

①

73868

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable William Jeffrey Young, Presiding Judge

RECEIVED

OCT 16 2014

SC Court of Appeals

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.*

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 counsel for the Respondent, before filing a Final Brief in the present matter, have directly contradicted their arguments that the Appellant retired. Both Attorney Derwood L. Aydlette, III and Attorney Christopher W. Johnson are co-counsel for the Respondent in the present matter and their signatures are on the Respondent's Final Brief.

In September 2012, Attorney Aydlette - the same counsel as now appearing for the present Respondent - when arguing Motions before the Court of Common Pleas in Horry County in Civil Action No. 2010-CP-26-05145, William H. Bailey vs. City of North Myrtle Beach *et al.*, argued that evidence should be admitted as relevant to the credibility of the plaintiff in that case (the Appellant in the present case) “...*which is obviously at issue in this case, especially in the case where the plaintiff was terminated for life*”. A copy of that section from a Transcript of that hearing has only recently become available. The preceding quotation is on page 13 at lines 20-24.

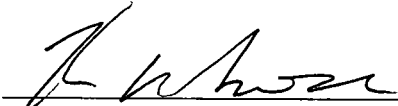
In September 2014, Attorney Johnson, who is also appearing in another case between the Appellant and the Respondent that is not under appeal, stated in argument that “...*basically we were getting completely inconsistent stories from Mr. Bailey, who incidentally in this, and this is important, was fired for lying*...” A copy of that section from a Transcript of the Motion hearing is attached. The quotation is on page 20, lines 9-11.

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.*”).

The Appellant respectfully requests the Court to allow the attached Transcripts of Record as a Supplement to the Record on Appeal.

¹The Court reporter may have misinterpreted “*lying*” as “*life*.”

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@wwpemplaw.com

Attorneys for Appellant

North Myrtle Beach, South Carolina

October 13, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN COURT OF COMMON PLEAS

2011-CP-26-06442

William H. Bailey, Jr.,)

PLAINTIFF,)

vs.)

North Myrtle Beach, a South)
Carolina Municipal)
Corporation,)

DEFENDANT.)

TRANSCRIPT OF RECORD

September 19, 2012
Conway, South Carolina

BEFORE:

The Honorable Larry B. Hyman, Jr., Judge

APPEARANCES:

BY: Kenneth R. Moss, Esquire
Attorney for William H. Bailey

BY: Derwood L. Aydlette, III, Esquire
Attorney for North Myrtle Beach, a South
Carolina Municipal Corporation

BRENDA R. BABB
Circuit Court Reporter

1 that one last thing?

2 The Court: Yes.

3 Mr. Aydlette: The reason that we believe that
4 it is unfair to bifurcate it is because we have a situation
5 where we have a forty-five page verified complaint,
6 verified amended complaint. That verify amended complaint
7 is contradicted by evidence that's in the record that Judge
8 Culbertson has already ruled on for summary judgment
9 purposes. Because it's contradictive, the plaintiff has
10 sworn to things, the documentary evidence in the record
11 shows that you can't, you can't rectify. Judge Culbertson
12 denied the Motion for Summary Judgment on the fraud claim,
13 denied the Motion for Reconsideration on the fraud claim
14 and said there were questions of fact. And the reason that
15 it's important to have the fraud claim as part of the main
16 action is because, number one, the, there are seventeen
17 causes of action. The plaintiff has seventeen causes of
18 action. There are three counterclaims. What plaintiff
19 wants is to bifurcate one out of twenty causes of action.
20 That fraud claim, not only is the evidence that we would
21 introduce on the fraud claim relevant as to that claim,
22 it's also relevant as to the plaintiff's credibility which
23 is obviously at issue in this case, especially in the case
24 where the plaintiff was terminated for life.

25 The Court: Well, you know, I didn't say there

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2013-CP-26-571

City of North Myrtle Beach,)
)
 Plaintiff,) Transcript of Record
)
 vs.) August 28, 2014
)
 William H. Bailey, Jr.,)
)
 Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

Christopher W. Johnson, Esquire
Attorney for Plaintiff

Randall K. Mullins, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 individual fighting a lawsuit against the government.

2 MR. JOHNSON: Well, and, and here's the thing, Your
3 Honor, but it's not automatic.

4 THE COURT: And I agree it's not automatic.

5 MR. JOHNSON: The statute requires substantial
6 justification. Again, the standard for that is whether or not
7 a reasonable person would, would, would begin or continue it
8 based on the facts, and the facts that we had were, basically
9 we were getting completely inconsistent stories from Mr.
10 Bailey, who incidentally in this, and this is important, was
11 fired for lying. So the City's got good reason not to believe
12 what he's telling them and to begin with.

13 THE COURT: Well, as I understand, he was fired for lying
14 or the City said he lied to the grievance committee.

15 MR. JOHNSON: That's right. That's, that's right.

16 THE COURT: In other words, they, they, they disciplined
17 him. He requested a grievance hearing. He goes before the
18 grievance hearing, and the City administrator said he lied at
19 that grievance hearing.

20 MR. JOHNSON: Well, and that's on top of the fact that,
21 that, again, he had, he had lied before that in the press
22 releases that went out.

23 THE COURT: Well, I mean, that's --

24 MR. JOHNSON: And those are all issues in the other case.

25 THE COURT: Those are disputed issues.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William Jeffrey Young, Circuit Court Judge

Case No. 2010-CP-26-5964
Appellate Case No. 2013-000195

RECEIVED
OCT 16 2014
SC Court of Appeals

William H. BAILEY, Jr.,

Appellant,

vs.

CITY OF NORTH MYRTLE
BEACH, a South Carolina
Municipal Corporation,


Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Supplement Record on Appeal on the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on October 13, 2014, addressed to their attorneys of record, Attorneys Aydlette and Johnson, Gignilliat, Savitz & Bettis, LLP, 900 Elmwood Avenue, Suite 100, Columbia, SC 29201.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Appellant

October 13, 2014


Kenneth R. Moss, S.C. Bar No. 15520
1180 Highway 17 North, Suite 2
Post Office Box 250
Little River, South Carolina 29566
Tel: 843/ 281-9901/ Fax: 843/ 281-9903

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 ♦
KELLY SANSONE-GALLEY ♦
NAPOLEON B. BAREFOOT, JR. •
ELIZABETH W. EMBREY***
BOYD T. WORLEY*
PRESTON B. HILTON*
RICHARD S. "RICK" PARROTTE*

D.F. McGOUGAN, JR.
(1921 - 1994)

OTHER OFFICES
SURFSIDE BEACH, SC
SHALLOTTE, 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*

October 13, 2014

**VIA CERTIFIED MAIL # 7014 0510 0000 2675 5070;
RETURN RECEIPT REQUESTED**

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

RECEIVED

OCT 16 2014

SC Court of Appeals

cc: Derwood L. Aydlettte, III, Esq.
Christopher W. Johnson, Esq