

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM DILLON COUNTY
Court of Common Pleas

JUL 28 2016

SC Court of Appeals

Richard L. Hinson, Special Referee

Case No. 2015-CP-17-313
Appellate Case No. 2016-000246

Thomas J. Grossetti, Jr.Respondent

v.

Nicolette S. BlueAppellant

Return to Appellant's Motion for Correction and/or Amendment
of Designation of Matter

Pursuant to Rule 209 and Rule 240(e), SCACR, Respondent requests that this court deny Appellant's Motion to Correct or Amend her Designation of Matter as to her request number two

(2):

"Hearing transcripts [sic] of the Motion to Set Aside Default Judgment have been added as No. 4 of the Amended Designation of Matter."

1. Respondent objects to the addition of the entire hearing transcript. Rule 209(b), SCACR plainly states that "the Designation may only propose to include portions of the transcript, pleading, orders, exhibits, or other materials which may be properly included in the Record on appeal. A party shall not include any matter in his Designation which is not relevant to the appeal."

Appellant did not refer by citation to any portion of the Motion to Set Aside Default Judgment hearing transcript in her Initial Brief to this court. Respondent, on the other hand, cited to the hearing transcript in compliance with Rule 209(b) by only including pages relevant to his argument on appeal.

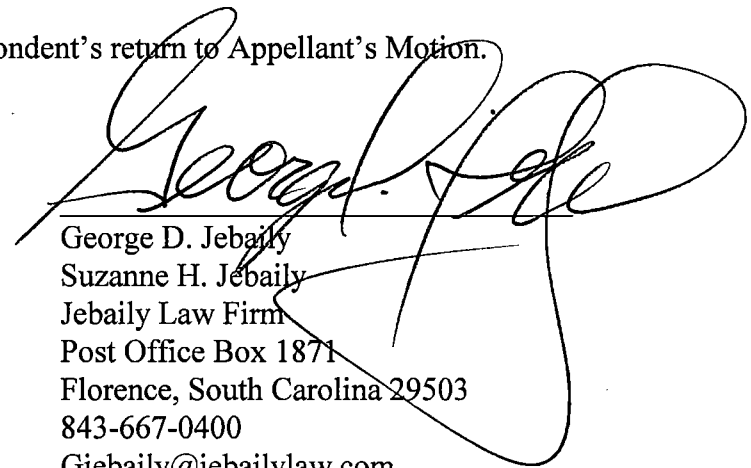
Appellant timely filed and served the Record on Appeal July 1, 2016 and included the entire motion hearing transcript. Respondent, in accordance with Rule 211(a), timely filed and served his Final Brief on July 13, 2016. Appellant filed and served her Motion for Correction and/or Amendment of Designation of Matter on July 15, 2016. Allowing Appellant to include additional matter in the Record on Appeal would give her a second chance to get evidence before the court without explaining its relevance and after Respondent filed and served his Final Brief. This would clearly put Respondent in a disadvantaged and potentially prejudiced position.

2. In deciding the issues on appeal here, Respondent moves that this court only consider the following transcript pages enumerated in his Designation of Matter filed with this court on May 4, 2016: Motion to Set Aside Default Judgment Hearing Transcript pp. 24, 28, 29, 30, 31, 32, 33, 36, 37. (See Designation of Matter of Respondent attached). Respondent moves that the remaining pages included in the Record on Appeal by Appellant be stricken from the Record and not considered in rendering a decision.

3. Respondent received Appellant's Motion for Correction and/or Amendment of Designation of Matter on July 15, 2016. On July 25, 2016, Respondent received a letter dated July 22, 2016 from this court referring to a telephone conversation indicating that Appellant's motion stayed her time for filing and serving her Final Brief. This appears to conflict with Rule 240(b), SCACR, which states that "[u]nless otherwise provided by these Rules, or ordered by the appellate

court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition.” Again, Respondent may be materially prejudiced by the staying of Appellant’s time for filing and serving her Final Brief when Respondent neither participated in the telephone conversation between this court and Appellant, nor consented to additional time for Appellant to file and serve her Final Brief.

4. Given the irregular timing issues involved in this appeal and the potential prejudice to Respondent, we respectfully request that this court, in its discretion pursuant to Rule 240(e), enlarge the time limit for the filing and serving of Respondent’s return to Appellant’s Motion.



