

# The Supreme Court of South Carolina

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,                      Petitioner,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,                      Respondent.

The Honorable Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2007-CP-07-01323

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## ORDER

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For good cause having been shown, the time for serving and filing the Reply to the Return to the Petition for Writ of Certiorari out of time in the above entitled matter is hereby extended until February 16, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Suzanne J. Shealy*  
*Chief Deputy* Clerk

Columbia, South Carolina

February 21, 2012

cc: Capers G. Barr, III, Esquire  
Louis O. Dore, Esquire

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Marvin H. Dukes, III, Master in Equity

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Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)

---

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major. . . . .Petitioner,

v.

Penn Community  
Services, Inc., a South  
Carolina Not-For-Profit  
Corporation. . . . . Respondent.

---

REQUEST TO FILE REPLY, OUT OF TIME

---

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P. O. Box 1037  
Charleston, South Carolina 29402-1037  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039  
Attorney for Petitioner

Other Counsel of Record:

Louis O. Dore  
Dore Law Firm  
P.O. Box 2478  
Beaufort, SC 29901  
Telephone: (843) 522-9112  
Facsimile: (843) 522-8050  
Attorney for Respondent

**RECEIVED**  
FEB 17 2012  
S.C. SUPREME COURT

Petitioner Johnnie Major, requests leave of the Court to file his Reply to the Return of Respondent Penn Center, out of time.

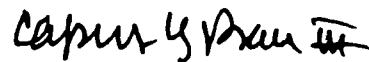
The undersigned received Respondent's Return on February 7, 2012. Because the Return itself is not dated, and no copy of Respondent's Proof of Service was provided to the undersigned, Petitioner inadvertently calculated the time upon which his Reply should be filed from the date of his receipt.

It does appear that Respondent's letter forwarding its Return to the Court, a copy of which was used to transmit the Return to the undersigned, was dated February 3d, so that Petitioner's Reply should have been postmarked by February 13<sup>th</sup>. The mistake was inadvertent. Petitioner respectfully requests that the Court accept for filing the Reply of Petitioner dated and mailed February 15<sup>th</sup> and received by the Court and by Respondent February 16<sup>th</sup>, 2012.

The undersigned has attempted to communicate with Louis O. Dore, Esquire, attorney for Respondent, to request his acquiescence to this request, but Mr. Dore is unavailable at this writing. The undersigned will supplement this request after contact has been made with Mr. Dore.

Respectfully Submitted,

**Barr, Unger & McIntosh, LLC**



---

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P. O. Box 1037  
Charleston, SC 29402-1037  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039  
Attorney for Petitioner

Charleston, South Carolina  
February 16, 2012

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Marvin H. Dukes, III, Master in Equity

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Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)

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Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major. . . . .Appellant,

v.

Penn Community  
Services, Inc., a South  
Carolina Not-For-Profit  
Corporation. . . . . Respondent.

---

**PROOF OF SERVICE**

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I certify that I have served a copy of the Request to File Reply, Out of Time on Respondent Penn Community Services, Inc., a South Carolina Not-For-Profit Corporation, by depositing a copy of same in the United States Mail, postage prepaid, on February 16, 2012, addressed to its attorney of record Louis O. Dore, Esquire, Dore Law Firm, P. O. Box 2478, Beaufort, South Carolina, 29901.

**Barr, Unger & McIntosh, LLC**



---

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P. O. Box 1037  
Charleston, SC 29402-1037  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039  
Attorney for Petitioner

Charleston, South Carolina  
February 16, 2012

**Capers G Barr III**

---

**From:** Louis O dore atty [dorelaw@embarqmail.com]  
**Sent:** Friday, February 17, 2012 10:01 AM  
**To:** Capers G Barr III  
**Subject:** Re: Major vs Penn Center

Good morning,

This is to advise that I don't have any objections. I am willing to sign a consent if you fax or email it to me this morning.

Louis

---

**From:** "Capers G Barr III" <cgb@barrungermcintosh.com>  
**To:** dorelaw@embarqmail.com  
**Cc:** "Megan Gardner" <mgardner@barrungermcintosh.com>  
**Sent:** Thursday, February 16, 2012 4:03:17 PM  
**Subject:** Major vs Penn Center

Dear Louis:

As you know we filed and served a Reply to Penn's Return, on behalf of Johnnie Major, that you should have received today.

I received a call from the Supreme Court a few minutes ago to advise that my filing should have been by 2/13, so I must apply to file the Reply out of time. Will you consent to this? I obviously counted my ten days from the date I received your Return, rather than from the date your Return was mailed.

You can respond to this request by email. Thanks for your consideration and with best regards,

Capers

Capers G. Barr, III  
Barr, Unger & McIntosh, L. L. C  
11 Broad Street  
P. O. Box 1037  
Charleston, South Carolina 29402-1037  
(843) 577-5083  
(843) 377-1226 (direct)  
(843) 723-9039 (fax)  
[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)  
[www.barrungermcintosh.com](http://www.barrungermcintosh.com)

RECEIVED

FEB 17 2012  
pm 2-16-12  
S.G. SUPREME COURT

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

11 BROAD STREET

P. O. Box 1037

CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III  
H. WAYNE UNGER, JR.  
WILLIAM S. BARR  
H. THOMAS McINTOSH, JR.  
ADAM E. BARR  
CAPERS G. BARR, IV  
W. SIAU BARR, JR.

