

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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OCT 15 2014

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Robert E. Watson, Master in Equity

Case No. 2010-CP-08-4140

Marion Creel, Appellant,

v.

Douglas Creel, Respondent.

APPENDIX TO THE RECORD ON APPEAL

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The undersigned hereby certifies that the Appendix to the Record on Appeal contains all material proposed to be included by consent of all of the parties and not any other material.

September 30, 2014



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OCT 15 2014

SC Court of Appeals

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BERKELEY ) Case No. 2010-CP-08-4140

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MARION CREEL,

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Plaintiff,

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vs.

 ORIGINAL

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DOUGLAS CREEL,

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Defendant.

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**TRANSCRIPT OF HEARING**

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DATE: January 11, 2012

18

TIME: 1:45 p.m. - 2:22 p.m.

19

LOCATION: Berkeley County Courthouse  
300 California Avenue  
Moncks Corner, South Carolina

20

21

REPORTED BY: Kimberly S. DeMichele

22

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23

LAW SERVICES OF S.C.  
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24

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7

**INDEX TO EXAMINATIONS**

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1 THE COURT: Defendant's 1 and 2 will  
2 be the letters from Attorney Dennis to -- who are they to?

3 MR. SEATON: These are addressed to Douglas  
4 Creel, the Defendant -- my client -- from Mr. Dennis.

5 THE COURT: Thank you.

6 MR. SEATON: I'll hand those up, Your Honor.

7 THE COURT: Thank you.

8 (Letters From Ned Dennis, Defendant's Exhibit Nos. 1  
9 and 2 are marked for identification and admitted into  
10 evidence.)

11 BY MR. SEATON:

12 Q As I understand it, you handle -- you help  
13 handle everything with your husband's affairs, according  
14 to your testimony?

15 A Yes.

16 Q And I'm sure there's a logical explanation for  
17 why you didn't attend the closing at Mr. Wycoff law firm?

18 A Because I was dealing with my sick mother.

19 Q Your sick mother. You didn't ask that the  
20 documents be sent for you to review?

21 A No.

22 Q And where's Mr. Wycoff today about all these  
23 conversations about the material errors that he made?

24 A I can't answer that.

25 Q He's not in the courtroom; is he?

4

1 A No; he's not.

2 Q So other than you getting on a calculator to  
3 press numbers for -- to help, quote, "the children in  
4 later life," you really didn't have anything to do with  
5 negotiating the terms of this agreement; did you?

6 A I had -- I had what he was telling me he was  
7 negotiating. I wasn't negotiating the terms.

8 Q Okay. But you were -- you were concerned and  
9 you handle -- help him handle all his affairs. That's  
10 your --

11 A I helped --

12 Q -- testimony.

13 A -- him handle his affairs.

14 Q Except this?

15 A No.

16 Q What is it else you don't --

17 A What; with the Manley? I helped --

18 Q No, ma'am.

19 A -- with the -- with the insurance stuff.

20 Q With the promissory note that your husband is  
21 bringing a lawsuit over?

22 A I have helped him with it.

23 Q Ma'am?

24 A I have helped him with it. Why it's in those  
25 letters, I don't know that. But we have addressed that.

5

1 Q Does he have his own checking account?

2 A Yes; he does.

3 Q Pay his bills; doesn't he?

4 A I write most of them out. He signs the  
5 checks.

6 Q Does he pay bills out of a checking account?

7 A He can.

8 Q Does he?

9 A Yes; he can.

10 Q Okay.

11 A I do -- I do as much as he does.

12 Q That's not my question, ma'am. You said you  
13 handle -- help with all his business affairs.

14 A Right.

15 Q -- and that's not true; is it?

16 A No. Yes; it is true. I help. I didn't say I  
17 did everything. I helped.

18 Q And he's got a driver's license?

19 A Yes; he does. And I do most of the driving.

20 Q Okay.

21 Ma'am, we'll get along a lot better if you  
22 just answer my questions. Can you do that?

23 A I'll try.

24 Q You'll try?

25 A (No response.)

6

1 Q And 20 months after the promissory  
2 note has been executed and the mortgage has been recorded,  
3 your husband brings a lawsuit?

