

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number: 2014-000139

Shou Y. Martin, Appellant,

vs

Wilmer (John) Rife and Barbara Ann Doomey, Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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Attorney for the Appellant

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Question I

Did the trial judge err in granting a judgment notwithstanding the judgment when the record contained evidence that Shou Martin owned the property sold to Wilmer John Rife and Barbara Doomey?

Shou Martin has standing to litigate her ownership of any and all property she personally furnished to her son to operate his business. The issue in this case is was Mrs. Martin the owner of the property. The jury resolved that question against Wilmer Rife and Barbara Ann Doomey.

When Mr. Rife and Ms. Doomey state “An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court’s ruling.” Br. of Resp. at 7. This statement confuses the standard of review. This Court does not, as suggested, review this record to determine if there is any evidence of no evidence. The standard is the same for the trial judge as this court - if there is a scintilla of evidence the case should be submitted to the jury. As the South Carolina Supreme Court has said “under the Scintilla rule which prevails in South Carolina, if there is a scintilla of evidence, which is any material evidence that if true would tend to establish the issue in the mind of a reasonable juror the case should be submitted to the jury for its determination.” *Woodle v. Brown*, 223 S.C. 204, 210, 74 S.E.2d 914, 917 (1953). This Court must look not to see if there is any evidence to sustain the JNOV granted by the trial judge, but whether there is a scintilla of evidence to sustain the verdict of the jury.

The Respondent has argued “Contrary to the argument of the Planitff, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no

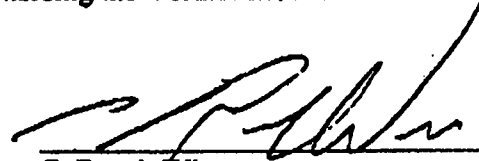
bearing on this Court's review." Br. of Resp. at 7. This conclusion is incorrect. As this Court has said "Our scope of review requires us to examine the record to determine whether the trial judge viewed the motion for judgment n.o.v. in a light most favorable to [plaintiff]" *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 135, 399 S.E.2d 427, 429 (Ct. App. 1990). Thus, this Court reviews the transcript in the light most favorable to Mrs. Martin with all reasonable inferences being against Mr. Rife and Mrs. Doomey. *See, also, Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 64, 352 S.E.2d 284, 285 (Ct. App. 1986)(a judgment must be affirmed on appeal where there is any evidence to support the factual findings implicit in the jury's verdict and that the party opposing the motions for directed verdict and judgment notwithstanding the verdict is entitled to all favorable inferences where the evidence is conflicting. Because a JNOV was granted, this Court does not review the evidence in the light most favorable to the Respondents.

The Respondent appears to argue that the testimony of Mrs. Martin is not evidence for only under such a conclusion can the JNOV of the trial judge be sustained. Certainly the testimony of the plaintiff that she owned the property she sold is material evidence of the fact that she owned the property. If Mrs. Martin did not own the property, to whom should the Respondent have paid the money they, by contract, owe. They appear to argue they are not required to pay for the equipment they purchased.

CONCLUSION

As the evidence at trial established material evidence that Shou Martin-owned the property she sold, the granting of the Judgment Notwithstanding the Verdict should be reversed and the verdict of the jury re-instated.

August 28, 2014



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Attorney for Appellant

Carter, Elizabeth A.

From: MJ Harter <mjharter2007@yahoo.com>
Sent: Wednesday, November 05, 2014 9:45 AM
To: Carter, Elizabeth A.
Subject: Shou Martin vs Rife, Doomey (2014-000139)
Attachments: MartinInitialReplyBriefDocs.pdf

Elizabeth, Here are all the documents that I believe your need for your file. If you need anything further, please let me know.

Thanks,

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November 5, 2014

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Shou Y. Martin vs Wilmer (John)Rife and Barbara Ann Doomey (2014-000139)

Dear Ms. Kitchings:

My office was contacted by Elizabeth from your office yesterday, who advised that it appeared that we had not filed our Initial Reply Brief in the above referenced matter. After further investigation, we found that we had filed the Reply Brief on August 28, 2014 along with the Motion to File Out of Time. We spoke with the office of Mike Mullinax and was informed that they had received their copy of the Reply Brief that was mailed on August 28, 2014. We then contacted Elizabeth and informed her of this information. She advised that she had the Motion to File Out of Time dated August 28, 2014 but did not show the original Initial Reply Brief.

Therefore, to correct your records, I am enclosing copies of all documents showing that the Initial Reply Brief was filed with your office as per my records.

If you need any further information, please let me know.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/mjh
cc: Michael Mullinax

**LAW OFFICE OF
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August 28, 2014

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Shou Y. Martin vs. Wilmer (John)Rife and Barbara Ann Doomey (2014-000139)

Dear Ms. Kitchings:

Enclosed herewith is the original Initial Reply Brief of Appellant concerning the above referenced matter, together with the original Petition for Extension and to File Out of Time.

My office has spoken with Michael Mullinax, and he has no objection to this extension.

With kindest regards, I am

Very truly yours,


C. Rauch Wise

CRW/mjh
cc: Michael Mullinax

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on August 28, 2014, she did deposit in the United States Mail with proper postage affixed thereto, a copy of Petition for Extension and to File Out of Time, and the Initial Reply Brief of Appellant in the above case addressed to Michael F. Mullinax, P.O. Box 2665, Anderson, South Carolina, 29622.

SWORN to and Subscribed

Sandy Traynham

before me this 28 day

of August, 2014.

Barbara Ann Hester (L.S.)
Notary Public for South Carolina
My Commission expires: 11/3/16

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PETITION FOR EXTENSION AND TO FILE REPLY BRIEF OUT OF TIME

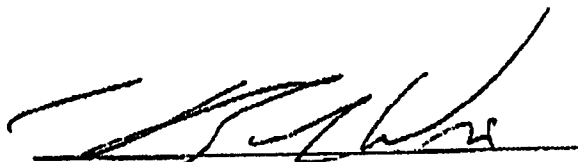
The Appellant, Shou Y. Martin hereby petitions the Court to be allowed to file the Initial Reply Brief out of time for the following reasons.

1. The Initial Reply Brief were due in this matter on August 25, 2014.
2. The Attorney for the Appellant would show that he was involved in preparation of a murder trial that was originally scheduled to begin on September 8, 2014, and therefore missed filing a Petition for Extension, and would therefore, request this Court allow this Initial Reply Brief to be filed out of time.

Therefore, the Appellant prays for an Order of this Court as follows:

1. For this Court to allow the Appellant to file her Initial Reply Brief out of time.

Agenda, 2014



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