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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEALS FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED
JUL 28 2015
SC Court of Appeals

Appellate Case No. 2014-002028
Circuit Case No. 2011-CP-10-7821

LISA FISHER.....Appellant
v.
BESSIE HUCKABEE.....Respondent

APPELLANT'S MOTION TO FILE HER INITIAL REPLY BRIEF TWO DAYS LATE

JOHN HUGHES COOPER, ESQUIRE
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335

(Attorney for Appellant)

COMES NOW Appellant Lisa Fisher respectfully moves for an order that she be permitted to file her Initial Reply Brief two days late due to the unexpected need to file a *Motion to Strike* and the press of business pursuant to Rule 263 (b), SCACR:

In support of the motion, Appellant , through counsel, states as follows:

1. Appellant's counsel was responsible for filing three appellate reply briefs on matters for Lisa Fisher and Appellant Betty Fisher, in respective cases 2014-002028, 2014-002034, and 2014-002020. Said briefs were due on July 22, 2015. All three of these actions are related in that they involve Alice Shaw Baker's estate. They are not related for purposes of filing a consolidated brief, however the court ordered them related for purposes of filing the record. The order consolidating the record was filed on March 9, 2015.
2. During drafting of the briefs, it became apparent that Respondent Bessie Huckabee included material that was not brought before the lower court and was not identified with specificity pursuant to 209(a), SCACR and 210 (c) . Therefore, to ensure that no objections were waived, Appellant's counsel was forced to file, on behalf of Appellant Lisa Fisher and Betty Fisher, a *Joint Motion to Strike Portions of Respondent's Designation of Record*.

3. Appellant's counsel was able to timely submit two of the three briefs due on July 22, 2015 and the Joint Motion to Strike, however due do difficulties in finalizing the briefs and electronic problems, this third Reply Brief was not timely finalized for mailing.

4. Appellant's counsel immediately composed this motion, including Counsel's Affidavit and has submitted this motion to the court with the completed Reply Brief as expeditiously as possible.

ARGUMENT

I. GOOD CAUSE EXISTS FOR EXTENDING THE TIME TO FILE APPELLANT'S INITIAL REPLY BRIEF

Rule 263(b) provides as follows:

“(b) Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. ...”

Appellant requests that the court permit her to file her brief two days late, because due to the press of business, difficulties in finalizing the brief, electronic problems, and the need to file a Joint Motion to Strike, the brief was not prepared for service and filing on July 22, 2015.

Appellant will be prejudiced if the court fails to allow her the opportunity to file her reply brief.

Appellant contends that there are substantial areas in Respondent's brief that were inaccurate, based on factual misstatements, and which failed to address the legal arguments posed by Appellant.

Moreover, Appellant was taken by surprise in reviewing the briefs to discover that there were several references to documents not presented to the lower court. (See Rules 209 and 212, SCACR) It is important to note that in support of Respondent's *Motion for Special Fiduciary*, she submitted only a 3 page motion. She submitted no affidavits, no documents, no evidence, and therefore her attempt to present unrelated evidence to this court is improper.

Rule 210(c) of the South Carolina Appellate Court Rules provides that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209..." Rule 210(c),SCACR. However, the record "shall not.. **Include matter which was not presented to the lower court tribunal.**" *Id.* The procedural requirement of this Rule is straightforward and important for the proper disposition of an appeal. Further, in a Georgia case, *McConnell v. Akins*, 586 S.E.2d 688 (2003), the court explained: "The law forbids introduction into case, by way of argument, facts which are not in the record and are calculated to prejudice a party and render the trial unfair."

The South Carolina Appellate Court Rules do not appear to provide a specific remedy for late filing of a brief, although Rule 263 provides some authority for the court to extend time, it is well settled that a court may grant equitable relief where there is no adequate remedy at law. (See *Shaw v. Coleman*, 373 S.C. 485, 498-499)

Appellant's counsel had a duty to file a *Motion to Strike portions of Respondent's Designation*. Unfortunately, this delayed the completion of Appellant's reply brief in this matter.

//

RELIEF REQUESTED

WHEREFORE, Appellant respectfully requests that this Court accept her late filed Reply brief after deadline for good cause shown.

July 24, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

Other Counsel of Record:

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457

AFFIDAVIT OF JOHN HUGHES COOPER

PERSONALLY APPEARED before me JOHN HUGHES COOPER, who being first duly sworn, stated as follows:

1. My name is John Hughes Cooper, and I am over the age of eighteen and of sound mind.

2. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I could and would competently do so.

3. I am the attorney of record for Lisa Fisher. I am the principal attorney on two appeals for Ms. Fisher, Appellate Case Nos. 2014-002028 and 2014-002034. I also represent Betty Fisher, Appellate case no. 2014-002020.

4. I sought an extension of all three matters, which was granted and all reply briefs were due July 22, 2015. I filed and served 2 of the 3 briefs, and a Motion to Strike portions of Respondent's designation, which included objections to material not brought before the lower court and failure to properly identify documents with specificity.

