

Case No. 2015-1472

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On appeal from the Court Common Pleas
Dorchester County
Carmen T. Mullen, Circuit Court Judge

LAWRENCE R. POTTS, CANDACE
MARIE POTTS, and LANETTE ZIMMERMAN,

Appellants

v.

EDWARD E. YAGER,

Respondent

SUPPLEMENTAL RECORD ON APPEAL

Mr. Michael Allan Maucher
Post Office Box 9
Goose Creek, South Carolina 29445

Kevin R. Eberle
367 President Street
Charleston, South Carolina 29403
Attorney for Appellants

Mrs. Jenny Anderson Home
133 East 1st North Street, Suite 5
Summerville, South Carolina 29483
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LAWRENCE R. POTTS, CANDACE)
MARIE POTTS AND LANETTE)
ZIMMERMAN.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

FILED COPY
2013 FEB -4 AM 11:56

Cheryl Williams
CLERK OF COURT
DORCHESTER COUNTY

CASE NO: 2013-CP-10-1804

Plaintiffs)
vs)
EDWARD E. YAGER,)

MOTION INFORMATION FORM COVER SHEET

Defendant
(check box above to indicate submitting party)

Plaintiff's counsel:

Name: Michael A. Maucher
SC Bar #: 03694
Address: P.O. Box 9, Goose Creek, SC 29445
Phone: (843) 572-4711 Fax: (843) 572-1285
e-mail: mike@delucamaucher.com

Defendant's counsel:

Name:
SC Bar #
Address:
Phone: () Fax: ()
e-mail:

- MOTION HEARING REQUESTED (attach written Motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

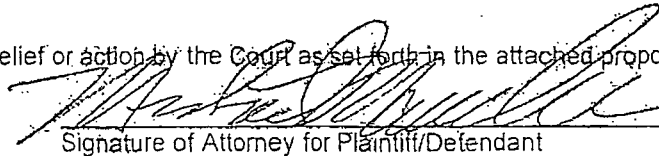
SECTION I: HEARING INFORMATION

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter needed: Yes No

SECTION II: Motion Type

Written Motion attached

I hereby move for relief or action by the Court as set forth in the attached proposed Order.


Date: _____
Signature of Attorney for Plaintiff/Defendant

SECTION III: Motion Fee

FEE-AID - AMOUNT: \$ 25.00

EXEMPT

- Rule to Show Cause in child or Spousal Support
 Domestic Abuse or Abuse or Neglect
 Indigent Status
 State Agency v. Indigent Party
 Sexually Violent Predator Act
 Post Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication
 Motion for Execution (Rule 69, SCRPC)
 Proposed Order submitted at request of the Court; or reduced to writing from motion made in open Court per Judge's instructions
Name of Court Reporter: _____
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached Order.
 Other

CODE _____ DATE _____ JUDGE _____
CLERK'S VERIFICATION

Collected by _____
(print name)

DATE FILED: _____

DI MOTION FEE COLLECTED: _____
DI CONTESTED - AMOUNT DUE: _____

with the parties on December 2, 2014.

On December 2, 2014, the Plaintiffs moved for a directed verdict as to both liability and damages. The Plaintiffs further advised the Court that the Plaintiffs would not be calling any witnesses in rebuttal, and the Plaintiff rested. The Defendant made no motions during the telephone conference with the Court.

By the Court's Order of January 26, 2015, the Plaintiffs' Motion for a directed verdict was denied and the Plaintiffs bring this Motion to have the record accurately reflect the procedural posture of the case, and the Plaintiffs hereby respectfully requests that the Court's Order be amended to add an additional finding of fact as paragraph thirteen (13) to state:

- 13) That after two days of recorded testimony and introduction of evidence on November 18-19, 2014, and after the Defendant had rested his case, the Court left open the record for several weeks to allow the Plaintiffs to locate a potential witness (Tony Mitchell) based upon new information as to Mr. Mitchell's whereabouts during the Defendant's testimony. The Court reopened the Trial of the matter during a telephone conference with Counsel for the parties on December 2, 2014. At that time, the Plaintiffs moved for a directed verdict as to both liability and damages, and the Plaintiffs advised the Court that they would not be presenting any rebuttal testimony. The Court took the Plaintiffs' Motion for a directed verdict as to liability and damages

under advisement. And by its Order of January 26, 2015, the Court denied Plaintiffs' Motion for a directed verdict.

