

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

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FEB 21 2017
SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers,Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANARespondents.

RESPONDENTS' MOTION TO STRIKE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA (“Respondents”) respectfully move this Court for an order striking from Appellants’ Designation of Matter certain materials designated by Appellants and requiring Appellants to file an amended initial brief omitting all references to the disputed items. Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on this motion to strike.

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011, in the freshwaters of Lake Murray in Lexington County, South Carolina. Appellants commenced suit against Respondents asserting a cause of action for, inter alia, wrongful death sounding in negligence.¹ Appellants have appealed from the Circuit Court’s entry of summary judgment in favor of Respondents.

At this time, counsels for Appellants and Respondents are not in agreement concerning the Appellants’ Designation of Matter and the undersigned now moves to strike all non-relevant documents from the same.

¹ Appellants initially brought a wrongful death action sounding in negligence and intentional infliction of emotional distress claims against Respondents and other Defendants. Appellants subsequently dismissed the other defendants and amended their complaint eliminating their intentional infliction of emotional distress claims.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court, including evidence, statutes or ordinances on which the parties are relying, and written memorials of any judicial action which triggered the appeal or which is necessary for the resolution of the appeal. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents move to strike the following material and documents from Appellants' Designation of Matter that were not part of the Circuit Court record:

- a. Answers to all Interrogatories and Requests for Production;
- b. Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants' seek to include the entire deposition and excerpts;²
- c. All emails between counsel of record.

Respondents further request the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders.

This appeal stems from the Circuit Court's order granting Respondents' Summary Judgment. The only relevant pleadings, motions, and orders include: (1) Appellants' Complaint; (2) Appellants' Amended Complaint; (3) Respondents' Answer to Amended Complaint; (4) Respondents' Motion for Summary Judgment and supporting memorandum; (5) Appellants'

² See Rule 209, SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits which may not be properly included in the Record on Appeal [See Rule 210(c)]”) (emphasis added).

Memorandum of Law in response to Respondents' Motion for Summary Judgment; (6) Appellants' Motion to Alter or Amend pursuant to Rule 59(e), SCRCF; (7) Respondents' Memorandum in Opposition to Appellants' Rule 59(e) motion; (8) Order granting Summary Judgment; (9) Order denying Rule 59(e) motion, SCRCF.

To the extent Appellants seek to include any pleadings, motions or orders not articulated above, such material and documents are irrelevant to the current appeal. See Rule 209(b) ("A party shall not include any matter on his Designation which is not relevant to the appeal."); 16 S.C. Jur Appeal and Error § 59 ("The Record on Appeal should contain only information needed to permit the Court to decide the issues on appeal; it should contain no irrelevant material."); 15. S.C. Jur. Appeal and Error § 63 ("Matters irrelevant to the question involved in the appeal are also disallowed.")

Respondents further move to strike from Appellants' Designation of Matter "Any other document cited in Appellants' Initial Briefs." The Appellate Court Rules clearly provide that documents listed in the Designation of Matter must be specifically named. See Rule 209(b), SCARC ("The Designation must clearly identify what the party desires to

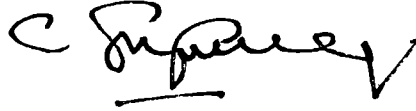
have included in the Record on Appeal[.]”). Appellants’ reference to “[a]ny other document cited,” does not comport with this rule. BIA

In short, Appellants have included items in their Designation of Matter and Initial Brief that were not presented to the Circuit Court and do not form part of the record on Respondents’ summary judgment motion. Further, Appellants have purported to include items in the Designation of Matter that are irrelevant to the issues on Appeal. Accordingly, pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from Appellants’ Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same. Respondents additionally request the Court hold the briefing deadlines in abeyance during the pendency of this motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
STRIKE**

Columbia, South Carolina
February 21, 2017

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PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Strike upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on February 21, 2017, addressed to the following:

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC

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Respectfully submitted,

COLLINS & LACY, P.C.



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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, vs. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA*

Civil Action No. 2014-CP-32-02210
Appellate File No. 2016-002487
Claim No. 683-411339
C&L File No. 000001-02078

Dear Ms. Kitchings:

Please find enclosed for filing the unbound originals and seven (7) copies of the Respondents' Motion to Strike and Motion for Extension of Time to file their Initial Brief and Designation of Matter in the above referenced matter. Also enclosed are our firm's checks in the amount of \$25.00 each, representing the filing fee of same. Please file the originals and return clocked copies of same via our courier.

By copy of this letter and enclosure, we are serving same on counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/mmm

Enclosures

cc: John Layton Ruffin, Esquire
Pedro E. Krompecher, III, Esquire

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SC Court of Appeals



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VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
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1-2078