

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

RECEIVED
AUG 10 2015
SC Court of Appeals

Dickie Shults Appellant,
Angela G. Miller Respondent.

Respondent's Return to Appellant's
Motion to Compel Respondent to Comply with Rule 211(b)

Despite Appellant's unilateral decision to redact information from the Record on Appeal, which is the subject of a previously filed motion, Respondent has complied with Rule 211(b), SCACR, when serving the Final Brief. This Court should, therefore, deny Appellant's current motion, require Appellant to produce a Record on Appeal as designated by the parties, and award Respondent costs and fees.

Respondent was previously forced to move for this Court to compel Appellant to comply with Rule 210, SCACR, by filing a Record on Appeal that contains "all matter designated to be

included by any party.”¹ Both Appellant and Respondent designated the entire transcript of the February 7, 2013 hearing from which Appellant filed this appeal to be included in the Record on Appeal. Without the consent of Respondent or this Court, Appellant unilaterally decided to redact from the Record on Appeal portions of Respondent’s arguments to the trial court from the hearing. (R. pp. 83 & 85)

When compiling the Final Brief, Respondent could not cite to the Record on Appeal all of the arguments presented to the trial court because of Appellant’s unilateral redactions. Caught in a web created by Appellant’s failure to produce a full record as required by Rule 210, SCACR, Respondent added the following footnote to a citation to the Record on Appeal:

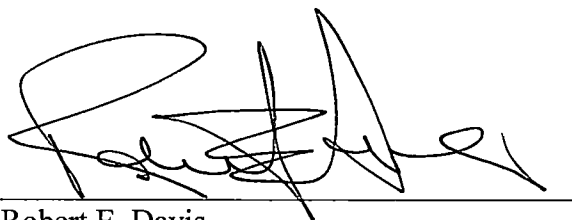
Appellant unilaterally redacted portions of the transcript relating to the settlement with Seay in the Record on Appeal. With the filing of this Final Brief, Respondent has moved for Appellant to correct the Record on Appeal to include all information presented to the trial court. Thus, reference to a Supplemental Record on Appeal may be necessary.

The footnote complies with Rule 211(b), SCACR. Rule 211(b)(1), SCACR, states that revised references to the Record on Appeal in the Final Brief “may be in place of or *in addition to* the initial references.” Id. (emphasis added). In compliance with Rule 211(b)(1), SCACR, the footnote to the citation to the Record on Appeal was made “in addition to” the initial reference and to alert this Court that reference to a possible supplemental record may be necessary.

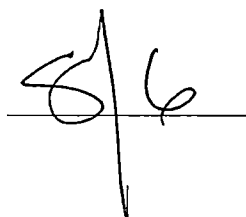
Appellant’s motion on such an innocuous footnote is nothing more than an attempt at a hyper-technical “gotcha” type argument that should be strongly disfavored by this Court. Respondent would not have added this footnote if Appellant had just produced the entire Record on Appeal as designated by both parties. The footnote contains no new arguments and merely alerts this

¹ At the time of the filing of this Return, that Motion is still pending.

Court of the pending motion and possible new Record on Appeal, which is in compliance with Rule 211(b), SCACR. Accordingly, this Court should deny Appellant's current motion, require Appellant to produce a Record on Appeal as designated by the parties, and award Respondent costs and fees.



Robert E. Davis
The Ward Law Firm, PA
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)
Attorney for Respondent

, 2015.

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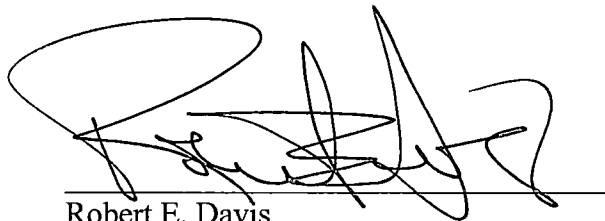
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Dickie Shults Appellant,
Angela G. Miller Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to Compel Respondent to Comply with Rule 211(b) by US Mail, on August 6, 2015, addressed to Appellant's attorney of record, Samuel D. Harms, Harms Law Firm, PA, 33 Market Point Drive, Greenville, SC 29607.

August 6, 2015.



Robert E. Davis
The Ward Law Firm, PA
233 South Pine Street
P. O. Box 5663
Spartanburg, South Carolina 29304
(864) 591-2369
(864) 585-3090 (facsimile)