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Attorneys for Respondent

July 26, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DILLON COUNTY
Court of Common Pleas
Richard L. Hinson, Special Referee

Case No. 2015-CP-17-313
Appellate Case No. 2016-000246

Thomas J. Grossetti, Jr.Respondent

v.

Nicolette S. BlueAppellant

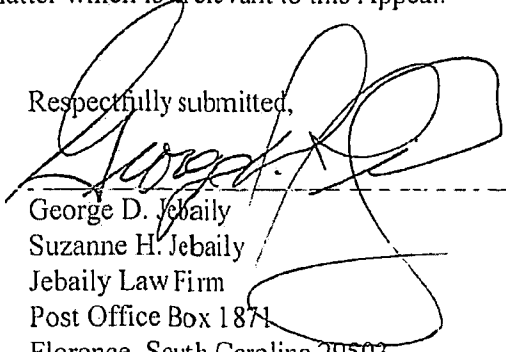
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Notice of Hearing, served September 2, 2015 with Proof of Service, signed return receipt dated September 4, 2015.
2. Motion to Set Aside Default Judgment Hearing Transcript (Motion Hrg. Tr.) pp. 24, 28, 29, 30, 31, 32, 33, 36, 37.

I certify that this designation contains no matter which is irrelevant to this Appeal.

Respectfully submitted,



George D. Jebaily
Suzanne H. Jebaily
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Post Office Box 1871
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843-667-0400
Attorneys for Respondent

May 4, 2016

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Thomas J. Grossetti, Jr. Respondent

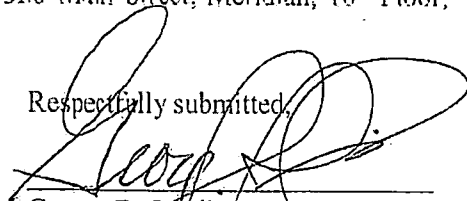
v.

Nicolette S. Blue Appellant

PROOF OF SERVICE

I hereby certify that I have served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on Appellant Nicolette S. Blue, by depositing a copy of same in the United States Mail, postage prepaid, on May 4, 2016, addressed to her attorney of record, Brett H. Bayne, Esquire, at 1320 Main Street, Meridian, 10th Floor, Columbia, SC 29201.

Respectfully submitted,


George D. Jebaily
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Attorneys for Respondent

May 4, 2016

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Thomas J. Grossetti, Jr. Respondent

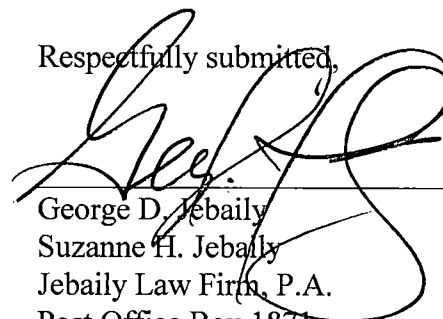
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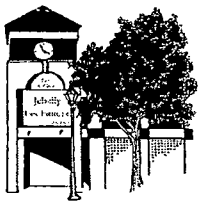
I hereby certify that I have served the Respondent's Return to Appellant's Motion for Correction and/or Amendment of Designation of Matter on Appellant, Nicolette S. Blue, by depositing a copy of same in the United States Mail, postage prepaid, on July 26, 2016, addressed to her attorney of record, Brett H. Bayne, Esquire, at 1320 Main Street, Meridian, 10th Floor, Columbia, SC 29201.

Respectfully submitted,



George D. Jebaily
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July 26, 2016



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RECEIVED

T. Brooke Allen
Suzanne H. Jebaily
Brian S. Yost

July 26, 2016

JUL 28 2016

SC Court of Appeals

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

RE: Thomas J. Grossetti, Jr. (Respondent) vs. Nicolette S. Blue (Appellant)
Appellate Case No. 2016-000246
Case No. 2015-CP-17-313
Matter No.: 13-5554-GDJ/kll

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondent's Return to Appellant's Motion for Correction and/or Amendment of Designation of Matter along with the Proof of Service reflecting service by mail of the aforementioned documents on counsel for the Appellant.

With kind regards, I am

Very truly yours,

JEBAILY LAW FIRM, P.A.


George D. Jebaily

GDJ/kll

Enclosures

cc: Thomas J. Grossetti, Jr.
Brett H. Bayne, Esquire, Attorney for Appellant



Jebaily Law Firm, P.A.

P.O. Box 1871
Florence, SC 29503-1871

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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