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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson. – Master-in-Equity

RECEIVED

MAY 12 2016

SC Court of Appeals

APPELLATE CASE NUMBER 2014-002580

Clyde Morris.....Respondent,

v.

Joseph V. Johnson, III, Joseph V. Johnson, Sr., Mildred R. Johnson, Joseph V.
Johnson, Jr., William Johnson and Allen R. Barnette, Defendants,

of whom Joseph V. Johnson, Sr..... Appellant

PETITION FOR REHEARING

Comes now, counsel for the Appellant, Joseph Johnson, Sr., hereby Petitions this Court for rehearing upon the Court's Order dismissing the Appellant's appeal.

The basis for this Petition is as follows:

1. That this matter was initially filed in the Court of Common Pleas for Berkeley County on August 19, 2013.
2. The Respondent's allegations in his Complaint, inter alia, asserted that his access to his real property along Doodle Hill Lane was blocked or impeded by the Appellant and or his agents.
3. Nothing in Respondent's pleadings indicated that Respondent had an express or implied easement but only that his right to ingress and egress along Doodle Hill Lane was restricted by acts of the Appellant.
4. Pursuant to the initial hearing before the Berkeley County Master In Equity, an Order was entered by the Court on August 19, 2014 that required the Appellant to remove certain obstacles directly in front of the Respondent's parcel along Doodle Hill Lane. The Order also required a survey of Doodle Hill Lane to determine the location of the roadbed. (Emphasis added) The initial hearing in this matter was done without the benefit of a court reporter, hence no transcripts of the testimony nor the exhibits proffered at the hearing subsequently available to the Appellant.
5. The Respondent requested another hearing, pursuant to a motion to determine the boundaries of Doodle Hill Lane that clarified who was responsible to the costs of the survey and the location of the obstacles to be removed from in from of the Respondent's property. A survey of the roadbed was completed by Homer P. Mason, on March 11, 2014

that denoted the location of the roadbed along Doodle Hill Lane. The survey stated that it was consistent with the order of the Master In Equity, dated December 2013. **(Exhibit 1)**

6. Respondent requested a third hearing that objecting to the boundary lines of the roadbed not being consistent with the boundary lines along Doodle Hill Lane. None of the hearings were requested or demanded by the Appellant.

7. The Mason survey specifically denoted that the survey was done in compliance with the Master's Order.

8. Subsequent to the third hearing the Master In Equity ordered a second survey. This survey was to reflect the granting of a Twenty-Five (25') foot easement to the Respondent.

9. This survey was completed on October 30, 2014 and The plat for this survey was then recorded on in Berkeley County on November 14, 2014 without further judicial intervention. **(Exhibit 2)**

10. That subsequent thereto, on November 21, 2014, the Appellant filed a Motion for Reconsideration after noting that the survey stakes for the proposed survey were placed in his bean field that runs along Doodle Hill Lane.

11. Appellant could not ascertain the footprint of the proposed Twenty-Five (25') foot easement until the survey work was started. There was never any easement by the Court regarding whether there was a less burdensome alternative for the placement of the easement on the servient parcel which is owned by the Appellant.

ARGUMENT AND AUTHORITIES

12. The Appellate Court's Order, filed April 26, 2016 correctly states that the Master In Equity issued his final order on August 19, 2014 and that Appellant did not file

their motion to reconsider until September 25, 2014 which is outside the ten days given to file a motion for reconsideration after receipt of the final order.

13. More particularly, the Appellate Court's Order states that because Rule 59(e), SCRCP requires the motion for reconsideration to be served with ten days of the receipt of the order which it stated in part*does not toll the time for the notice of appeal* (Emphasis added) and concluded therefore that the Appellant's appeal was untimely.