Counsel for the Plaintiffs attaches and incorporates by reference Exhibit A, affidavit of the Plaintiffs' Counsel as to the facts and circumstances of the telephone hearing/conference held by the Court with the parties Counsel on December 2, 2014.

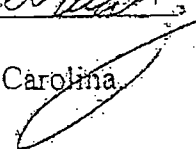
Counsel for the Plaintiffs attaches and incorporates by reference Exhibit B, affidavit of Susan Mauldin, assistant to Plaintiffs' Counsel as to the facts and circumstances of the telephone hearing/conference held by the Court with the parties Counsel on December 2, 2014.

Respectfully Submitted
DeLuca & Maucher
Post Office Box 9
Goose Creek, SC 29445
(843) 572-1711

By 

MICHAEL A. MAUCHER
ATTORNEY FOR PLAINTIFF

This 2 day of February, 2015.

Goose Creek, South Carolina 

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2012-CP-18-1764

LAWRENCE R. POTTS, CANDACE)
MARIE POTTS, and LANETTE)
ZIMMERMAN,)

Plaintiffs,)

v.)

EDWARD E. YAGER,)

Defendant.)

AFFIDAVIT OF ATTORNEY
MICHAEL A. MAUCHER

2015 FEB -4 AM 11:30
CERTIFIED COPY
DORCHESTER COUNTY

PERSONALLY APPEARED BEFORE ME, Michael A. Maucher, Esquire who, after being duly sworn, deposes and says as follows:

ONE: That the civil matter between parties was heard as a bench trial before the Honorable Carmen Mullen on November 18-19, 2014. At the conclusion of two days of testimony, the Defendant rested his case, and at that time the Court offered the Plaintiffs the opportunity to further investigate whether to call Tony Mitchell as a witness for the Plaintiffs based upon new contact information of Mr. Mitchell that came to light during testimony by the Defendant. As the matter had not yet concluded, the Court advised the parties that a telephone conference would be held several weeks later, and the Plaintiff could decide whether to continue with a rebuttal case.

TWO: That the Court scheduled a telephone conference with the parties, and said conference was held on December 2, 2014. At that time, the Plaintiffs



moved for a directed verdict on both liability and damages having proven liability/negligence and moved for a directed verdict on having proved some damages. The Plaintiffs further advised the Court that the Plaintiffs would not call Mr. Mitchell as a witness, and the Plaintiffs advised the Court that the Plaintiffs rested.

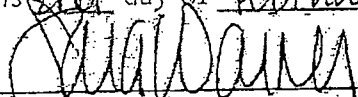
THREE: That during the telephone conference with the parties on December 2, 2014, the Court did not rule on the Plaintiffs' Motion for directed verdict on liability and damages, but advised the parties that the Court would issue a decision. The Court's decision ending the matter was certified and filed on January 26, 2015. The Plaintiffs received a copy of the Court's Order by mail on January 29, 2015.

FOUR: The Court's Order dated January 15, 2015, which Order was certified and filed on January 26, 2015, did not include as a finding of fact the procedural history that at the conclusion of the Defendant's case, the Plaintiffs moved for a directed verdict as to both liability and damages.

FURTHER AFFIANT SAITH NOT!

By: 
MICHAEL A. MAUCHER

SWORN TO AND SUBSCRIBED BEFORE ME
this 2nd day of February, 2015


Notary Public State of South Carolina
My Commission Expires: AUGUST 28, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-18-1764

2015 FEB -4
 CERTIFIED COPY

LAWRENCE R. POTTS, CANDACE)
 MARIE POTTS, and LANETTE)
 ZIMMERMAN,)
 Plaintiffs,)
)
 v.)
)
 EDWARD E. YAGER,)
 Defendant.)

AFFIDAVIT OF SUSAN C. MAULDIN
 ASSISTANT TO ATTORNEY
 MICHAEL A. MAUCHER

PERSONALLY APPEARED BEFORE ME, Susan C. Mauldin who, after being duly sworn, deposes and says as follows:

ONE: That I was present in the room, and heard the telephone conference between the Court and Counsel for the parties on Dec. 2, 2014.

TWO: That at that time, Mr. Maucher as Counsel for the Plaintiffs moved for a directed verdict as to liability and damages..

THREE: That during the telephone conference of December 2, 2014, the Court did not rule on the Plaintiffs' Motion.