TELEPHONE 843-577-5083

FAX 843-723-9039

www.barrungermcintosh.com

EDISTO ISLAND OFFICE  
806 OYSTER PARK  
EDISTO ISLAND, SC 29438  
TELEPHONE 843-869-2389  
FAX 843-869-0110

February 16, 2012

The Honorable Daniel E. Shearouse  
Attn: Linda Allen  
Clerk of South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

Re: *Johnnie Major v. Penn Community Services, Inc.*  
Case No. 2007-CP-07-1323;  
Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)  
Our File No. 2011--1180

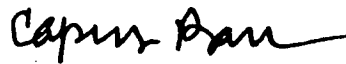
Dear Mr. Shearouse:

Enclosed for filing in the above matter are the following documents:

1. Request to File Reply of Petitioner, Out of Time;
2. Proof of Service (of the Request to Reply, Out of Time; and
3. Our firm's check in the amount of \$25.00 for the filing fee.

Thank you for your consideration and with best regards,

Sincerely yours,



Capers G. Barr, III

CGBIII/meg

Enclosures (as stated).

cc: Louis O. Dore, Esq. (w/enclosures)  
Johnnie Major (w/enclosures)

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

11 BROAD STREET

P. O. Box 1037

CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III  
H. WAYNE UNGER, JR.  
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H. THOMAS McINTOSH, JR.  
ADAM E. BARR  
CAPERS G. BARR, IV  
W. SIAU BARR, JR.

TELEPHONE 843-577-5083

FAX 843-723-9039

www.barrungermcintosh.com

EDISTO ISLAND OFFICE

806 OYSTER PARK

EDISTO ISLAND, SC 29438

TELEPHONE 843-869-2389

FAX 843-869-0110

February 15, 2012

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

Re: *Johnnie Major v. Penn Community Services, Inc.*  
Case No. 2007-CP-07-1323;  
Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)  
Our File No. 2011--1180

Dear Mr. Shearouse:

Enclosed for filing in the above matter are the following documents:

1. Reply of Petitioner (original and seven copies);
2. Proof of Service (of the foregoing Reply of Petitioner) (original and seven copies); and
3. Self-addressed, stamped envelope.

Please return to me in the enclosed envelope a clocked copy of the Reply of Petitioner and Proof of Service.

Thank you for your consideration and with best regards, I am

Sincerely yours,



Capers G. Barr, III

CGBIII/meg

Enclosures (as stated).

cc: Louis O. Dore, Esq. (w/enclosures)  
Johnnie Major (w/enclosures)

**RECEIVED**

FEB 16 2012

**S.C. SUPREME COURT**

pm 2-15-12

DORE LAW FIRM, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 2478

BEAUFORT, SOUTH CAROLINA 29901-2478

Louis O. Dore  
Cheryl V. Doe  
Anthony O. Dore  
Bertrand O. Dore

TELEPHONE (843) 522-9112  
FAX (843) 522-8050  
DORELAW@EMBARQMAIL.COM

February 3, 2012

Honorable Daniel E. Shearouse, Esq.  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

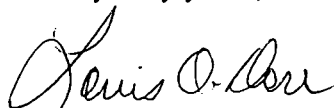
RE: Johnnie Major, Personal Representative of the Estate of Ed Major, et al. vs. Penn  
Community Services, Inc., etc.  
Court of Appeals Decision #4838, filed October 10, 2011

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of Respondent's Return to Petition for Writ  
of Certiorari, along with Proof of Service in the above captioned matter.

With kind regards, I am

Very truly yours,



Louis O. Dore

:mcm

Enclosures

cc: Capers G. Barr, III

**RECEIVED**

FEB 06 2012

S.G. SUPREME COURT

PM 2-3-12  
UPS

# The Supreme Court of South Carolina

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,                      Petitioner,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,                      Respondent.

The Honorable Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2007-CP-07-1323

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## ORDER

---

For good cause having been shown, the time for serving and filing the  
Return to the Petition for Writ of Certiorari in the above entitled matter is  
hereby extended until February 8, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Brenda J. Shealy*  
Chief Deputy Clerk

Columbia, South Carolina

December 28, 2011

cc: Capers G. Barr, III, Esquire  
Louis O. Dore, Esquire

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

---

Case No. 2007-CP-07-1323

---

RECEIVED

DEC 28 2011

S.C. Supreme Court

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,

Appellant,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,

Respondent.

