

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Doyet E. Early, III, Circuit Court Judge

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Appellate Case No. 2015-002235

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**RECEIVED**

JAN 08 2016

SC Court of Appeals

Gene F. Bunton, Sr.;  
Randolph L. Bunton, Sr.; and  
Mary Elizabeth B. Breland;

Appellants,

v.

Lois Blackwelder

Respondent.

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RESPONDENT'S RETURN TO APPELLANTS' MOTION TO REMAND FOR NEW  
TRIAL

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Respondent, through her undersigned counsel, submits this, her Respondent's Return to Appellants' Motion to Remand for New Trial, in opposition to the Appellants' Motion to Remand for New Trial and shows this Court the following:

1. The non-jury trial conducted in this matter on May 26, 2015 before the Honorable Doyet A. Early was exceedingly brief. Testimony was taken from only two witnesses: that of Lois Blackwelder for Respondent and that of Gene F. Bunton, Sr. for the Appellants. The Circuit Court provided ample opportunity for the parties to call witnesses and present other evidence. Both parties chose to rest following the testimony presented. The Circuit Court found that sufficient evidence had not been submitted for there to be a ruling and ordered that the

deposition be taken of a Coastal Electric Cooperative employee who was knowledgeable about the placement of electric power lines. No objection was made by either party to the Court's ruling. The deposition of Joseph Frakes, a Coastal Electric Cooperative employee who was knowledgeable about the placement of electric power lines, was taken and submitted to the Court. On September 22, 2015, the Circuit Court issued an order based on the evidence submitted at trial and the deposition of Joseph Frakes.

2. Based on the representations made in the Appellants' Motion to Remand for a New Trial, the trial transcript has been stolen.
3. Where there is a disagreement as to what the record on appeal should contain, the duty and responsibility of settling the question rests upon the trial judge. *China v. Parrott*, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968).
4. Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired. *Id.*
5. Appellants cite *State v. Ladson*, 644 S.E.2d 271, 373 S.C. 320 (Ct. App. 2007) in an attempt to establish the need for a new trial. However, as Appellants point out, "[i]f a transcript is altogether inaccurate and no adequate record of what transpired at trial can be reconstructed, the court must remand for a new trial." *Id.*
6. An adequate record of what transpired at the trial in this case can be reconstructed. As stated above, the Court took testimony from only two witnesses. The trial was completed in less than an hour. As such, reconstruction of the record in this case will not prove difficult as this trial, as compared to the one in *Ladson*,

was significantly shorter (one hour as opposed to three days), less complex (only two lay witnesses as opposed to numerous witnesses, some of whom were experts), and less time has passed since the conclusion of the trial (seven months as opposed to fourteen months). Moreover, the Circuit Court's order makes a recital of the facts taken into evidence at trial. No such recital was available in *Ladson*.

7. Therefore, Respondent requests that this case be remanded to the Circuit Court for reconstruction of the record.

Respectfully submitted January 5, 2016.



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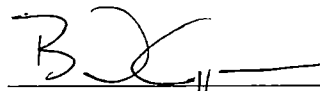
Respondent.

CERTIFICATE OF SERVICE

I, Benjamin T. Coppage, certify that I served the Respondent's Return to Appellants' Motion to Remand for New Trial in the above-captioned case by mailing a copy of the same via U.S. Mail with the return address clearly indicated on the envelope and proper postage attached on January 5, 2016, to opposing counsel of record at the following addresses:

Eleanor Duffy Cleary  
1116 Blanding Street, Suite 2B  
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\_\_\_\_\_  
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January 5, 2016

The Honorable Jenny Abbot Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 111629  
Columbia, South Carolina 29211


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SC Court of Appeals

Re: *Bunton, et. al. v. Blackwelder*  
Appellate Case No.: 2015-002235  
Our File No.: 5194.0000

Dear Madame Clerk:

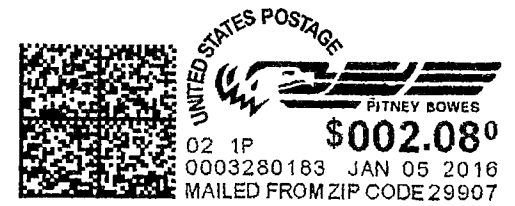
Please find enclosed herewith the original and six copies of the Respondent's Return to Appellants' Motion to Remand for New Trial. Please file the same in your usual manner and do not hesitate to contact me if you need any further information.

With warmest regards,



Benjamin T. Coppage

Enclosures  
cc: Eleanor D. Cleary, Laurie C. Sanders



LAW OFFICES OF  
**J. THOMAS MIKELL, PC**  
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To:

The Honorable Jenny Abbot Kitchings  
Clerk of the S.C. Court of Appeals  
P.O. Box 111629  
Columbia, SC 29211

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