

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2010-CP-12-0168
Appellate Case No. 2011-191876

RECEIVED
SEP 17 2012
SC Court of Appeals

In the Matter of the Estate of Reba P. Hinson, Probate 2008-ES-12-297,

Mell Woods Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative
of the Estate of Reba Hinson Respondent.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE CERTAIN OF
RESPONDENT'S DESIGNATIONS FOR THE RECORD ON APPEAL

Appellant's Initial Brief and Designation were served on March 27, 2012.

Appellant's Second Amended Initial Brief was served on June 5, 2012.

Respondent's Initial Brief and Designation were served on June 28, 2012.

Appellant's Initial Reply Brief was served on July 9, 2012, **without objection to the Respondent's designated materials for the Record on Appeal.**

Appellant served the proposed Record on Appeal (702 pages) on August 8, 2012 **without objection to the Respondent's designated materials for the Record on Appeal.**

The Record on Appeal served by Appellant was deficient in several respects, leading to the filing and service of Respondent's Motion to Dismiss Appeal or Alternatively to Compel Appellant to Serve a Proper Record on Appeal. The filing also included a Motion to Stay Briefing Schedule. The Motion identified five particular defects in the proposed Record served by Appellant:

Inadequate Index;

Missing Appellant's Motion for Reconsideration dated March 11, 2011;

Missing Order dated December 29, 2011 in case no. 2011-CP-12-0323;

Missing pages from Appellant's deposition transcript;

Missing designated exhibits from Appellant's deposition transcript.

Appellant filed and served his Return to the Motion to Dismiss on or about August 29, 2012, in which he represented that the pages and exhibits from Appellant's deposition transcript designated by Respondent were not "in the record, and is not available to the appellant to produce." (Appellant's Return to Motion to Dismiss dated August 29, 2012, p. 2, l. 6-9.)

On September 8, 2012, **72 days after service of Respondent's Designation**, Appellant filed and served his Motion to Strike Portions of Respondent's Designation of Record.

Respondent asserts that Appellant's Motion is untimely and that Appellant has abandoned or waived the ability to now object to Respondent's designations. In court proceedings, an objection or motion based on a mere irregularity¹ must usually be made promptly at the earliest possible opportunity or it is deemed to be abandoned. 60 C.J.S. Motions & Orders §9 (2002); Hudson ex

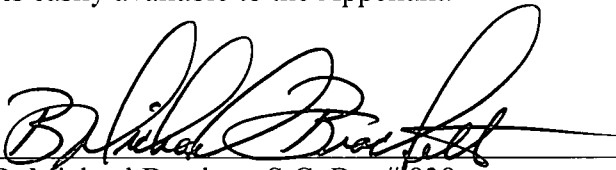
¹ Respondent does not admit that his designations are improper.

rel. Hudson v. Lancaster Convalescent Center, 391 S.C. 167, 705 S.E.2d 436 (Ct. App. 2010). The requirement that objections be promptly made is based on the public policy of furthering orderly procedures in court. 60 C.J.S. Motions & Orders §9 (2002).

Reserving the above objection, the December 29, 2011 Order in case no. 2011-CP-12-0323 is cited by Respondent only in the Statement of the Facts to explain the background of this case in the context of the various pieces of related litigation filed by the Appellant. (Respondent's Initial Brief p. 6, l. 10-16). 2011-CP-12-0323 is a case between the same parties involving the same probate estate, and Appellant has commenced an appeal in that case to this court.

The missing deposition pages and exhibits are in the Appellant's deposition transcript in the above-captioned case, **the only deposition taken in this case**, said deposition having been taken on May 10, 2010.

Everything designated by Respondent is easily available to the Appellant.



B. Michael Brackett, S.C. Bar # 838
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

September 17, 2012

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In the Matter of the Estate of Reba P. Hinson, Probate 2008-ES-12-297,

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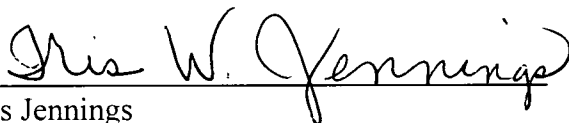
v.

Robert H. Breakfield, Esquire, as Personal Representative
of the Estate of Reba Hinson Respondent.

Certificate of Service

I, Iris Jennings,, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Defendant in the above-captioned matter, do hereby certify that I have served the Appellant, Mell Woods, with a copy of **Respondent's Return to Appellant's Motion to Dismiss Portions of Respondent's designated materials**, postage prepaid and return address clearly indicated on said envelope, on this 17th day of September, 2012 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Plaintiff, pro se


Iris Jennings

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

September 17, 2012

Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Woods v. Breakfield, Personal Representative
2010-CP-12-0168
Appellate Case No.: 2011191876
Our File Number - 12085.1

Dear Ms. Kitchings:


Enclosed for filing please find the original and six copies of Respondent's Return to Appellant's Motion to Dismiss Portions of Respondent's designated materials.

By copy of this letter, a copy of the enclosed Return is being served upon the Appellant, personally, who has appeared pro se throughout the proceedings.

The authorities supporting the Return are set forth in the Return, so I am not filing a separate memorandum of law.

Please return a clocked copy of the Return using the envelope provided.

Very truly yours,



B. Michael Brackett

BMB/bmb
Enclosures

cc. Robert H. Breakfield, Esquire
Mell Woods, pro se