14. Appellant asserts that the final order in this demanded a thing to be done that by its very nature requires judicial review of the additional acts required in the order. See *Charlotte-Mecklenburg Hosp. Authority*, 387 S.C. at 267. In defining a "final judgment" the court in *Cathy C. Bone vs. U.S Food Service*, 399 S.C. 566, 733 S.E. 2d 200 rejected the inference in *Charlotte Mecklenburg* that an order is 'final' if it has ruled on the merits. In *Bone* the Court opined that *a judgment deciding issues of law but leaving poen issues of fact is not a final judgment.*

15. Furthermore, the constitutional dimension regarding the scope of easements requires the court to address whether the footprint of the easement constitutes a "taking" in p court mandated Twenty-Five (25') foot easement. These issues are more fully discussed in the Appellant's brief.

16. More importantly, the survey work was within the control of the Respondent and the survey was not served on the Appellant until October 30, 2014, well past the time to serve a motion for reconsideration.

17. Substantially more than ten (10) days has elapsed since the final order was served upon the Appellant and the actual survey work along Doodle Hill Lane pursuant to the order was not completed. Appellant service of the Motion for Reconsideration was reasonable

given the impossibility of ascertaining the scope of the easement without the benefit of the survey and plat.

18. Rule 203(b) (1) (b) of the South Carolina Rules of Appellate Practice requires that the Notice of Appeal should be filed with the Clerk of the lower court and the Clerk of the Appellate Court within ten (10) days after the Notice is served.

19. The Appellant has filed a Notice of Appeal with the South Carolina Court of Appeals as required by the hereinabove mentioned rule. The Appellant asserts that the order dated August 19, 2014 is not a final order in that it requires additional acts to be done and those acts give rise to questions of fact and therefore tolls the time required to serve a motion for reconsideration.

WHEREFORE, Appellant prays, for the reasons set-forth herein, that this Court deem that the Appellant's Motion for Reconsideration of the order issued by the Honorable Robert E. Watson on August 19, 2014 be deemed timely because the order is not a final order and therefore tolled the requirements of SCRPC, Rule 59. Accordingly, asking that the appeal be reinstated.

May 15, 2016

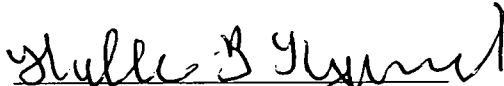

Willie B. Heyward, Esquire
27 Gamecock Ave, Ste. 200
Charleston, SC 29407
(843) 225-8754
(843) 225-8765 (fax)
Attorney for Appellant

Exhibit 1

LEGEND:

- IPF-IRON PIPE FOUND
- RBF-REBAR FOUND
- R/W-RIGHT OF WAY
- P-POWER LINE
- PP-POWER POLE
- PL-PROPERTY LINE
- PROP. COR.-PROPERTY CORNER
- NTS-NOT TO SCALE
- X-FENCE

NOTE:

THE NEW BOUNDARY OF DOODLE HILL SHALL BE CONTIGUOUS WITH THE PROPERTY BOUNDARIES OF ALL TRACTS OF LAND UTILIZING DOODLE HILL LANE FOR INGRESS/EGRESS AND OTHER ACCESS.

