

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity for York County

Appellate Case No. 2016-000451

William G. Tucker, Respondent,

v.

Connie Lynn Batey, Appellant.

RESPONDENT'S REPLY TO RETURN TO
MOTION TO DISMISS APPEAL

Pursuant to Rule 240(f), SCACR, the Respondent, by his counsel herein, submits his Reply to the Appellant's Return to the Motion to Dismiss Appeal, on the grounds stated below.

1. In her Return to the Motion to Dismiss paragraphs 1-4, Appellant sets forth the efforts of her counsel to obtain a transcript of the trial below. The efforts of counsel in this regard no doubt were noble. However, in paragraph 6 of the Return, Appellant states that Respondent does not attribute the lack of recoverability of a transcript to the Appellant. This is not correct. Appellant had the opportunity – as did Respondent – to retain a court reporter to transcribe the trial. Each party decided not to retain a court reporter for the trial, and therefore each party took the chance that the recording equipment of the Master in Equity would not function properly. Appellant assumed

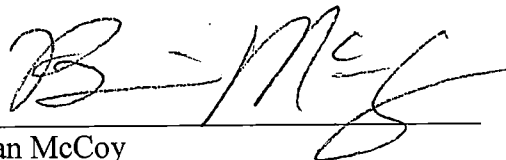
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this risk at the outset of trial. Therefore, the failure of Appellant to produce a necessary transcript is the fault of the Appellant. *See* Rule 207(a)(1), SCACR, (“unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below”); *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984) (burden is on appealing party to provide a sufficient record so the appellate court can make an intelligent review).

2. As set forth in the Motion to Dismiss Appeal, the case of *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428, 433 (2014), provides no support for the Appellant’s contention. *Woodson* involved the lack of a transcript of a summary judgment hearing where no evidence was taken. In contrast, the case at bar involves a trial where all evidence was admitted through live testimony. The difference between the two types of proceedings being appealed is determinative. Such a transcript may not be required for appellate review of an order of a summary judgment hearing, but it is necessary for a review of a trial with live testimony. *See, Germain v. Nichol*, 278 S.C.508 299 S.E.2d 335(1983) (affirming because “Appellant does not present this Court with any of the trial testimony”).
3. The Rule 59 Motion filed below by Appellant does not cure the deficiencies of her failure to provide a transcript. It simply reveals the arguments that she made below to Alter or Amend the Judgment, which arguments were rejected by the trial judge. This in no way addresses (i) the inability to assess the credibility of the testimony of the parties, (ii) the context of the admission of exhibits, (iii) the parties’ intentions regarding exhibits, (iv) the inability to have the judgment affirmed on additional sustaining grounds, or (v) whether arguments were made or waived at trial.

4. Because there is no transcript of the testimony and the trial proceedings below, this Court cannot make an intelligent review on appeal. Accordingly, the Respondent requests the Court to dismiss the appeal.

August 15, 2016



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378 East Main Street
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Attorney for Respondent

Other Counsel of Record:

cc: John Martin Foster
P.O. Box 106
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803-324-8100
Attorney for Appellant

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PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Return to Motion to Dismiss Appeal on the following counsel or person of record:

John Martin Foster
P.O. Box 106
Rock Hill, SC 29731
803-324-8100
Attorney for Appellant

By depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to those attorney(s) and/or persons set out above, pursuant to Rule 262 (f).

August 16, 2016



Brian McCoy
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August 16, 2016

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

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Re: William G. Tucker vs. Connie Lynn Batey
Case No.: 2016-000451

Dear Ms. Kitchings:

In accordance with the Rule 240 (f), enclosed herewith please find the original and seven (7) copies of the Respondent's Reply to Return to Motion to Dismiss Appeal, together with the Proof of Service for the same in the above reference case.

By copy of this letter, I am serving the attorney for the Appellant with copies of the said Motion, as evidenced by the Proof of Service.

Please return the extra filed copy to my office in the enclosed self-addressed, stamped envelope.

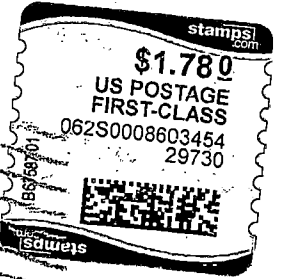
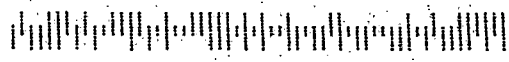
Very Truly Yours,

McCOY LAW FIRM, LLC


Brian S. McCoy

BSM:mep
Enclosures

CC: John Martin Foster, Esq.



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