

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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AUG 16 2017

SC Court of Appeals

Case No.: 2014-CP-26-7264
Appellate Case No.: 2017-000471

Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller,.....Appellants,

vs.

Geoffrey Duerk, Kristen Duerk and James M. Stewart,Respondents.

**RESPONSE IN OPPOSITION TO RESPONDENT STEWART'S
MOTION TO STRIKE AND HOLD DEADLINES IN ABEYANCE**

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

Appellant's, Gregory Duerk, Donald L. Duerk, and Deborah Duerk Tiller ("Appellants"),
by and through their undersigned counsel, hereby submit this Response in Opposition to
Respondent James M. Stewart's ("Respondent Stewart"), Motion to Strike and Hold Deadlines in
Abeyance filed on or about July 28, 2017.

A. Argument to Strike Appellants' Brief

Respondent Stewart alleges Appellant's Initial Brief fails to comply with Appellate Court Rule 208(b)(4) inasmuch as the Brief contains no citations to the record and includes contested assertions within the Statement of the Case.

Appellants are agreeable to filing and serving a revised Initial Brief providing all appropriate references as required by SCACR 208(b)(4). Further, Appellants' noncompliance with this Rule was inadvertent and a minor discrepancy. Respondent Stewart's request to strike Appellants' Initial Brief based upon this minor discrepancy is not supported by the applicable court rules or case law cited by Respondent Stewart in his motion.

Respondent Stewart further alleges that Appellants' Initial Brief contains several "contested assertions" in violation of SCACR 208(b)(1)(c); however Respondent Stewart fails to address any specific assertions being contested. The motion contains a footnote stating that Appellants make "various assertions regarding the frequency of contact between Respondent and Appellants" but fails to provide any additional information as to which contacts outlined in Appellants' Brief Respondent Stewart is contesting or the reason he is contesting these assertions. Without providing additional information as to these "contested assertions" it is impossible for Appellants to adequately respond. Further, Appellants assert they have provided in their statement of the case a concise history of the case that is necessary for this Honorable Court to understand the appeal.

B. Argument to Strike or Limit Designation of Matter to be Included in the Record on Appeal

Similarly, Respondent Stewart alleges that Appellants' Designation of Matter to be Included in the Record fails to comply with Rule 209(b), SCACR which states as follows:

(b) Content. The Designation must clearly identify what the party desires to have included in the Record on Appeal, and 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 [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

Rule 210(c), SCACR states as follows:

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, 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. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.


Each and every document identified in Appellant's Designation of Matter is both relevant to this appeal and, further, was presented to the lower court. Respondent Stewart asserts that many of the documents listed on Appellants' Designation of Matter were not "presented to the circuit court for consideration during the pendency of Respondent's Motion to Dismiss". Appellants believe Respondent Stewart has misinterpreted the Appellate Court Rules which simply state that all documents must have been "presented to the lower court". This would include all documents which are part of the Court's file, not simply documents handed to the circuit court judge during the motion which is now on appeal.

Both Appellants' Initial Brief and Designation of Matter to be Included in the Record substantially comply with applicable Appellate Court Rules. Any instances of noncompliance were inadvertent technical errors and minor discrepancies. 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. Further, the cases cited in Respondent Stewart's motion do not substantiate striking an Initial Brief or Designation of Matter due to technicalities.

WHEREFORE, for the foregoing reasons, Appellants respectfully request this Honorable Court deny Respondent Stewart's Motion to Strike and Hold Deadlines in Abeyance and grant such other and further relief as may be just and proper.

Respectfully submitted,

THE BRITAIN LAW FIRM, P.A.



Thomas C. Brittain, Esq. (SC Bar #893)
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 Telephone
843-497-6124 Facsimile
Attorney for Appellants

August 14, 2017
Myrtle Beach, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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v.

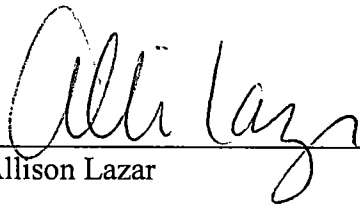
Geoffrey Duerk, Kristen Duerk and James M. Stewart,Respondents.

PROOF OF SERVICE

I, Allison Lazar, do hereby certify that I am an employee of THE BRITAIN LAW FIRM, P.A., attorneys for the Appellants Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller in the above-entitled action, and that I have this 14th day of August, 2017, caused to be served upon the following parties the **Response in Opposition to Respondent Stewart's Motion to Strike and Hold Deadlines in Abeyance** by depositing a copy of same in the United States Mail, with sufficient first class postage affixed thereto, addressed as follows:


William A. Bryan, Jr.
Collins & Lacy, P.C.
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576

Jay M. Bultz
Bultz Law Offices, PA
417 79th Avenue North, Suite A
Myrtle Beach, SC 29572



Allison Lazar

SWORN AND SUBSCRIBED before me
this 14th day of August, 2017.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5/2/2021

THE BRITAIN LAW FIRM, P.A.

ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMAS C. BRITTAIN
MARY MADISON BRITTAIN LANGWAY
A. PRESTON BRITTAIN
T. CASE BRITTAIN, JR.

843-449-8562
FAX 843-497-6124
www.brittainlawfirm.com

August 14, 2017

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller v. Geoffrey Duerk,
Kristen Duerk and James M. Stewart
Appellate Case No. 2017-000471


Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants' Response in Opposition to Respondent Stewart's Motion to Strike and Hold Deadlines in Abeyance and Proof of Service in the above-referenced matter.

I would appreciate your returning one (1) clocked-in copy of these documents to our office in the enclosed envelope.

With warm regards, I am
Yours truly,

THE BRITAIN LAW FIRM, P.A.


Thomas C. Brittain
TCB/all

cc: William A. Bryan, Jr., Esquire
Jay M. Bultz, Esquire

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THE BRITAIN LAW FIRM, P.A.
ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

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