyce Ann Campbell
Tashona Miles



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108 WHITSETT STREET
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