---

MOTION FOR AN EXTENSION OF TIME  
TO RESPOND TO APPELLANT'S  
PETITION FOR WRIT OF CERTIORARI

---

Louis O. Dore  
DORE LAW FIRM, P.A.  
Post Office Box 2478  
Beaufort, South Carolina 29901  
Telephone (843) 522-9112  
Attorney for Respondent

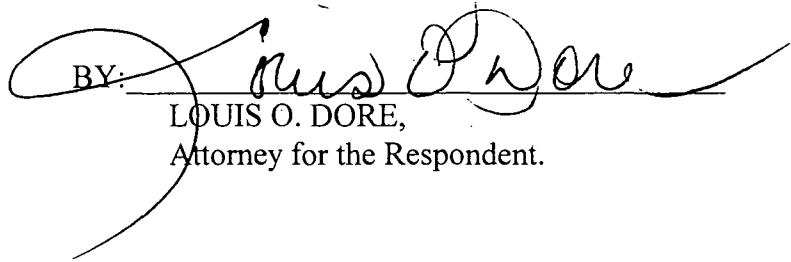
Other Counsel of Record:

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P.O. Box 1037  
Charleston, South Carolina 29402-1037  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039

Facsimile: (843) 723-9039

The undersigned, Louis O. Dore, attorney for the Respondent, does hereby move before the Court for an Order granting to the undersigned an extension of time to respond to Appellant's Petition for A Writ of Certiorari. The undersigned has had serious illness in the immediate family, and his office work is also being disrupted by the Christmas and New Year Holidays due to staff being on vacation or holiday leave. For these reasons the undersigned does hereby request that the Court grant to the undersigned an additional thirty (30) days extension of time to respond to Appellant's Petition for a Writ of Certiorari.


DORE LAW FIRM, P.A.

BY:   
LOUIS O. DORE,  
Attorney for the Respondent.

Beaufort, South Carolina

December 23, 2011

I CONSENT:

  
CAPERS G. BARR, III  
Attorney for the Appellant

**RECEIVED**

JAN 09 2012

S.C. SUPREME COURT

DORE LAW FIRM, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 2478

BEAUFORT, SOUTH CAROLINA 29901-2478

Louis O. Dore  
Cheryl V. Doe  
Anthony O. Dore  
Bertrand O. Dore

TELEPHONE (843) 522-9112  
FAX (843) 522-8050  
DORELAW@EMBARQMAIL.COM

January 4, 2012

Honorable Daniel E. Shearouse, Esq.  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

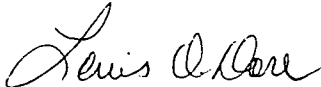
RE: Johnnie Major, Personal Representative of the Estate of Ed Major, etc. vs. Penn  
Community Services, Inc., etc.  
Court of Appeals Decision #4838, filed October 10, 2011

Dear Mr. Shearouse:

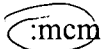
Please find enclosed the original signature consent page to my Motion for an extension of time to  
respond to Appellant's Petition for Writ of Certiorari for filing with the court.

With kind regards, I am

Very truly yours,



Louis O. Dore



Enclosure

**RECEIVED**


JAN 09 2012

**S.C. SUPREME COURT**

Facsimile: (843) 723-9039

The undersigned, Louis O. Dore, attorney for the Respondent, does hereby move before the Court for an Order granting to the undersigned an extension of time to respond to Appellant's Petition for A Writ of Certiorari. The undersigned has had serious illness in the immediate family, and his office work is also being disrupted by the Christmas and New Year Holidays due to staff being on vacation or holiday leave. For these reasons the undersigned does hereby request that the Court grant to the undersigned an additional thirty (30) days extension of time to respond to Appellant's Petition for a Writ of Certiorari.

DORE LAW FIRM, P.A.

BY:   
LOUIS O. DORE,  
Attorney for the Respondent.

Beaufort, South Carolina

December 23, 2011

I CONSENT:

\_\_\_\_\_  
CAPERS G. BARR, III  
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

---

Case No. 2007-CP-07-1323

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Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,

Appellant,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,

Respondent.

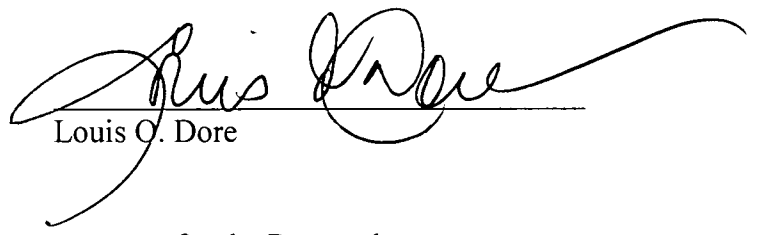
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PROOF OF SERVICE

---

I, Louis O. Dore, hereby certify that, on December 23, 2011, I filed and served by mail a Motion for an Extension of Time to Respond to Appellant's Petition for Writ of Certiorari by depositing same, with sufficient first class postage prepaid, at the United States Post Office at Beaufort, South Carolina, and addressed as follows:

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P. O. Box 1037  
Charleston, South Carolina 29402-1037



Louis O. Dore

Attorney for the Respondent  
Penn Community Services, Inc.

DORE LAW FIRM, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 2478

BEAUFORT, SOUTH CAROLINA 29901-2478

TELEPHONE (843) 522-9112

FAX (843) 522-8050

DORELAW@EMBARQMAIL.COM

Louis O. Dore  
Cheryl V. Doe  
Anthony O. Dore  
Bertrand O. Dore

December 23, 2011

Honorable Daniel E. Shearouse, Esq.  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Johnnie Major, Personal Representative of the Estate of Ed Major, etc. vs. Penn  
Community Services, Inc., etc.  
Court of Appeals Decision #4838, filed October 10, 2011

Dear Mr. Shearouse:

Please find enclosed my Motion for an Extension of Time to Respond the Appellant's Petition for Writ of Certiorari. I am also enclosing a check in the amount of \$25.00 filing fee. I have contacted Mr. Capers Barr, III, attorney for the Appellant and he has graciously consented to the extension.