4 A This started 20 months ago. It's been going  
5 every since.

6 Q I understand that, ma'am. You waited 20  
7 months to bring this lawsuit?

8 A It was the process of getting here.

9 Q The process -- would you agree with me, ma'am,  
10 the loan was closed in April of 2009?

11 A Yes.

12 Q You want to look at the complaint? It was  
13 clocked in on November the 19th of 2010. Counting  
14 inclusively, that's 20 months, -- not the time to get it  
15 here in a courtroom -- to bring the action.

16 A And he did talk to several attorneys.

17 Q That's not my question. Waited 20 months.  
18 Almost two years. Ma'am?

19 A How do you want me to answer that?

20 Q Truthfully, like "yes" or "no."

21 A Yes. But he was working on it the whole time.

22 Q What was there to work on?

23 A First of all, giving Douglas a chance to go  
24 back and -- and change what they had talked about because  
25 it -- it wasn't done as -- as they discussed it, according

7

1 to my husband.

2 Q According to your husband?

3 A Right.

4 Q In contrast to all -- have you seen the  
5 written contract of sale between your husband and your  
6 stepson?

7 A Yeah; I've seen it.

8 Q Okay. And it's just exactly like the note and  
9 mortgage that Mr. Wycoff closed?

10 A Yes; it was.

11 Q Thank you.

12 A But it wasn't.

13 MR. SEATON: May we take a five-minute break?

14 THE COURT: Yes; we may. Yes.

15 All right. We'll take a five-minute break.

16 If I can help you lawyers in any way, let me know.

17 Ma'am, you can't talk to anybody about your  
18 testimony. Okay?

19 THE WITNESS: Okay. I'll sit right here, if  
20 you want me to.

21 (A short recess was taken.)

22 THE COURT: Okay. Is there any way I can help  
23 you lawyers in any way with this case before we move  
24 forward?

25 MR. THUSS: Do you want talk?



## P-R-O-C-E-E-D-I-N-G-S

1  
2 THE COURT: All right. Just for the purpose of  
3 the parties here, I want to generally tell you what's  
4 been going on, from my perspective, this morning that  
5 brings us up to where we are right now.

6 There have been some discussions in the  
7 back about the law of the case, the facts of the case,  
8 and there are some efforts to get the case settled. So  
9 having said those things, I have not determined what I'm  
10 going to do with this case at this time. What I hear in  
11 chambers regarding settlement, it is not under  
12 consideration for me at this moment. Evidence has to now  
13 be presented to me regarding the facts of the case.

14 So I have not made up my mind. But it was  
15 based upon my experience and the experience of the two  
16 good lawyers, it was our impression, particularly mine,  
17 that this is a case that should be settled. And so  
18 that's what I was trying to accomplish. It has not been  
19 settled, and now I'm going to be the judge of the case.

20 And just again a settlement is a situation  
21 where neither side is really happy with what happens, but  
22 the case is resolved. Considering the relationships in  
23 this case and even the facts in this case, I thought it  
24 would be appropriate to get it settled. So that's what I  
25 have spent my time trying to do this morning. Is that

1 correct, gentlemen?

2 MR. SEATON: Yes, sir.

3 THE COURT: Any other observations?

4 MR. SEATON: No, sir. That's absolutely  
5 correct.

6 THE COURT: Mr. Thuss, is that accurate?

7 MR. THUSS: Yes, Your Honor.

8 THE COURT: As I understand the status of this  
9 case, you have been here before, I've received testimony  
10 from two witnesses prior to today. The plaintiff was  
11 putting up his case. We stopped the testimony at that  
12 time to again try to get the case resolved. And I have  
13 heard from Ms. Robin Chavis; is that right? She has  
14 testified so far. And also I think Mr. Marion Creel's  
15 wife, which is Suzette. That's the only testimony I've  
16 received so far in the case.

