

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 09 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-001389

Green Tree Servicing, LLC,

Respondent,

v.

Jacqueline L. Taylor a/k/a Jacqueline Hendricks,

Appellant.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO SUPPLEMENT
DESIGNATION OF MATTER**

Undersigned counsel for Respondent Green Tree Servicing, LLC respectfully submits its Return to the Appellant's Motion to Supplement her Designation of Matter filed on August 31, 2016. As further set forth herein, Respondent opposes the Motion on the grounds that the proposed order with which Appellant seeks to supplement the Designation of Matter was not presented to the lower court pursuant to Rules 209(b) and 210(c), SCACR, and therefore is not proper for inclusion in the Record.

Rule 209(b) provides that the "... Designation may only propose to include portions of the transcript, pleadings, 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." See Rule 209(b), SCACR.

Rule 210(c) further provides that the Record on Appeal shall not “include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant.” Rule 210(c), SCACR.

At the conclusion of the hearing on Respondent’s Motion for Summary Judgment on April 2, 2016, the trial judge requested each party to submit a proposed order within the following ten (10) days. Both Respondent and Appellant sent copies of their respective proposed orders in word format to the trial judge and his law clerk via email in accordance with this directive. Subsequently, the parties were notified of the court’s ruling when the proposed order submitted by Respondent was executed by the trial judge and entered by the court on April 19, 2016. At no time did Appellant file the proposed order with the lower court, or otherwise include it with any court filings.

While the Respondent’s proposed order became the Order which is the subject of this appeal, the Appellant’s proposed order was not filed with the court and is not part of the record below. “The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this state. *See Henning v. Kaye*, 307 S.C. 436, 437 415 S.E.2d 794, 794 (1992). “Appellant is reminded that the Record on Appeal shall not contain any matter not resented to the trial court”. *Id.* 307 S.C. at 438, 415 S.E.2d at 794-95.

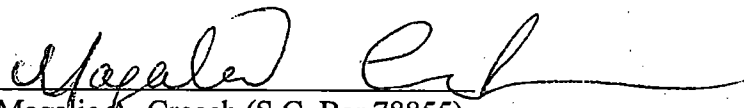
The proposed order is undisputedly not a transcript, pleading, order, or exhibit. Appellant could have included her proposed order in the record below by filing it with the lower

court or including it as an exhibit to her Motion to Reconsider. Any argument contained in the proposed order is thus not preserved for appeal. Appellant's Motion improperly attempts to circumvent the issue preservation requirements that are her burden to satisfy as the appellant in this matter. Moreover, the proposed order is not relevant to the instant appeal; indeed, it is a ruling in accordance with this very proposed order that the Appellant seeks to obtain by filing this appeal, and it is highly improper to include in the Designation of Matter when it is neither relevant nor part of the record.

Accordingly, Respondent requests that the Appellant's Motion to Supplement the Designation of Matter be denied.

Respectfully submitted,

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December 5, 2016

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Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-001389

Green Tree Servicing, LLC,

Respondent,


v.

Jacqueline L. Taylor a/k/a Jacqueline Hendricks,

Appellant.

PROOF OF SERVICE

I certify that I have served the *Respondent's Return to Appellant's Motion to Supplement Designation of Matter* by depositing a copy of same in the United States Mail, postage prepaid, on December 5, 2016, addressed to Appellant's counsel of record, William H. Edwards, Esquire, P.O. Box 5709, West Columbia, South Carolina 29171.


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December 5, 2016

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MAGALIE A. CREECH
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REPLY TO:
CHARLESTON LITIGATION

December 5, 2016

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

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RE: Green Tree Servicing, LLC v. Jacqueline L. Taylor
Appellate Case No.: 2016-001389
Our File No.: 60440.48491

Dear Ms. Kitchings:

Enclosed for filing is the original and six (6) copies of the *Respondent's Return to Appellant's Motion to Supplement Designation of Matter* and related *Proof of Service* in the above-referenced case.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM

Magalie A. Creech

CC: William H. Edwards, Esquire

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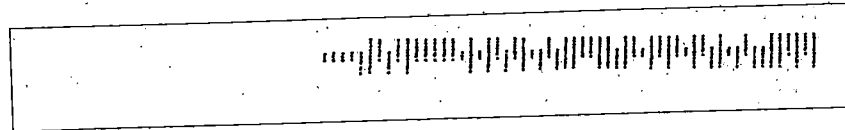
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