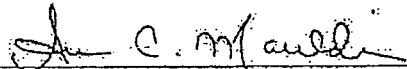
FOUR: That during the telephone conference of December 2, 2014, Mr. Maucher advised the Court that the Plaintiffs would not reopen testimony to call Tony Mitchell as a party.

FIVE: That during the telephone conference of December 2, 2014,

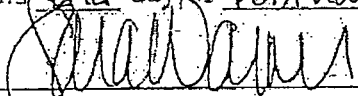


Jenny A. Home, Counsel for the Defendant also advised the Court that he did not wish to call Tony Mitchell as a party/witness.

FURTHER AFFIANT SAITH NOT!

By: 
SUSAN C. MAULDIN

SWORN TO AND SUBSCRIBED BEFORE ME
this 2nd day of February, 2015

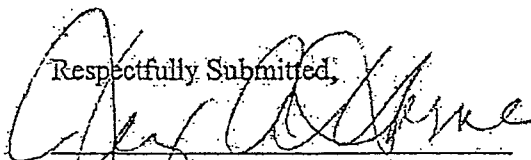

Notary Public State of South Carolina
My Commission Expires: AUGUST 28, 2018

In the present case, the Court was both the trier of fact and the arbiter of the law. The trial judge's factual findings in an action at law, tried without a jury, must be affirmed unless there is no evidence that reasonably supports the trial judge's findings. "Moreover, we will not disturb the trial judges's finding of fact that depend on the credibility of witnesses." *Daisy Outdoor Advertising, Co. Inc. v. Dean Abbott*, 317 S.C. 14, 16, 451 S.E.2d 394, 395 (Ct. App. 1994), *affirmed in part, and reversed in part*, 322 S.C. 489, 473 S.E.2d 47 (1996). Indeed, in the instant case the court determined as the trier of fact that the Plaintiffs were not credible witnesses.

CONCLUSION

For the foregoing reasons, Defendant respectfully request that the Court deny Plaintiff's Rule 52(c) Motion to Amend Findings by the Court.

Respectfully Submitted,



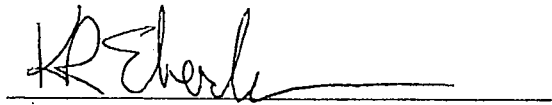
Jenny A. Horne, SC Bar ID# 14179
jenny@jennyhornelaw.com
JENNY HORNE LAW FIRM, LLC
133 East 1st North Street
Summerville, SC 29483
843-873-1721 (phone)
843-875-4696 (fax)

Attorneys for Defendant

May 29, 2015
Summerville, SC

¹Counsel for Defense did not go to the expense of ordering the trial transcript so Defense counsel does not recall whether any motions were made during the trial. Counsel does seem to recall that we relaxed some procedural formalities due to the fact that this was a bench trial. Further, Counsel for Defendant does not recall whether Plaintiff made any motions during the December 2, 2014 telephone conference with the court; however, it is immaterial for the reasons set forth in this memorandum of law.

The undersigned certifies that this Record on Appeal includes all materials designated by the Court for inclusion in its letter of September 5, 2017.

A handwritten signature in black ink, appearing to read "K R Eberle", is written over a horizontal line.

Kevin R. Eberle
367 President Street
Charleston, South Carolina 29403
(843) 853-5355

Michael A. Maucher
Sara L. Warner
Deluca & Maucher, LLP
102 Marilyn Street
Goose Creek, South Carolina 29445
(843) 572-1711

ATTORNEYS FOR APPELLANTS

Kevin R. Eberle

Eberle Law, LLC
367 President Street
Charleston, South Carolina 29403
KevinRogerEberle@gmail.com
(843) 853-5355

Jenny Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Ms. Kitchings:

Enclosed for filing, please find the following items in the case of *Potts v. Yager* (Case No. 2015-1472):

- Supplemental Record on Appeal (14 bound, 1 original unbound)

Also, at the direction of the staff at your office, please let this letter serve as notice that I will be appearing on behalf of the Appellant at the oral argument of this case along with Ms. Sara Warner.

Thank you for your assistance with this task.

Sincerely,

A handwritten signature in black ink, appearing to read "KREberle", with a long horizontal flourish extending to the right.

Kevin R. Eberle

cc: Jenny Horne (with Supplemental Record enclosed)
Sara Warner (with Supplemental Record enclosed)