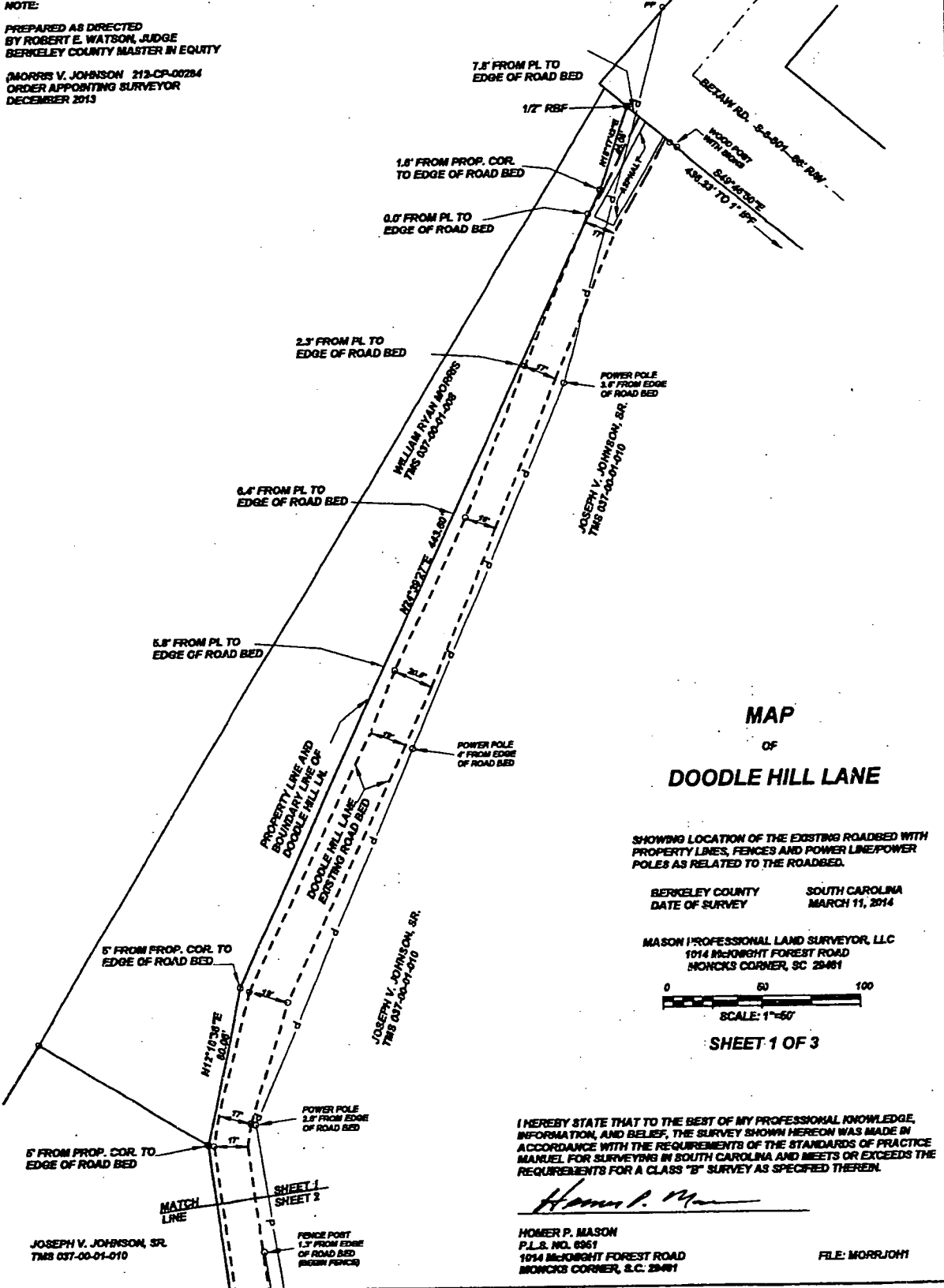
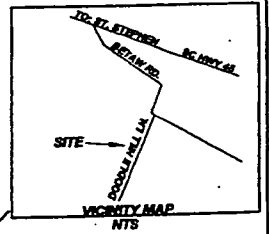


CHRIS J. LOUDEN
ATTORNEY AT LAW
POST OFFICE BOX 253
MONCK'S CORNER SC 29461

NOTE:

PREPARED AS DIRECTED
 BY ROBERT E. WATSON, JUDGE
 BERKELEY COUNTY MASTER IN EQUITY

(MORRIS V. JOHNSON 213-CP-00284
 ORDER APPOINTING SURVEYOR
 DECEMBER 2013)

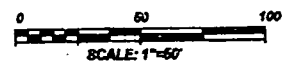


MAP
OF
DOODLE HILL LANE

SHOWING LOCATION OF THE EXISTING ROADBED WITH PROPERTY LINES, FENCES AND POWER LINE/POWER POLES AS RELATED TO THE ROADBED.