Very truly yours,



Louis O. Dore

LOD/mcm

Enclosures

cc: Capers G. Barr, III

check # 8904  
\$25.00

**RECEIVED**  
DEC 28 2011  
S.C. SUPREME COURT  
pm 12-23-11

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

11 BROAD STREET

P. O. Box 1037

CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III  
H. WAYNE UNGER, JR.  
WILLIAM S. BARR  
H. THOMAS McINTOSH, JR.  
ADAM E. BARR  
CAPERS G. BARR, IV  
W. SIAU BARR, JR.

TELEPHONE 843-577-5083

FAX 843-723-9039

www.barrungermcintosh.com

EDISTO ISLAND OFFICE

806 OYSTER PARK

EDISTO ISLAND, SC 29438

TELEPHONE 843-869-2389

FAX 843-869-0110

December 8, 2011

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Attn: Linda Allan  
1231 Gervais Street  
Columbia, SC 29201

RECEIVED

DEC 12 2011

S.C. Supreme Court

Re: *Johnnie Major v. Penn Community Services, Inc.*  
Case No. 2007-CP-07-1323;  
Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)  
Our File No. 2011--1180

Dear Linda:

Pursuant to our telephone conversation today, enclosed please find the following:

1. A bound copy of the Final Brief of Appellant;
2. One bound copy the Amended Appendix to the Petition for a Writ of Certiorari; and
3. A check made payable to the S. C. Supreme Court for \$100.00 for the filing fee.

Also enclosed are the original unbound and one copy of the Amended Appendix to the Petition for a Writ of Certiorari. Would you please return a date stamped copy of the Amended Appendix to me in the enclosed envelope?

Please feel free to contact me if you need anything additional.

Sincerely yours,

*Megan E. Gardner*

Megan E. Gardner  
Paralegal to Capers G. Barr, III

CGBIII/meg  
Enclosures (as stated)  
cc: Louis O. Dore, Esq. (w/enclosures)  
Johnnie Major (w/enclosures)

Check # 35709  
\$100.00



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 8, 2011

Capers G. Barr, III, Esquire  
Barr Unger & McIntosh LLC  
P O Box 1037  
Charleston, SC 29402

Re: Major, Johnnie v. Penn Comm. Serv.  
Case Tracking No. 2011-202386

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Louis O. Dore, Esquire  
The Honorable Tanya Gee

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

11 BROAD STREET

P. O. Box 1037

CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III  
H. WAYNE UNGER, JR.  
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ADAM E. BARR  
CAPERS G. BARR, IV  
W. SIAU BARR, JR.

TELEPHONE 843-577-5083

FAX 843-723-9039

www.barrungermcintosh.com

EDISTO ISLAND OFFICE

806 OYSTER PARK

EDISTO ISLAND, SC 29438

TELEPHONE 843-869-2389

FAX 843-869-0110

December 6, 2011

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

Re: *Johnnie Major v. Penn Community Services, Inc.*  
Case No. 2007-CP-07-1323;  
Opinion No. 4838 (S.C. Ct. App. Re-filed October 10, 2011)  
Our File No. 2011--1180

Dear Mr. Shearouse:

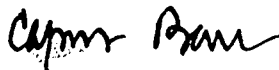
Enclosed for filing in the above matter are the following documents:

1. Petition for a Writ of Certiorari (original and seven copies)
2. Appendix  
(one unbound original and supporting documents)  
(one copy bound w/supporting documents)  
(one copy of the Appendix pages only, no supporting documents)
3. Proof of Service (of the foregoing Petition and Appendix)
4. (original and seven copies)
5. Proof of Service (of the foregoing Petition on the S.C. Court of Appeals)
6. (original and seven copies)
7. Our check in the amount of \$150 for the filing fee
8. Self-addressed, stamped envelope

Please return to me in the enclosed envelope a clocked copy of each: Petition for Writ, Appendix pages without supporting documents, and Proofs of Service.

Thank you for your consideration and with best regards, I am

Sincerely yours,



Capers G. Barr, III

CGBIII/meg  
Enclosures

cc: Louis O. Dore, Esq. (w/enclosures)  
Johnnie Major (w/enclosures)

RECEIVED  
DEC 8 2011  
S.C. SUPREME COURT  
pm  
12-6-11

Returned check #3880  
for \$150.00

BARR, UNGER AND MCINTOSH, LLC • GENERAL TRUST ACCOUNT  
CHARLESTON, SC 29402-1037

3880

Check Number:

Date: 12/06/11

File ID/Number: 2011-1180

TAC: GEN TRUST

Client/ Matter: Johnnie Major

Ledger Comment:

Responsible Party:

Pay To: S.C. Supreme Court

Check Amount: \$ 150.00

Memo: Writ of Certiorari Filing Fee

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

3880

**BARR, UNGER AND MCINTOSH, L.L.C.**  
ATTORNEYS AT LAW - GENERAL TRUST ACCT  
11 BROAD STREET, SECOND FLOOR  
PO BOX 1037  
CHARLESTON, SC 29402-1037

*The Bank of South Carolina*

CHARLESTON, SC

NUMBER

67-187/532

2011-1180

Writ of Certiorari Filing Fee

--One Hundred Fifty and 00/100

DATE

AMOUNT

December 6, 2011

\$ \*\*\*\*\*150.00

PAY  
TO THE  
ORDER  
OF S.C. Supreme Court

Barr, Unger and McIntosh, L.L.C. - General Trust Account  
ATTORNEYS AT LAW

*Cherryman*

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BARR, UNGER AND MCINTOSH, L.L.C.

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November 8, 2011

(By Facsimile and First Class Mail)

Honorable Daniel E. Shearouse, Esq.  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: Johnnie Major, Personal Representative of the Estate of Ed Major, etc. vs. Penn  
Community Services, Inc., etc.  
Court of Appeals Decision #4838, filed October 10, 2011  
Our File No: 2011-1180

Dear Mr. Shearouse:


It occurs to me that I should have provided you with more information in my letter of yesterday, November 7, 2011, in which I requested an extension of time within which to file a Petition for Writ of Certiorari.

Whereas I reported in yesterday's letter that I did not represent Mr. Major at trial or before the Court of Appeals; I was substituted as counsel for his previous lawyer in the Court of Appeals; and I did file the Petition for Rehearing in that Court. Accordingly, I am attaching a copy of the Order of Substitution filed with the Court of Appeals.

Additionally, I am also attaching a copy of the re-filed decision of the Court of Appeals, dated October 10, 2011.

If you require any further information, do not hesitate to contact me.

Sincerely,



Capers G. Barr, III

CGBIII/meg

Enclosures (as stated).

cc: Louis O. Dore, Esquire (w/enclosure)

Johnnie Major (w/enclosure)

RECEIVED

NOV 09 2011

S.C. SUPREME COURT

pm 11-8-11

4834



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 1, 2011

Capers G. Barr, III, Esquire  
Barr Unger & McIntosh LLC  
P.O. Box 1037  
Charleston, SC 29402

Re: Major, Johnnie v. Penn Community

Dear Mr. Barr:

Enclosed is a copy of an Order of the Court Granting your Motion to Substitute as Counsel in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson  
Administrative Specialist

Handwritten initials "TAG/rj" in black ink.

cc: Ray A. Lord, Esquire  
Louis O. Dore, Esquire

**RECEIVED**

NOV 09 2011

S:G: SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2007-CP-07-1323

RECEIVED

JUN 30 2011

SC Court of Appeals

Johnnie Major, Personal  
Representative of Ed  
Major a/k/a Edward Major. . . . .Appellant,

v.

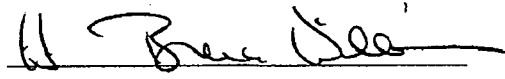
Penn Community  
Services, Inc., A South  
Carolina Not-For-Profit. . . . . Respondent.

ORDER SUBSTITUTING COUNSEL

Whereas Appellant Johnnie Major seeks to substitute attorney Capers G. Barr, III for attorney Ray A. Lord as attorney for Appellant in the within case; it is therefore

ORDERED that Capers G. Barr, III be substituted as attorney of record in the within case for attorney Ray A. Lord.

AND IT IS SO ORDERED



FILED

JUL 01 2011

In the Matter of Johnnie Major, Personal Representative, etc. vs. Penn Community Services, Inc.; Order Substituting Capers G. Barr, III for Ray A. Lord as attorney for Appellant:

I move for the within substitution of counsel,

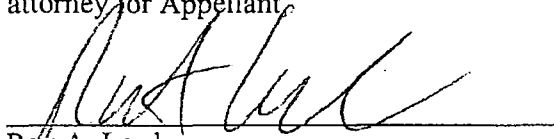


---

JOHNNIE MAJOR

In the Matter of Johnnie Major, Personal Representative, etc. vs. Penn Community Services, Inc.; Order Substituting Capers G. Barr, III for Ray A. Lord as attorney for Appellant:

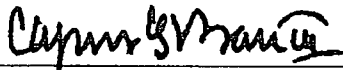
I consent to the within substitution of Capers G. Barr, III for Ray A. Lord, as attorney for Appellant.



Ray A. Lord  
Lord Law Firm, LLC  
Post Office Box 2735  
Irmo, South Carolina 29063  
Telephone: (803) 407-4140  
Facsimile: (803) 407-4710

In the Matter of Johnnie Major, Personal Representative, etc. vs. Penn Community Services, Inc.; Order Substituting Capers G. Barr, III for Ray A. Lord as attorney for Appellant:

I consent to the within substitution of Capers G. Barr, III for Ray A. Lord, as attorney for Appellant,



---

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
P. O. Box 1037  
Charleston, South Carolina 29402-1037  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039

# The South Carolina Court of Appeals

Johnnie Major, Personal Representative  
of the Estate of Ed Major a/k/a Edward  
Major a/k/a Edward Major, Sr., Appellant,

v.