5. I am part of a two person law firm. My client, Lisa Fisher, is an attorney in good standing in California. Due to the press of business on this and other matters and electronic problems, all three briefs were not timely completed for mailing. My client's own schedule prevented earlier finalizing this third brief. Also, I did not anticipate the need to file the Motion to Strike portions of Respondent's designation. The inclusion of material outside of the documents presented to the lower court was not anticipated and is in violation of the rules.

6. In realizing that the Reply Brief was not going to be timely filed, The motion was immediately composed and presented to this court as expeditiously as possible.

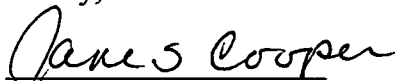
7. I respectfully request that the court grant this request to file the brief two days late. Respondent will not be prejudiced by this two day delay, especially in light of the fact that Respondent knew or should have known that it was improper to include in the designation documents not provided to the lower court. Appellant will be prejudiced if the court does not permit the filing of this Reply Brief. Appellant was taken by surprise in reviewing the briefs to discover that there were several references to documents not presented to the lower court. It is important to note that in support of Respondent's *Motion for Special Fiduciary*, she submitted only a 3 page motion. She submitted no affidavits, no documents, no evidence, therefore her attempt to present unrelated evidence to this court is improper. Further, Respondent made misstatements of fact and asserted false conclusions not supported by the record. Therefore, Appellant's reply is important to address Respondent's improper tactics.

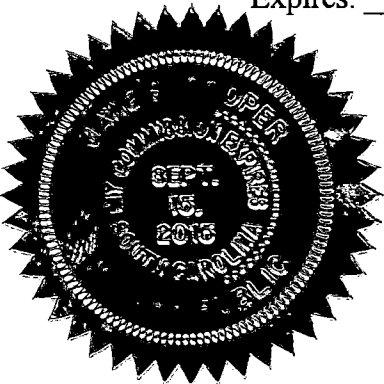
8. FURTHER, AFFIANT SAYETH NAUGHT.

By:


JOHN HUGHES COOPER

Sworn to and Subscribed
Before Me This 24th Day
of July, 2015.


Notary Public For South
Carolina; My Commission
Expires: 9-15-2015



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APPEAL FROM CHARLESTON COUNTY
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LISA FISHERAppellant

v.

BESSIE HUCKABEE.....Respondent

PROOF OF SERVICE

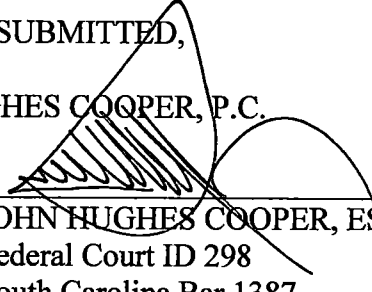
I certify that I have served **Appellant's Motion to File Her Initial Reply Brief Two Days Late and Affidavit of John Hughes Cooper** upon Respondent Bessie Huckabee by depositing a copy of it in the United States Mail, postage prepaid, on July 24, 2015, addressed to her attorney of record Peter A. Kouten, Esquire, P.O. Box 340, Johns Island, SC 29457.

July 24, 2015

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:


JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR APPELLANT

JOHN HUGHES COOPER PC

ADMIRALTY & MARITIME LAW & CIVIL LITIGATION



John Hughes Cooper
shiplaw@jhcooper.com

www.JHCOOPER.com

July 24, 2015

John Townsend Cooper
jtc@jhcooper.com
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JUL 28 2015

SC Court of Appeals

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: LISA FISHER, Appellant v. BESSIE HUCKABEE, Respondent
Appellate Case No. 2014-002028

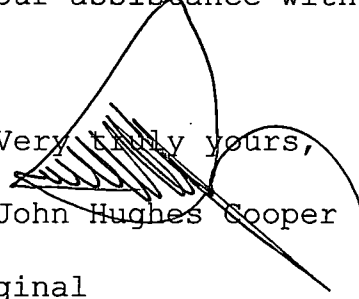
Dear Madam Clerk:

Enclosed for filing please find the original and six copies of Appellant's Motion to File Her Initial Reply Brief Two Days Late and Affidavit of John Hughes Cooper, Proof of Service, and a check for the \$25.00 Motion Fee.

Also enclosed please find a copy of our filing for date stamping and return to us in the enclosed envelope.

Thank you for your assistance with this matter.

Best regards.

Very truly yours,

John Hughes Cooper

Enclosures: Original
6 copies
Proof of Service
\$25.00 check
Date stamp copies
Return envelope

cc: Peter A. Kouten, Esquire

WE COVER THE WATERFRONT

1476 Ben Sawyer Blvd., Suite 7 | Mount Pleasant, SC 29464 | office 843.883.9099 fax 843.883.9335



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JOHN HUGHES COOPER PC
ADMIRALTY & MARITIME LAW & CIVIL LITIGATION
1476 Ben Sawyer Blvd., Suite 7
Mount Pleasant, SC 29464

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