BERKELEY COUNTY SOUTH CAROLINA
 DATE OF SURVEY MARCH 11, 2014

MASON PROFESSIONAL LAND SURVEYOR, LLC
 1014 McJONIGHT FOREST ROAD
 MONCK'S CORNER, SC 29461



SHEET 1 OF 3

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

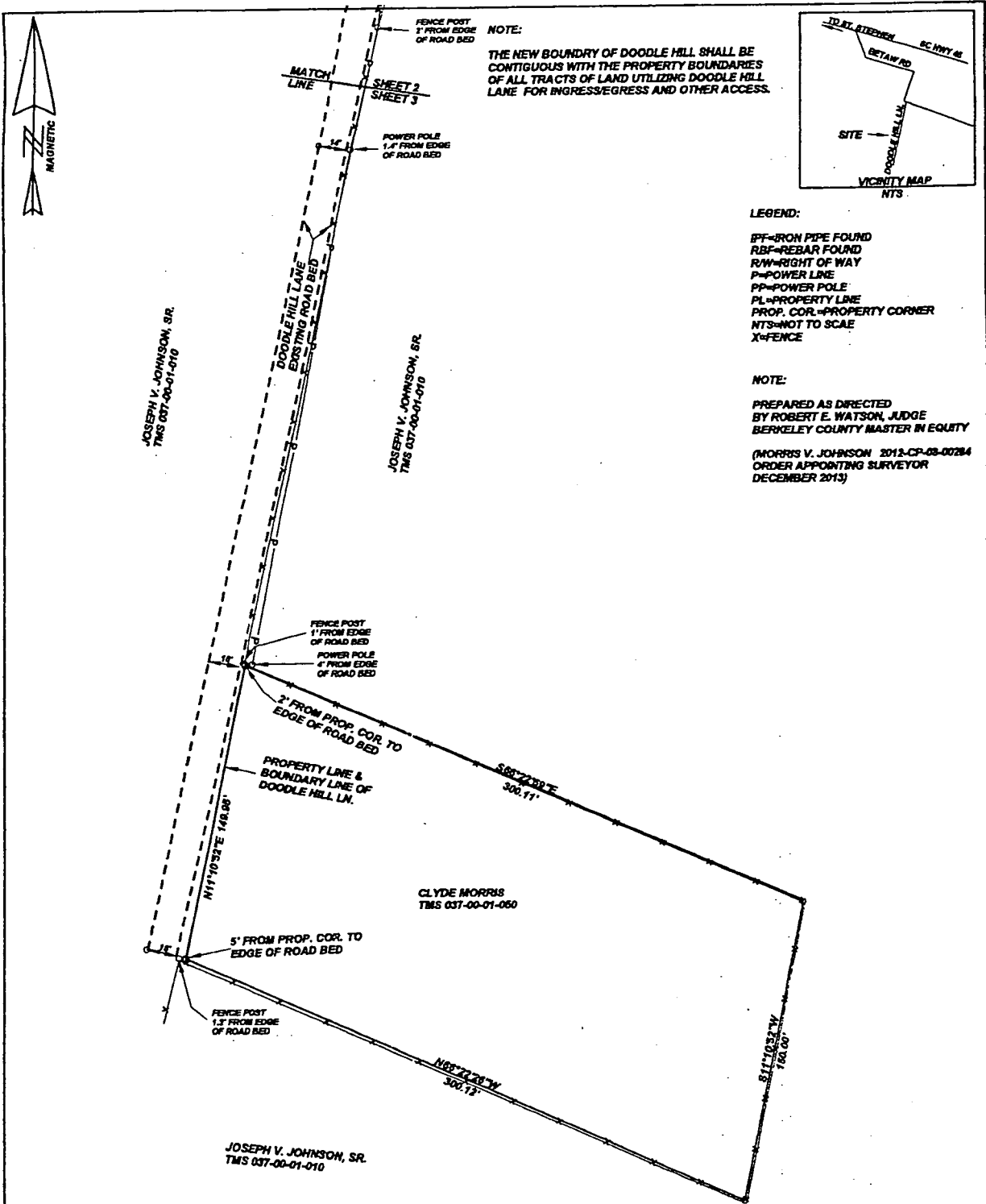
Homer P. Mason

HOMER P. MASON
 P.L.S. NO. 6961
 1014 McJONIGHT FOREST ROAD
 MONCK'S CORNER, S.C. 29461

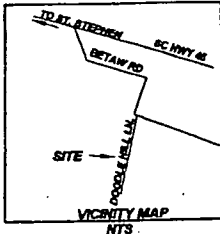
FILE: MORRJOH

JOSEPH V. JOHNSON, SR.
 TMS 037-00-01-010

FENCE POST
 1.3' FROM EDGE
 OF ROAD BED
 FROM FENCE



NOTE:
 THE NEW BOUNDARY OF DOODLE HILL SHALL BE CONTIGUOUS WITH THE PROPERTY BOUNDARIES OF ALL TRACTS OF LAND UTILIZING DOODLE HILL LANE FOR INGRESS/EGRESS AND OTHER ACCESS.



LEGEND:
 IFF-IRON PIPE FOUND
 RBF-REBAR FOUND
 RW-RIGHT OF WAY
 P-POWER LINE
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 PL-PROPERTY LINE
 PROP. COR.-PROPERTY CORNER
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 X=FENCE

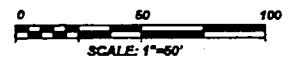
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DOODLE HILL LANE

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BERKELEY COUNTY SOUTH CAROLINA
 DATE OF SURVEY MARCH 11, 2014

MASON PROFESSIONAL LAND SURVEYOR, LLC
 1014 MCKNIGHT FOREST ROAD
 MONCKS CORNER, SC 29461



SHEET 3 OF 3

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE,
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 REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

