

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Fifth Judicial Circuit Court Judge

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SEP 11 2015

SC Court of Appeals

Appellate Case No. 2015-000061

Brenda G. Harmon,..... Appellant,

v.

Joel E. Johnson, D.M.D.,..... Respondent.

**RESPONDENT'S MEMORANDUM TO INCLUDE CERTAIN DOCUMENTS IN
THE RECORD ON APPEAL AND EXCLUDE UNRELATED DOCUMENTS**

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Attorneys for Respondent

MEMORANDUM

Pursuant to the Order signed September 2, 2015 by the South Carolina Court of Appeals, Respondent sets forth the following with regard to what should be included in the Record on Appeal.

Documents to be included in the Record on Appeal that are not included in the Record on Appeal filed July 17, 2015

The content of the Record on Appeal under Rule 210(c), SCACR “shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267.”

Appellant failed to include the following documents designated by Respondent in his Designations of Matter:

1. Complaint;
2. Affidavit of Brenda Harmon;
3. Defendant’s Motions to Dismiss;
4. Defendant’s Answer;
5. Certificate of Service with Defendant’s Answer;
6. Plaintiff’s Response;
7. Plaintiff’s willful disregard document;
8. Form 4 Order signed by Judge Benjamin; and
9. Order of Dismissal.

Documents to be excluded from the Record on Appeal that are currently included in the Record on Appeal filed July 17, 2015 or designated by Appellant

The content of the Record on Appeal under 210(c), SCARC “shall not, however, include matter which was not presented to the lower court or tribunal.”

Appellant improperly included the following documents in the Record on Appeal because they were not before the trial court:

1. Prescription for oral surgery;
2. A letter from Dr. McKenzie to Dr. Johnson;
3. Documents from Dr. Bhadori;
4. Medical Records; and
5. The names of witnesses although no witnesses were called at the hearing or deposed.

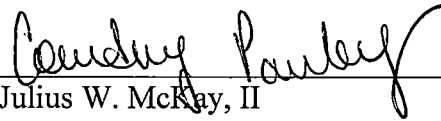
Appellant improperly designated the following items to be included in the Record on Appeal and those documents should not be included in the amended Record on Appeal because they were not before the trial court:

1. Notes of daily suffering;
2. Her mouth and gums;
3. Pictures; and
4. The Charters of Freedom.

CONCLUSION

Appellant has the burden to produce an appropriate Record on Appeal. *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335 (1983). Respondent is unable to file its final brief in compliance with the South Carolina Rules of Appellate Procedure until an appropriate Record on Appeal containing the above-referenced designations are included.

Respectfully Submitted,



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September 11, 2015

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CERTIFICATE OF SERVICE

I certify that I have served the *Respondent's Memorandum to Include Certain Documents in the Record on Appeal and Exclude Unrelated Documents* upon Appellant, Brenda G. Harmon, by depositing a copy of it in the United States Mail, postage prepaid, on September 11, 2015, addressed to Brenda G. Harmon, 2110 Woodfield Drive, Columbia, SC 29223.

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September 11, 2015

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Brenda G. Harmon v. Joel E. Johnson, DMD
Appellate Case No: 2015-000061
Our File No: 390-436

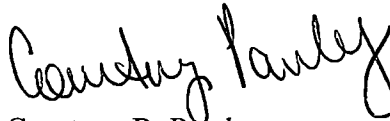
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Dear Ms. Kitchings:

Attached are the original and eight copies of *Respondent's Memorandum to Include Certain Documents in the Record on Appeal and Exclude Unrelated Documents* pursuant to the Order issued by the South Carolina Court of Appeals on September 2, 2015 in this case. Please return two clocked copies to our courier.

Thank you for your assistance in this matter.

Yours very truly,


Courtney R. Pawley

CRP
Attachments