17 MR. THUSS: Yes, sir.

18 THE COURT: Mr. Thuss, I will allow you to move  
19 forward with the presentation of your case at this time.

20 MR. THUSS: Thank you, Your Honor. I would  
21 like to call Marion Creel, Jr.

22 THE COURT: That will be fine.

23 Come forward. Good morning, sir.

24 THE WITNESS: Good morning, Your Honor.

25 THE COURT: Would you give me your full name?

1 Mr. Creel, when someone else is speaking,  
2 you don't speak, please, sir.

3 THE WITNESS: All right, sir. I'll try my  
4 best to --

5 BY MR. SEATON:

6 Q And Defendant's Exhibit No. 2 written on your  
7 behalf by Edward J. Dennis to your son, is there anything  
8 in there about correcting a mortgage in that?

9 A No, sir, I don't believe so.

10 MR. SEATON: I don't have any more questions.

11 THE COURT: Anything on redirect?

12 MR. THUSS: No, Your Honor, I don't believe so.

13 THE COURT: Mr. Creel, you may step down, sir.

14 THE WITNESS: Thank you.

15 MR. THUSS: May it please the Court.

16 THE COURT: Yes.

17 MR. THUSS: Your Honor, I was going to call a  
18 Dr. David Hammett, who is Mr. Creel's neurologist to  
19 testify, but he's more than 100 miles from -- his  
20 practice is in Columbia. I did his deposition recently.  
21 Mr. Seaton is going to object to it on grounds because we  
22 just took the deposition last week. But I do have his  
23 deposition that I would want to offer into evidence.

24 MR. SEATON: I oppose it on the following  
25 basis, Your Honor:

1                   Number one, of course, every rule in  
2 discovery has been violated by the taking of his  
3 deposition. I didn't even know of this witness or this  
4 man until I received a letter April 25th that he is going  
5 to take his deposition on May 9 at 9:30 a.m. -- excuse  
6 me. He's going to take his deposition on May 3, 2008  
7 [sic]. That would be eight days notice. He was never  
8 listed as a witness.

9                   Then I learned -- I go to the deposition.  
10 Rather than bother you with a conference call, I went  
11 with the application of maybe we could conclude the case,  
12 discuss something. Then I learn that this doctor has  
13 been treating Mr. Creel for six months. I was (a) never  
14 given his name. I was given a half page vitae on the  
15 letter I received on the 25th. I put into the record  
16 that it's highly prejudicial. I have had no opportunity  
17 to know of this doctor.

18                   Discovery listing of witnesses has been  
19 outstanding since 2010. I have no abilities to receive  
20 his deposition and move for an independent examination  
21 should I see fit. There is no allegations of non compos  
22 mentis, which require a motion hearing. Under Rule  
23 30(a)(1) Rule 30(n)(5), there isn't any compliance with  
24 the rules whatsoever, sir. As a matter of fact, I got a  
25 copy of his deposition yesterday afternoon at about

1 2:00 o'clock in the afternoon -- excuse me, 10:10. I had  
2 the UPS man date it and time it. So, I mean, I just move  
3 to suppress any portion of this doctor's deposition.

4 THE COURT: Mr. Thuss, I'll hear from you about  
5 the deposition, sir.

6 MR. THUSS: Well, Your Honor, I wasn't aware  
7 until recently, in the last month and a half, that  
8 Mr. Creel had had an MRI done by this neurologist, who he  
9 was referred to from his heart doctor, who I'd noticed  
10 Mr. Seaton of. And Mr. Creel requested that I take the  
11 doctor's deposition. And for several weeks I was trying  
12 to play scheduling with the doctor to try to get him to  
13 take the deposition. Didn't know if he would; didn't  
14 know if he wouldn't.