Penn Community Services, Inc., a  
South Carolina Not-For-Profit  
Corporation, Respondent.

The Hon. Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2007-CP-07-1323

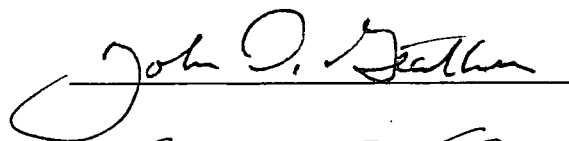
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## ORDER DENYING PETITION FOR REHEARING AND SUBSTITUTING OPINION

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PER CURIAM: After a careful consideration of the Petition for Panel Rehearing, the Court has decided to issue a substituted opinion. It is, therefore, ordered that the Petition for Panel Rehearing be denied and the earlier opinion, Op. No. 4838, be withdrawn and substituted with the attached opinion.

  
\_\_\_\_\_  
J. Williams

  
\_\_\_\_\_  
J. Geathers

  
\_\_\_\_\_  
J. Lockemy

Columbia, South Carolina

cc: Capers G. Barr, III, Esquire  
Ray A. Lord, Esquire  
Louis O. Dore, Esquire

**FILED**

OCT 10 2011

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,                      Appellant,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,                      Respondent.

---

Appeal From Beaufort County  
The Hon. Marvin H. Dukes, III, Master-in-Equity

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Opinion No. 4838  
Submitted March 1, 2011 – Filed June 8, 2011  
Withdrawn, Substituted and Refiled October 10, 2011

---

**AFFIRMED**

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Ray A. Lord, of Irmo, for Appellant.

Louis O. Dore, of Beaufort, for Respondent.

**WILLIAMS, J.:** On appeal, Johnnie Major, as personal representative for the estate of Edward Major (the Estate), contests the master-in-equity's finding that Penn Community Services, Inc. (Penn) is the fee simple owner of 6.2 acres of real estate in Beaufort County (the Property). The Estate first claims the master lacked subject matter jurisdiction because the master's decision to quiet title to the Property required a determination of intestate heirs, which is exclusively within the probate court's jurisdiction. The Estate also argues the master erred in concluding a certain deed conveyed the Property to Penn because the master's decision was based upon an erroneous determination of intestate succession. We affirm.

### **FACTS/PROCEDURAL HISTORY**

Sub Lot 8,<sup>1</sup> bordered in part by Johnson River, is located on Saint Helena's Island in Beaufort County, South Carolina. Sub Lot 8 comprises 14.13 acres of real estate, and of the 14.13 acres, the Estate undisputedly owns 7.93 acres. At issue in this appeal is whether the Estate or Penn possesses title to an additional 6.2 acres located in the southern portion of Sub Lot 8 (the Property).

In 1866, Edward Philbrick deeded "[ ] Lot No. (8) . . . containing eighteen acres more or less" to Scipio Josiah. Scipio Josiah later died intestate, leaving his only child, William Josiah, as his sole heir. On January 5, 1932, William Josiah conveyed Lot 8 to F.R. Ford for payment of delinquent taxes. The 1932 deed described Lot 8 as "eighteen acres, more or less, being bounded . . . on the North by the marshes of Johnson River, East by lands of Penn School, South by lands of Penn School, [and on the] West by [m]arshes of Johnson River." On June 17, 1936, F.R. Ford conveyed the same parcel to brothers Edward and James Major. The 1936 deed described Lot 8 with the identical language stated in the 1932 deed.

---

<sup>1</sup> For ease of reference, this court refers to "Lot 8" as the original eighteen acres, "Sub Lot 8" as the 14.13 acres, and "the Property" as the disputed 6.2 acres that is in the southern portion of Sub Lot 8.

On September 23, 1950, the brothers partitioned the eighteen acres in Lot 8, with the northern ten acres deeded to James Major and the southern eight<sup>2</sup> acres deeded to Edward Major. After Edward Major passed away in 1997, the Estate brought an action to quiet and confirm title to Sub Lot 8 as well as to confirm the southern boundary line of Sub Lot 8. In its complaint, the Estate asserted it was the rightful owner of "the southern portion of Sub Lot 8," which, in addition to its ownership of 7.93 acres, totaled 14.13 acres. The Estate averred it never conveyed away any portion of Sub Lot 8, and Penn's only rightful claim of ownership was to 3.11 acres undisputedly owned by Penn. In response, Penn asserted it had obtained lawful title of the Property from R.R. Legare in 1916,<sup>3</sup> which was duly recorded at the Beaufort County Register of Deeds office. Penn claimed it immediately entered into possession of the Property after this conveyance.

