

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 05 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg,Appellants

v.

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries,Respondents

**RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

Respondents propose the following be included in the Record on Appeal:

1. Arbitration Agreement
2. Admission Agreement
3. Progress Note Addressing Decisional Capacity
4. Nursing Evaluation
5. Nursing Admission Data Collection Form
6. History and Physical
7. Hearing Transcript
8. Health Care Power of Attorney
9. Durable Power of Attorney for Finance

10. Judge Cole's Order re: Motion to Dismiss and/or Compel Arbitration
11. Plaintiffs' Memo in Opposition to Defendant's Motion to Compel/Dismiss Arbitration
12. Defendants' Motion to Dismiss and/or Compel Arbitration

Pursuant to SCACR 210(c), Respondents object to including the following matters

designated by Appellant:

3. Summons and Complaint, December 16, 2015
4. Answer, January 19, 2016
7. Spartanburg Regional Medical Center Discharge Summary of Jolly Davis
8. Authorized Representative Agreement between White Oak Manor and Jolly Davis

None of these documents were presented to the trial court and should not be part of the Record on Appeal. Rule 210(c), SCACR, prohibits the inclusion in the Record on Appeal of "matter which was not presented to the lower court or tribunal." (Accord State v. White, 372 S.C. 364, 387, 642, S.E.2d 607, 619 (Ct. App. 2007); Sanders v. Salley, 283 S.C. 458, 460, 322 S.E.2d 829, 830 (Ct. App. 1984); see Cobb v. Benjamin, 325 S.C. 573, 581 n. 2, 482 S.E.2d 589, 593 n. 2 (Ct. App. 1997)).

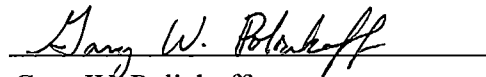
What "matter" means in the Rule is *material*, whether it is a writing such as a motion or pleading, an exhibit, or oral argument or testimony in transcript form. (Rule 210(c), SCACR). In short, matter presented to the lower court means physical things presented to the lower court. Id. If any party to an appeal could include *anything* in the Record on Appeal, whether or not it was ever presented to the lower court, it would turn the appellate process on its head and make appellate courts into trial courts where new evidence may be received for consideration. (Sanders, 283 S.C. at 460, 461). This is what the requirement that "the Record shall not . . . include matter which was not presented to the lower court" is designed to prevent. (Rule 210(c), SCACR). It is a fundamental violation of the principles of appellate practice and review, and it seeks to undermine the very function of this Court. Id. (See also White, 372 S.C. at 387 ("Morris' statement was not presented to the lower court and cannot

be properly included in the Record on Appeal"); Norris v. Ferre, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (denying motion to supplement record on appeal with deposition testimony "since the matters were not presented to the trial judge"); Sanders, 283 S.C. at 460-61 (excluding mortgage from record on appeal where "mortgage was not in evidence before the master or the circuit court").

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

December 2, 2016

POLIAKOFF & ASSOCIATES, P.A.



Gary W. Poliakoff
Raymond P. Mullman, Jr.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 05 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2015-CP-42-5123

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc. d/b/a White Oak of SpartanburgAppellants,

v.

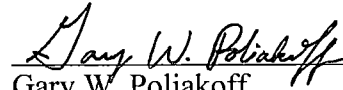
Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased, and as Personal Representative of the Statutory Beneficiaries,Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Designation of Matter to be Included in the Record on Appeal was served upon the following on December 2, 2016 via electronic transmission and via United States Postal Service, with proper postage affixed thereto to the following address(es):

THE WARD LAW FIRM, P.A.
John E. Rogers, II
Ginger D. Goforth
P.O. Box 5663
Spartanburg, SC 29304

RESPECTFULLY SUBMITTED,



Gary W. Poliakoff

Raymond P. Mullman, Jr.

POLIAKOFF & ASSOCIATES, P.A.

215 Magnolia Street

P. O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Attorneys for Respondents

December 2, 2016
Spartanburg, S.C.

Gary W. Poliakoff
atty@gpoliakoff.com

Raymond P. Mullman, Jr.
rmullmanjr@gmail.com



Benard B. Poliakoff
(1916-1955)

J. Manning Poliakoff
(1923-1969)

Matthew Poliakoff
(1919-1979)

December 2, 2016

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
PO Box 11629
Columbia, SC 29211

RECEIVED

DEC 05 2016

SC Court of Appeals

RE: White Oak Manor, Inc., White Oak Management, Inc. and White Oak Manor-Spartanburg, Inc., d/b/a White Oak of Spartanburg, Appellants, v. Hilda Stott, individually and as personal representative of the Estate of Jolly P. Davis, Respondents.
CaseNo. 2016-001732

Dear Mrs. Kitchings:

Enclosed please find one (1) original of the Respondents' Initial Brief and one (1) original of the Designation of Matter to be Included in the Record on Appeal. Also please find a Proof of Service enclosed herewith. Please file the original.

Please contact us if you should need any additional information.

With kindest regards, I am,

Yours very truly,

A handwritten signature in cursive script that reads "Gary W. Poliakoff".

Gary W. Poliakoff
POLIAKOFF & ASSOCIATES, P.A.

GWP/snh
Enclosures

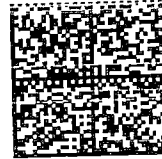
cc: Ginger D. Goforth (via U.S. mail and email: ggoforth@wardfirm.com)
John E. Rogers, II (via U.S. mail and email: jrogers@wardfirm.com)



POLIAKOFF

& ASSOCIATES

P.O. Box 1571
Spartanburg, SC 29304



UNITED STATES POSTAGE



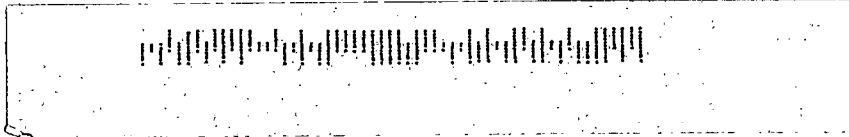
PITNEY BOWES

\$ 002.20⁰

02 1P

0001796873 DEC 02 2016
MAILED FROM ZIP CODE 29306

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
PO Box 11629
Columbia, SC 29211



RECEIVED

DEC 05 2016

SC Court of Appeals