Homer P. Mason

HOMER P. MASON
 P.L.S. NO. 6361
 1014 MCKNIGHT FOREST ROAD
 MONCKS CORNER, S.C. 29461 FILE: MORR1043

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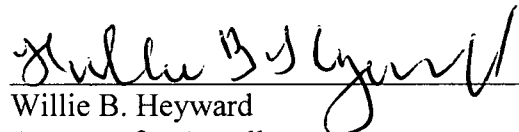
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Jr., William Johnson and Allen R. Barnette

of whom Joseph V. Johnson, Sr..... Appellant

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on all counsel of record by depositing a copy of same in the United States Mail postage prepaid, on May 12, 2016, addressed as follows:

Clyde Morris
156 Doodle Hill Lane
Moncks Corner, SC 29479


Willie B. Heyward
Attorney for Appellant

**Heirs Property
Law Firm, LLC**



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SC Court of Appeals

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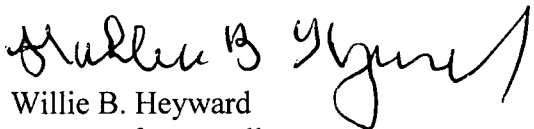
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Clyde Morris vs. Joseph V. Johnson, Sr., et al.
Case No: 2012-CP-08-0284
Appellant Case No.: 2014-002580

Dear Sir/Madam:

Enclosed for filing, please find the Petition for Rehearing (6 copies) and the Certificate of Service on the Respondent. By copy of this correspondence I am providing counsel for Respondent copies of the same.

Thank you for your attention to this matter.


Willie B. Heyward
Attorney for Appellants

Enclosures; as stated

cc: Clyde Morris
156 Doodle Hill Lane
Moncks Corner, SC 29479
Respondent / Pro Se