

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge
2015-001861

Kathleen Lollis and Linda Campbell,
Appellants/Respondents

v

Lisa Dutton, Dennis Dutton and Kelsey Dutton,
Respondents/Appellants

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APPELLANTS' REPLY BRIEF

OF RESPONDENTS/APPELLANTS

S.C. SUPREME COURT

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SC Court of Appeals

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COX FERGUSON & WHAM, LLC
Attorneys for Respondents/Appellants

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Statement of the Issue

THE DOCUMENTS COMPLAINED OF ARE PROPERLY BEFORE THE COURT. . 2

THE DOCUMENTS COMPLAINED OF ARE PROPERLY BEFORE THE COURT.

In their third issue Appellants/Respondents incorrectly assert that Respondents/Appellants' Attorney's Fee Affidavit (R. p. 83) was not properly before the Court below. This is not supported by the applicable law or the facts.

Appellants/Respondents cite Rule 210(c), SCACR, in support of their position, apparently to show that the documents in question are not among those enumerated. In fact, post-trial motions and related documents are not mentioned, but it cannot be claimed that it is improper to include such documents in an appellate record. The rule specifically says that the record may include "other materials and documents", so specific enumeration is not required.

Both attorneys below sought attorney fees and costs. The undersigned had understood that the side which won the attorney fee issue would file an affidavit dealing with "how much" after the "if" part of the question had been determined. Opposing counsel likewise did not file an attorney's fee affidavit before the judge ruled, so it is inferable that her understanding was the same. Both counsel were taken by surprise when the judge failed to grant attorney fees and costs to either side. It cannot be argued that the judge had no evidence before him on the "if" part of the question, because he had the case file and exhibits and had observed four days of trial.

The Attorney's Fee Affidavit did not suddenly materialize from the ether after the filing of this appeal. It was presented to the Court below, and the judge had it before him when he ruled on the post-trial motion pertaining to fees and costs. It is inherent in attorney's fee affidavits that they are not trial exhibits and are instead presented post-trial. The trial judge did not rule that the affidavit and its attachments could not be considered, and all the indications are that he did consider it. The Appellants/Respondents' contrary assertion is without evidentiary support.

It is also important to note that there was no objection by opposing counsel to the judge's receipt and consideration of the affidavit in question with its attachments. Appellants/ Respondents have therefore waived their objection and are estopped to make it at this late date.

CONCLUSION

Respondents/Appellants are entitled to have this Court consider all the documents considered by the Court below, including the Attorney's Fee Affidavit of Respondents/Appellants; and they are entitled to the relief sought in their appeal. Appellants/Respondents have shown no good cause to overturn those portions of the order below which are favorable to Respondents/Appellants, so those rulings must be affirmed. The Respondents/Appellants are poor people who have spent and are spending much more than they can afford to prevent the Appellants/Respondents from taking their homes. It is grossly unjust for the Appellants/Respondents not to reimburse them for this damage to their economic well being. The issue of the amount of attorney fees and costs due Respondents/Appellants can be resolved either by this Court or by the Court below on remand.

COX, FERGUSON & WHAM, LLC
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April 27, 2016

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

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SC Court of Appeals

The undersigned certifies that she is an employee at Cox Ferguson and Wham LLC and that on the 28 day of April, 2016 she served the Appellants' Reply Brief of Respondents/Appellants herein by personally delivering two copies of it to Appellants/Respondents' attorney at:

Matthew P. Turner, Esq.
Attorney at Law
105 W. Public Square
Laurens, SC 29360.

Dulwrah Ball

April 28, 2016

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MAY 02 2016 April 28, 2016

Office of the Clerk of Court
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

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SC Court of Appeals

Re: Lollis et al v. Dutton et al., 2015-001861

Dear Ladies:

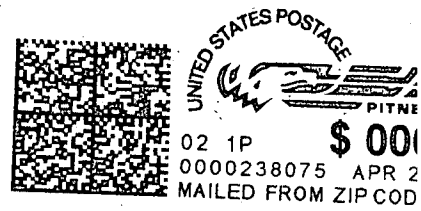
With this letter you will find enclosed for filing an original and nine copies of the Reply Brief of Appellants/ Respondents. I have also enclosed an original and one copy of the Certificate of Service on opposing counsel; please send me a clocked copy of that document in the enclosed envelope.

Thank you for your help.

Sincerely,

John R. Ferguson
John R. Ferguson

JRF/wp
Encl.
CC: Matthew P. Turner, Esq.



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LAURENS, SC 29360

TO:

Office of the Clerk of Court
S.C. Supreme Court
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April 28, 2016