15 They finally gave me a notice on the 23rd  
16 of April that they would do the deposition on May 3rd. I  
17 put notice in the mail on the 23rd to Mr. Seaton. I  
18 acknowledge that because this proceeding was coming up,  
19 he doesn't have time to get an independent neurologist.  
20 And we were aware of that when we decided to undertake  
21 it, but my client was of the belief that a deposition  
22 needed to be taken by his neurologist concerning deficits  
23 related to how his brain functions post-stroke that he  
24 was not aware of really until this neurologist examined  
25 him.

1 THE COURT: Now, why is that relevant? Does  
2 this go back to the time the documents were signed in  
3 2009? I mean, what is the connection? Or does it impact  
4 him testifying here today? I don't understand what the  
5 doctor's testimony -- why it would be of any benefit to  
6 the Court.

7 MR. THUSS: Well, the damage to the brain was  
8 done when the stroke occurred, when the bleeding occurred  
9 back in September of, October of 2008..

10 THE COURT: 2008.

11 MR. THUSS: That's when the damage was done.  
12 It occurred when quite a bit of bleeding happened in this  
13 part of his brain that affected him from that point  
14 forward. And the doctor -- you know, the brain damage is  
15 permanent. It's not reversible. And it affects visually  
16 the whole left side of his world, his visual  
17 understanding. And the doctor stated that --

18 MR. SEATON: I'm going to object to him  
19 continuing to give a medical resume.

20 THE COURT: I'll overrule that objection. I  
21 just want to hear as to why this would be relevant to  
22 where we are in this proceeding.

23 Go ahead, sir.

24 MR. THUSS: And if it was denied, I'd be asking  
25 to make a proffer anyways, if it was denied in. But the

1 doctor said his whole left side of his world, the  
2 processing of his brain and how he processes objects and  
3 visual understanding is affected by the stroke and that  
4 there is some compensation that occurs over time.  
5 Generally they look at recovery at six months and then a  
6 year.

7           People can be taught in some respect to  
8 compensate. But whenever they are put under stress, that  
9 deficit -- the stress headaches, which Mr. Creel  
10 testified to -- whenever they are put under stress, the  
11 deficits are heightened. And so not only whether or not  
12 somebody could process something on a piece of paper  
13 depending on where it is in their field of vision, but  
14 even their understanding and ability to put things  
15 together was affected by the nature of the stroke that  
16 occurred in his life in 2008. And the doctor did not  
17 say --

18           THE COURT: And because of all of that, how  
19 does that impact what happened in your opinion? And why  
20 should I -- how would that impact my deciding this case?  
21 What would that mean to me?

22           MR. THUSS: On the theory of the unilateral  
23 mistake, that somebody -- well, two things. The law firm  
24 gives somebody who is ignorant, or unwary, illiterate, a  
25 person who is in a relationship with someone who they

1 trust, and they're going into it but they're not able to  
2 look out for their own best interest at the time, will  
3 forgive them.

4 Mr. Creel's theory is that he was  
5 recovering from a stroke and went to this closing. He  
6 never signed the promissory note. And he became  
7 distressed at some point in time, and how he processed  
8 what was occurring was affected by his physical  
9 condition. I mean, he's barely literate. And then on  
10 top of that -- even before the stroke -- and then he has  
11 this whole deficit as a result of the stroke that  
12 occurred. At a time when he was recovering, he was  
13 entering into this major transaction.

14 And the doctor stated that he would advise  
15 clients in this position not to enter into transactions  
16 like that without having somebody in their corner,  
17 somebody along to help them to know what was happening.  
18 And that was -- basically that was the gist of the  
19 testimony. And I think it goes to what Mr. Creel  
20 experienced when the actual closing occurred. I don't  
21 even know how he was affected six months earlier during  
22 his recovery. We're not talking about six weeks, eight  
23 weeks earlier, in March, when he signed something that he  
24 says he didn't sign. So his health condition is the  
25 relevancy of this, is his health at the time of the

1 transaction is the reason why the Court should consider  
2 it.

