

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

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APR 30 2015

SC Court of Appeals

C/A NO.: 2013-CP-36-193
APPELLATE CASE NO.: 2014-002410

Raymond D. Hobby Respondent,

v.

Mary T. Hobby Appellant,

v.

Frances B.B. Knowlton, individually and as Trustee Respondent.

RETURN BY RESPONDENT RAYMOND D. HOBBY IN OPPOSITION TO APPELLANT'S
MOTION TO ADD A STATEMENT OF ISSUES ON APPEAL TO APPELLANT'S BRIEF

Respondent Raymond D. Hobby submits this Return in opposition to Appellant's Motion to Add a Statement of Issues on Appeal to Appellant's Brief. For the reasons set forth below, Appellant's Motion should be denied.

Under Rule 208(b), SCACR,

The brief of appellant shall contain under appropriate headings and in the order indicated:

* * *

(B) Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement **shall be concise and direct as to each issue**, and may be stated in question form. Broad general statements

may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

Rule 208(b)(1), SCACR (emphasis added). Appellant failed to include a statement of issues in her brief, and she attempted to cure that defect only after she had the benefit of the Respondents' briefs. Furthermore, the statement of issues Appellant proposes with her motion violates the Rule because it fails to concisely and directly state each of the issues presented for review. As an illustration, Issue Number I sets out not one issue but at least seven because it includes subsections A through F. Even those subsections are unclear about the precise issue presented in each. For example, Issue I.A. states,

THE CIRCUIT COURT JUDGE ERRED IN BECOMING A FACT FINDER, IN FINDING THAT MS. HOBBY HAD FAILED TO PRESENT ANY EVIDENCE THAT THE TRUSTEE HAD BREACHED HIS FIDUCIARY DUTY AND IN FINDING THAT THE TRUSTEE HAD AS A MATTER OF LAW, THE RIGHT TO DO WHAT HE DID

One cannot discern from the language used if the issue presented is (i) whether the Circuit Court erred in finding the Appellant failed to present any evidence to support her breach of fiduciary duty claim, or (ii) whether the Circuit Court erred in finding the Trustee had "the right to do what he did." Nor is it remotely clear what Appellant means by "do what he did" given the array of allegations Appellant levied against the Trustee in this dispute.

As another example, Issue I.D. states,

THE CIRCUIT COURT JUDGE ERRED IN FINDING THAT THE TRUSTEE ACCEPTED MR. HOBBY'S OFFER, WHEN THE TRUSTEE HAD NOT AND IN SUGGESTING THAT THERE MIGHT BE A SUIT FOR SPECIFIC PERFORMANCE AND IN FINDING IT WAS PRUDENT FOR THE TRUSTEE TO ACCEPT MR. HOBBY'S OFFER

Based on the wording used, it is unclear whether the issue presented is: (i) whether the Circuit Court erred in finding that the Trustee accepted Mr. Hobby's offer, when the Trustee had not, (ii) whether the Circuit Court erred in suggesting that there might be a suit for specific performance,

or (iii) whether the Circuit Court erred in finding it was prudent for the Trustee to accept Mr. Hobby's offer.

Issue Number IV also fails to clearly state the issue presented:

THE CIRCUIT COURT JUDGE ERRED IN CONSIDERING MR. HOBBY'S AFFIDAVIT AND OTHER SUBMISSIONS, WHICH WERE NOT SERVED WITH HIS MOTION AND THE CIRCUIT COURT JUDGE SHOULD HAVE DENIED HIS MOTION SINCE IT WAS NOT SERVED WITH ANY SUPPORTING AFFIDAVITS OR OTHER EVIDENCE

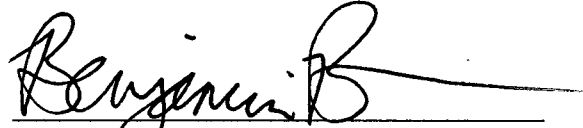
Again, the Appellant fails to concisely and directly identify the issue she presents for this Court to review. At best, the Court and the Respondents are left to discern whether she is raising a question about the Circuit Court's consideration of affidavits not served with the motion for summary judgment, or the Circuit Court's granting summary judgment despite an the absence of a supporting affidavit served and filed at the same time as the motion.¹ See Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (“[E]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to ‘grope in the dark’ to ascertain the precise point at issue.”).

For these reasons, Appellant's proposed statement of issues fails to conform to the requirements of the South Carolina Appellate Court Rules and fails to provide this Court insight into the actual issues she presents for review in this matter. Appellant's motion to supplement her brief, which was filed more than one month ago, with a statement of issues should be denied accordingly.

[SIGNATURE ON FOLLOWING PAGE]

¹ The Respondent in no way concedes that the motion was filed without support and refers the Court to Section III of his brief as to that issue.

Respectfully submitted,



Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorney for Respondent Raymond D. Hobby

April 28, 2015

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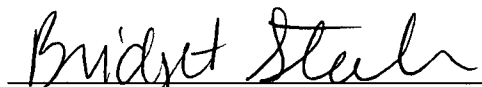
Frances B.B. Knowlton, individually and as Trustee Respondent.

PROOF OF SERVICE

I, Bridget Steele, an employee for Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Raymond D. Hobby, do certify that a copy of the attached *Return by Respondent Raymond D. Hobby in Opposition to Appellant's Motion to Add a Statement of Issues on Appeal to Appellant's Brief* was served by U.S. Mail on Pope D. Johnson, Esquire, 1230 Richland Street, Columbia, South Carolina 29201, and on R. Davis Howser, Esquire, Post Office Box 12009, Columbia, South Carolina 29211, this 28th day of April, 2015.

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Bridget Steele

SC Court of Appeals

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AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

April 28, 2015

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

Re: *Hobby v. Hobby v. Frances Knowlton*
Appellate Case No.: 2014-002410
BPWM File No.: 1-04.141

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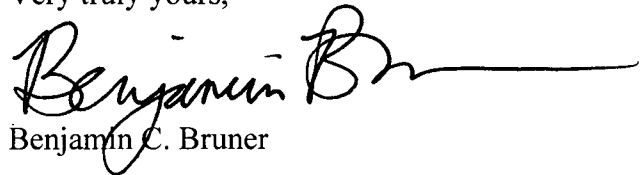
Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the *Return by Respondent Raymond D. Hobby in Opposition to Appellant's Motion to Add a Statement of Issues on Appeal to Appellant's Brief*. Please file the originals and return a stamped copy of each to me in the envelope provided.

By copy of this letter, I am serving the same on all counsel of record.

With my kindest regards, I am,

Very truly yours,


Benjamin C. Bruner

BCB/gh

Enclosures

cc: R. Davis Howser, Esq.
Pope D. Johnson, III, Esq.

BRUNER, POWELL, WALL & MULLINS, LLC

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The Honorable Jenny Abbott Kitchings
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