

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
ALISON RENEE LEE, CIRCUIT COURT JUDGE
APPELLATE CASE NO. 2015-001556

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and
Kenny Boykin, Plaintiffs
v.

Zady R. Burton, Individually and as Personal Representative of
the Estate of Helen L. Burton, and Sandy Boykin a/k/a Sandy H. Boykin, Jr., Defendants,

Of Whom Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L.
Burton is the Appellant and Jimmy Boykin is the Respondent.

FINAL REPLY BRIEF OF APPELLANT

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January 29, 2016

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OTHER AUTHORITIES

Rule 43(k), SCRCF 5, 6

Rule 59(e), SCRCF 4

STATEMENT OF ISSUES ON APPEAL

- A. Did the Trial Court err when it granted Respondent's Motion to Enforce the Mediation and denied Appellant's Rule 59(e) Motion?
- B. Did the Trial Court err when it considered this case settled?
- C. Did the Trial Court err when it denied Appellant's Motion to Compel?

APPELLANT'S REPLY

Respondent's Brief¹ notes that the Proof of ADR provided "that the matter was 'fully settled' with the agreed to terms of the suit settlements and sale of the Home being reduced to writing by the attorneys ..., signed by Appellant and Respondent, and attached to and filed with the Proof of ADR." *See* Resp's Brf at 6. However, the Proof of ADR also contains a checked box marked "by Consent Judgment to be filed by Attorneys". *See* ROA 43. Further, neither the Proof of ADR nor its attachment² ("Attachment") says anything about "the Home" or a "sale".

Respondent's Brief also asserts that the mediation resulted "in a signed mediated settlement agreement which was attached to the mediator's Proof of ADR filed May 9, 2014." *See* Resp's Brf at 4. The Attachment was handwritten, prepared by the mediator, and contained certain terms not noted in Respondent's Brief, *viz*,

B- Execution of Family Settlement Agreement

Mutual Release of All Parties

Cooperate in Settlement of Helen Burton Estate

¹ Page references herein to "Respondent's Brief" (or "Resp's Brf") relate to Respondent's Initial Brief inasmuch as the Respondent's Final Brief was not available to Appellant at the time of preparation of Appellant's Final Brief.

² The Attachment is referred to in Appellant's Final Brief as the "Mediation Memorandum".

Respondent's Brief admits that a proposed settlement agreement was "unacceptable to Respondent because Appellant required conditions precedent to delivering a deed, without the co-ordinated or simultaneous closing as provided in the lower court order." *See* Resp's Brf at 9; *see also* Resp's Brf at 7. So, there is no family settlement agreement. Further, the lower court order, dated May 14, 2015, is irrelevant here because it did not exist at the time of either the mediation or the attempts to negotiate the family settlement agreement.

Respondent's Brief states that "The stated goal of the Lis Pendens and Amended Petition [in this case] is for a private sale of the Home as stated previously." *See e.g.*, Respondent's Brf at 8. However, Respondent's reason for filing the underlying action is irrelevant to this appeal.

Finally, Respondent argues that the mediation and Proof of ADR settled this case. *See* Resp's Brf at 9-10. In support of this argument, Respondent's Brief claims that Appellant's Brief's Farnsworth citation "is distinguishable as it does not involve a mediation and the filing of the proof of ADR would constitute noting the settlement 'upon the record' as allowed by Rule 43(k)." *Id.* at 10. However, while Farnsworth does not involve a mediation, Respondent's Brief ignores Buckley v. Shealy, 370 S.C. 317, 635 S.E.2d 76 (2006), cited in Appellant's Brief right after Farnsworth. *See* Appellant's Brf at 9. In Buckley, the Supreme Court of South Carolina addressed the issue of the application of Rule 43(k) in a mediation context:

Rule 43(k), SCRPC, provides that '[n]o agreement ... in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record.' Because the purported agreement the parties reached following mediation was neither entered into the court's record nor acknowledged in open court and placed upon the record, Rule

43(k), SCRCP, plainly provides that the agreement is unenforceable. Accordingly, we uphold the family court's decision not to enforce the agreement. Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006).

Footnote 2 in Buckley is also material here and reads as follows:

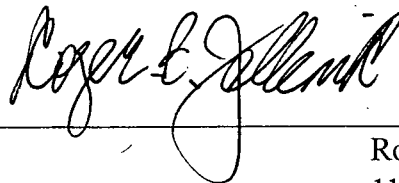
Husband argues that Rule 43(k), SCRCP, does not apply where an agreement is admitted or has been carried into effect. Although Husband's argument draws directly from our precedent, see *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 494, 458 S.E. 2d 533, 534 (1995), we recently held that Rule 43(k)'s terms are mandatory and that *Ashfort's* recitation was misguided dicta. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). Accordingly, we adhere to the view we adopted in *Farnsworth*.

It is respectfully submitted that Respondent's Brief makes no proper argument and cites no proper precedent to contradict Appellant's Brief on this issue.

CONCLUSIONS

For the reasons stated above and in the Final Brief of Appellant, Judge Lee's order should be reversed, this case should be remanded to the Court of Common Pleas for further proceedings, and Appellant's Motion to Compel should be granted.

Respectfully submitted this 29th day of January, 2016.



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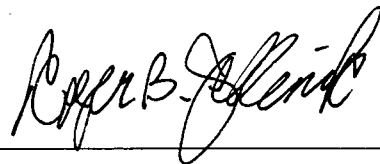
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

January 29, 2016



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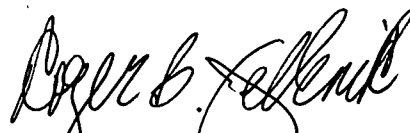
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PROOF OF SERVICE

I certify that I have served a copy of the Final Brief of Appellant, Final Reply Brief of Appellant, and this Proof of Service, each dated January 29, 2016, upon Respondent Jimmy Boykin by certified mail by depositing it in the United States Mail, postage prepaid, on January 29, 2016, addressed to his attorney of record, Moultrie B. Burns, Jr., Esq., at his office at 1111 Church Street, Camden, SC 29020.

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