3 MR. SEATON: May I respond, Your Honor?

4 THE COURT: Yes.

5 MR. SEATON: Nothing wrong with picking the  
6 telephone up and telling me all that information in  
7 advance and asking if I will agree to a deposition, or if  
8 not then I'm going to contact the judge in a conference  
9 call, I need to get this hearing rescheduled, and I'll do  
10 this appropriate.

11 The way I read the deposition is the  
12 doctor who has seen him for six months now has partial  
13 medical records, was not his treating physician, has no  
14 medical opinion about his cognizant abilities about the  
15 time period in question, and said he was mentally  
16 competent.

17 But I haven't received any other  
18 information other than to be in Columbia at 9:00 o'clock  
19 last Friday at this doctor's office. And out of an  
20 abundance of caution, I showed up and put my objections  
21 on the record, and rightfully so, Your Honor.

22 MR. THUSS: May it please the Court?

23 THE COURT: Yeah.

24 MR. THUSS: I've been quite indulgent for two  
25 and a half years trying to get this case heard. I did

1 the best that I could with the information I was given  
2 and the deadlines I was given in trying to communicate  
3 with a physician in order to make something happen. I  
4 have had attempts to contact and talk to Mr. Seaton's  
5 office over issues over time where I haven't received  
6 responses and --

7 MR. SEATON: I'd appreciate you putting your  
8 hand down, please.

9 MR. THUSS: But there was no intent to surprise  
10 or do anything to Mr. Seaton.

11 THE COURT: This is what I'm going to do. I'm  
12 going to allow the deposition in. I will keep the record  
13 open, as to Mr. Seaton, if he wants to look at it more  
14 carefully. Does that mean anything you might present or  
15 you can get another witness? I'm going to allow you to  
16 do everything you could have done before and after that  
17 deposition had you had appropriate time to do it. Okay?

18 MR. SEATON: Yes, sir.

19 THE COURT: We'll talk about that at the end of  
20 the case if we need to.

21 MR. THUSS: Yes, sir.

22 THE COURT: I'll take that in with the  
23 understanding Mr. Seaton has not had ample time to even  
24 read and study the deposition, nor to respond to it. And  
25 I'm going to give him that opportunity.

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MR. THUSS: Yes, Your Honor.

THE COURT: You wanted to publish it?

MR. THUSS: Well, I can submit it for the court to review.

THE COURT: Let's just submit it to my review.

Do you object to that, Mr. Seaton? At a later time.

MR. SEATON: No, sir. I understand how you're letting it in. And I would ask that counsel for the plaintiff be advised ex mero motu from the Court to deliver the medical information as he's supposed to under production so that I can meet with my client and see if we need to move for an independent medical evaluation of a neurosurgeon of our choice.

THE COURT: Mr. Thuss, that would be the appropriate thing to do, is make available to Mr. Seaton all the medical information you have regarding your client, Mr. Creel's, Marion Creel's, health condition since the stroke in 2008.

MR. THUSS: Yes, sir, I will gather all that and provide it to Mr. Seaton as soon as possible.

THE COURT: Then you will have the opportunity to review all that and speak with your client.

MR. SEATON: This doctor only goes back six months, Your Honor.

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM BERKELEY COUNTY  
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Robert E. Watson, Master in Equity

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PROOF OF SERVICE

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I certify that I have served the Appendix to Record On Appeal on Douglas Creel by depositing a copy of it in the United States Mail, postage prepaid, on October 1, 2014, addressed to his attorneys of record, Grover Seaton, Esq, P.O. Box 38, Moncks Corner, SC 29461, and Michael M. Murphy, III, 105 Carolina Ave., Moncks Corner, SC 29461.

November 6, 2014



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