The parties introduced various plats at trial in an attempt to accurately document the master chain of title. Penn first submitted the Simons-Myrant Plat, which was prepared and recorded in 1905 before Penn purportedly purchased the Property. The Simons-Myrant plat illustrated Penn's northernmost boundary including land only up to the disputed 6.2 acres. Penn also submitted the Palmer and Malone Plat, which was prepared and recorded in 1967. This plat included the disputed 6.2 acres, which was consistent with Penn's claim that it acquired the Property in 1916. Last, the Estate submitted the Gasque plat, which was prepared by a local surveyor, David Gasque, for trial and was not recorded. The Gasque plat depicted Sub Lot 8 as consisting of 14.13 acres, which included the disputed 6.2 acres and the 7.93 acres originally deeded to Edward Major in 1950. Besides the Gasque plat, the Estate presented no other evidence to show it ever surveyed, platted, or recorded Sub Lot 8.

In support of its claim that the Estate was the rightful owner of the Property, several family members testified they used the Property to graze

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<sup>2</sup> The record reflects the Estate owns exactly 7.93 acres.

<sup>3</sup> Penn initially asserted in its Answer and Counterclaim that it obtained title from Jane Chisolm in 1959. Penn orally amended its Answer and Counterclaim, without objection, at trial to allege a conveyance from R.R. Legare to Penn by deed dated October 12, 1916.

animals for a number of years and had, at some point in time, planted a small garden on the Property. The Major family also stated they, along with other citizens in the community, frequently used the "Penn dock" on the eastern end of the Property for swimming, boating, and crabbing.

In support of its claim of ownership, Penn's acting executive director and two past executive directors testified Penn had been in possession of the Property for thirty-five years without any claims of adverse ownership by the Major family. The directors noted various Major family members lived adjacent to the Property; however, they claimed none of the Major heirs ever questioned Penn's ownership, despite Penn's establishment of a nature trail and construction of a dock on the eastern end of the Property.

Additionally, Penn presented, without objection, the 1916 deed from R.R. Legare to Penn, which was duly recorded. The 1916 deed stated R.R. Legare was conveying "the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres, and portion described as being bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." Penn also presented, without objection, a property record card prepared by Arthur Christensen, a surveyor in Beaufort County during the relevant time period. The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah." The card subsequently noted a conveyance from William Josiah to F.R. Ford on January 5, 1932.

Because the R.R. Legare deed to Penn did not contain a metes and bounds description but was only defined by adjacent landowners' property lines, the master resorted to the various plats and deeds as well as witnesses' testimony to determine whether the Property was located in Sub Lot 8. In his final order, the master found Penn was the fee simple owner of the Property, free and clear of any claims of ownership by the Estate. This appeal followed.

### STANDARD OF REVIEW

Generally, an action to quiet title is one in equity. Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). However, when the defendant's

answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, the issue of title is legal. Dargan v. Tankersley, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). Therefore, in a case tried without a jury, the factual findings of a judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). This scope of review is equally applicable to the factual determinations of a master when, as in the present case, he enters final judgment. May v. Hopkinson, 289 S.C. 549, 554-55, 347 S.E.2d 508, 511 (Ct. App. 1986).

### LAW/ANALYSIS

The Estate first claims the master did not have subject matter jurisdiction to quiet title to the Property because his ruling necessarily involved a determination of intestate heirs, which can only be decided by the probate court. We disagree.

The Estate filed an action in circuit court "for the purposes of quieting and confirming title to the [P]roperty . . . and confirming the southern boundary line thereto . . . ." <sup>4</sup> An action to quiet title is governed by section 15-67-10 of the South Carolina Code (2005). Pursuant to section 15-67-10,

Any person in possession of real property . . . or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

---

<sup>4</sup> A review of the Estate's complaint and the parties' briefs establish the main purpose of this suit was to determine title to the disputed 6.2 acres. We find the boundary line question is incident to the action to quiet title. See Knox v. Bogan, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) (finding disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title).

Once the Estate filed this action, the circuit court was required to refer the action to a master-in-equity to first determine rightful ownership of the Property and then to enter final judgment. See S.C. Code Ann. § 15-67-60 (2005) ("In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents."); see also S.C. Code Ann. § 14-11-85 (Supp. 2010) ("When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals . . .").

While the Estate claims the master improperly asserted subject matter jurisdiction in contravention of section 62-1-302(a)(1) of the South Carolina Code (2009)<sup>5</sup> when the master found "Florence Major acquired an intestate share in the Scipio Josiah estate," we find this argument unpersuasive.

The master was not required to make a determination of heirs to establish rightful ownership of the Property. In order to identify the subject matter of the grant, and as such, whether Penn had paramount title to the disputed land, the master had to determine whether the R.R. Legare deed was in the chain of title and constituted a conveyance out of Sub Lot 8. See Powers v. Rawles, 119 S.C. 134, 156, 112 S.E. 78, 86 (1922) ("The sole purpose of a description of land as contained in a deed is to identify the subject-matter of the grant."). Accordingly, the master recited certain lineage that was already documented in the R.R. Legare deed and the property record card in an effort to identify the exact location of the Property. See Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1955) (parol evidence is admissible to elucidate latent ambiguities in written instruments).

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<sup>5</sup> Section 62-1-302(a)(1) grants "the probate court . . . exclusive original jurisdiction over all subject matter related to . . . [the] determination of heirs and successors of decedents . . . ."

