

PM 5-16-2012  
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STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM YORK COUNTY  
Court of Common Pleas

RECEIVED  
MAY 18 2012  
SC Court of Appeals

The Honorable S. Jackson Kimball, Special Circuit Judge

Civil Action No. 2011-CP-46-4366

Michael Earl Miller I and Michael Earl Miller II, ..... Appellants,

v.

Cynthia Crowe ..... Respondent.

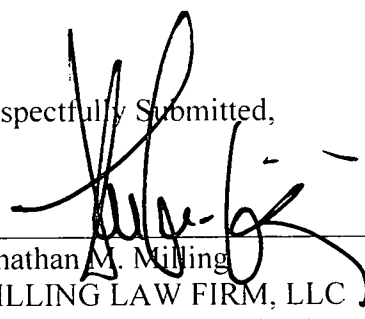


**NOTICE OF APPEAL**

Michael Earl Miller I and Michael Earl Miller II, appeals from the decision of the Honorable S. Jackson Kimball, dated May 1, 2012, and entered of record May 3, 2012.

Appellants received an electronic copy of this order on May 1, 2012, and an electronic copy of the clocked-in order on May 3, 2012.

Respectfully Submitted,



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Attorney for Appellant Michael Earl Miller I

May 16, 2012

Other Counsel of Record:

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Attorney for Respondent Cynthia Crowe

STATE OF SOUTH CAROLINA  
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Civil Action No. 2011-CP-46-4366

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Michael Earl Miller I and Michael Earl Miller II, ..... Appellants,

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**PROOF OF SERVICE**

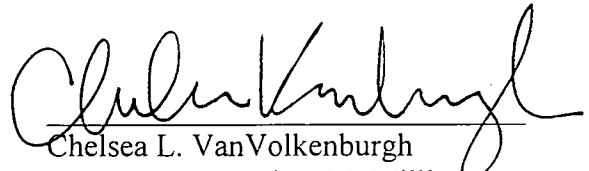
The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent and the York County Clerk of Court with a copy of the *Notice of Appeal* by mailing copies of the same via United States Mail with first class postage prepaid to the following addresses:

**RECEIVED**  
MAY 18 2012  
**SC Court of Appeals**

Ashley White Creech, Esquire  
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The Honorable David Hamilton  
York County Clerk of Court  
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Chelsea L. VanVolkenburgh  
Assistant to Jonathan M. Milling

May 16, 2012



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May 16, 2012

RECEIVED  
MAY 18 2012  
SC Court of Appeals

The Honorable Jenny Kitchings  
Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Cynthia Crowe v. Michael Earl Miller I and Michael Earl Miller II  
Civil Action No. 2011-CP-46-4366

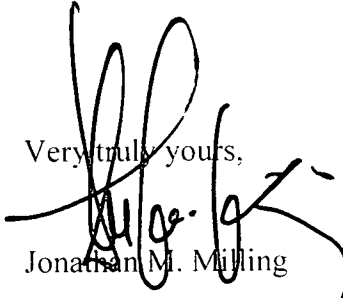
Dear Ms. Kitchings:

Attached please find for filing with your office, one (1) original and one (1) copy of a Notice of Appeal in the above captioned matter. I would appreciate your office filing the originals and returning the clocked copies in the enclosed postage-paid return envelope. I have also enclosed the following:

- 1.) Proof of Service of the Notice of Appeal on the Respondents;
- 2.) A copy of the Orders which are to be challenged on appeal;
- 3.) A filing fee of \$100.00.

With kind regards, I remain

Very truly yours,

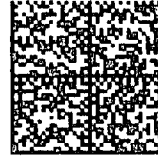
  
Jonathan M. Milling


cc: The Honorable David Hamilton  
Ashley White Creech, Esquire  
Leland Greeley, Esquire  
Michael Earl Miller II



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The Honorable Jenny Kitchings  
Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2011CP4604366

Cynthia Crowe	Michael Earl Miller I Michael Earl Miller II
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