Specifically, the R.R. Legare deed conveyed roughly six acres to Penn, described as "the same land inherited by Florence Major from her grandfather, Scipio Josiah . . . and . . . bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah" and later noted a conveyance "to F.R. Ford on January 5, 1932." While the deed and property record card appear to conflict on whether Florence acquired her share of the estate directly from her grandfather, Scipio, or directly from her father, William, this discrepancy is immaterial for purposes of determining whether Penn or the Estate possessed paramount title. Moreover, we note the Estate never contested the validity, accuracy, or recordation of the 1916 deed at trial. The Estate's attempt to bootstrap its subject matter jurisdiction claim to evidence that it never contested prior to this appeal is unpersuasive, particularly when the deed and the property record card establish Florence Major had ownership rights to approximately six acres that were described in both documents as the "Corner" of Lot 8. Because the R.R. Legare deed expressly conveyed six acres in Lot 8 owned by Florence Major to Penn, it was reasonable for the master to conclude the disputed 6.2 acres is the same six acres conveyed to Penn in 1916. *conclude in support of this*

Other evidence supports this conclusion as well. Each deed in the Estate's chain of title conveyed a total of eighteen acres. The partition deed between Edward and James Major divided eighteen acres, which indicates the 6.2 acres of disputed land was not a part of the Estate's chain of title. If F.R. Ford had received title to the Property, which he then conveyed to Edward and James Major, we conclude it would be reasonable for the specified acreage in the deed to be greater than eighteen acres. See Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985). ("[A] grantor of real property generally can transfer no greater interest than he himself has in the property."). Moreover, both the 1932 and 1936 deeds expressly described the eighteen acres as being bound on both the east and the south by "the lands of Penn School." This description is consistent with the master's finding that R.R. Legare conveyed these southern six acres in Sub Lot 8 to Penn in 1916, prior to the 1932 and 1936 deeds to the Majors. In addition, Penn's recorded plats all support the master's conclusions. The 1905 plat illustrated Penn's northernmost boundary as land bordering, but not

including, the disputed 6.2 acres. The 1967 plat, on the other hand, included the disputed 6.2 acres, which is consistent with Penn's claim that it acquired the Property in 1916. See King v. Hawkins, 282 S.C. 508, 510, 319 S.E.2d 361, 362 (Ct. App. 1984) (finding party was record owner of property when deed matched recorded plats indicating disputed property was owned by the party and party's predecessors in interest). Last, Penn had been in possession of this land for over thirty-five years without any adverse claims of ownership by the Estate, which lends support for the master's conclusion that Penn was the rightful owner of the Property. Because the foregoing evidence reasonably supports the master's finding that Penn possessed fee simple title to the Property, we affirm the master's decision.

### CONCLUSION

Based on the foregoing, the master-in-equity's order is

**AFFIRMED.**

**GEATHERS and LOCKEMY, JJ., concur.**

# The Supreme Court of South Carolina

Johnnie Major, Personal  
Representative of the Estate of  
Ed Major a/k/a Edward Major  
a/k/a Edward Major, Sr.,                      Petitioner,

v.

Penn Community Services,  
Inc., a South Carolina Not-For-  
Profit Corporation,                      Respondent.

The Honorable Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2007-CP-07-1323

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## ORDER

---

For good cause having been shown, the time for serving and filing the  
Petition for Writ of Certiorari and Appendix in the above entitled matter is  
hereby extended until December 8, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dwenda J. Shealy*  
Clerk

*Chief Deputy*

Columbia, South Carolina

November 9, 2011

cc: Capers G. Barr, III, Esquire  
Louis O. Dore, Esquire  
The Honorable Tanya Gee

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

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November 7, 2011

(By Facsimile and First Class Mail)

Honorable Daniel E. Shearouse, Esq.  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: Johnnie Major, Personal Representative of the Estate of Ed Major, etc. vs. Penn  
Community Services, Inc., etc.  
Court of Appeals Decision #4838, filed October 10, 2011  
Our File No: 2011-1180

Dear Mr. Shearouse:

I represent Johnnie Major, unsuccessful appellant before the Court of Appeals in the  
above referenced case. My client desires to file a Petition for Writ of Certiorari with the  
Supreme Court.

I write this letter to ask for a thirty day extension of time within which to file a  
Petition for Writ of Certiorari. I was not involved in this case at the trial level, or before the  
Court of Appeals, and for that reason alone I require additional time within which to fully  
read, understand, and research the issues necessary to present a Petition to the Supreme  
Court. Additionally, my court schedule with other matters, as well as my involvement with a  
political campaign scheduled for election tomorrow, November 8, 2011, have interrupted my  
time for adequate preparation for Mr. Major's petition.

I have consulted with opposing counsel, Louis O. Dore, Esq. of Beaufort who has no  
objection to this request. My check in the sum of \$25.00 for the filing fee is also enclosed.

My client and I would greatly appreciate the court's favorable consideration of this  
request.

Sincerely,

*Capers Barr* RECEIVED

Capers G. Barr, III

NOV 09 2011

CGBIII/meg

Enclosures (as stated).

cc: Louis O. Dore, Esquire (w/enclosure)  
Johnnie Major (w/enclosure)

S.C. SUPREME COURT  
pm 11-7-11

Check # 35540  
\$25.00