**RECEIVED**  
 MAY 18 2012  
 SC COURT OF APPEALS

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER FOR JUDGMENT ON THE PLEADINGS AS TO DEFENDANT

ORDER INFORMATION

This order  ends  does not end the case. Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ <i>B. Jackson Kimball</i>	3063	05/01/2012
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on May 03, 2012, and a copy mailed first class or placed in the appropriate attorney's box on May 03, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley White Creech McGowan Hood & Felder LLC 1539 Healthcare Dr  
Rock Hill, SC 29732

Leland Greeley Leland B. Greeley, PA P.O. Box 2981 Rock Hill, SC 29732  
Jonathan McKey Milling Milling Law Firm L L C 1614 Taylor St Ste C  
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA FILED RECEIVED IN THE COURT OF COMMON PLEAS

COUNTY OF YORK 2012 MAY -3 PM 3:35 SIXTEENTH JUDICIAL CIRCUIT

Cynthia Crowe

Plaintiff,

v.

Michael Earl Miller, I, and Michael Earl Miller, II

Defendants.

DAVID HAMILTON  
C.C.C.P. & G.S.  
YORK COUNTY, SC

Case No: 2011-CP-46-4366

**ORDER FOR JUDGMENT ON THE  
PLEADINGS AS TO DEFENDANT  
MICHAEL EARL MILLER, II's  
COUNTERCLAIMS**

This matter came before me on April 19, 2012, upon Plaintiff's Motion for Judgment on the Pleadings as to the counterclaim of Defendant Michael Earl Miller, II ("Miller"). Representing the parties were: Ashley Creech for Plaintiff; and, Jonathan Milling for Defendant. Based on the record presented, I make the following findings and conclusions.

**BACKGROUND**

On November 18, 2011, Plaintiff filed a Complaint against Defendant Miller seeking to recover damages for injuries she sustained in a boating accident. She asserts that she was a passenger in a boat being driven by Miller, who was driving the boat while intoxicated by alcohol. Defendant served an Answer to Plaintiff's Complaint, asserting a counterclaim alleging that Plaintiff was actually "operating" the boat and seeking monetary damages from Plaintiff for injuries sustained by Miller.

In December, 2010, Miller entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to Driving a Water Vehicle Under the Influence and causing severe bodily injury. The plea was based on the same events alleged in the Complaint. The transcript of the plea shows that Miller agreed to a recitation of the facts, stating that he was driving a boat while under the influence of alcohol at the time of the occurrence, and that Plaintiff was a passenger.

**STANDARD**

Rule 12(c) of the South Carolina Rules of Civil Procedure allows parties to make a motion for judgment on the pleadings after the pleadings are closed, but within such time so not to delay trial. A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle the claimant to judgment if resolved in his favor. *Russell v. City of*

*MR*  
#1

*Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). If matters outside of the pleadings are presented, the Court should treat the motion as one for summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure. See Rule 12(c) S.C. R. Civ. P.

#### DISCUSSION

Miller pled guilty under *Alford* to operating a water vehicle while under the influence of alcohol and causing severe bodily injury. The plea addresses the same events as Miller's counterclaim. Where a party has pleaded guilty under *Alford* in a former criminal proceeding, that party is collaterally estopped from asserting a contrary position concerning the same factual issues in a subsequent civil action. *Zurcher v. Bilton*, 379 S.C. 132, 66 S.E.2d 224, 136 (2008); See *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). Miller pled guilty to operating a boat while under the influence of alcohol, causing bodily injury to Plaintiff. In the plea proceeding, Miller effectively acknowledged that Plaintiff was a passenger, and that he was the driver of the boat. Accordingly, Miller is collaterally estopped from asserting in his counterclaim that Plaintiff was driving the boat, and caused him injury. he AM

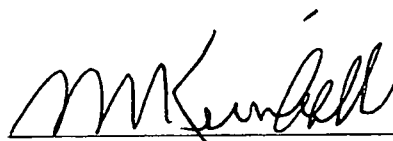
Based on the preceding discussion, I find and conclude that Miller's counterclaim should be dismissed as a matter of law.

#### ORDER

Therefore, it is ordered that Plaintiff's Motion for Judgment on the Pleadings be granted, and that Miller's counterclaim be dismissed with prejudice.

AND IT IS SO ORDERED.

May 1, 2012



S. Jackson Kimball  
Special Circuit Court Judge  
York County

#2