

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2016CP0701475

RECEIVED
JAN 04 2018
SC Court of Appeals

Shamsy Madani, Respondent,

v.

Rickey Phelps and Christy Phelps Appellants.

APPELLANTS' RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, LEAVE TO FILE DESIGNATION OF MATTER AND FINAL
BRIEF

COMES NOW THE APPELLANTS, Rickey Phelps and Christy Phelps ("Appellants")
and hereby provide their Return in Opposition to Respondents Motion to Dismiss or, In the
Alternative, Leave to File Designation of Matter and Final Brief.

FACTS

Appellants filed their Notice of Appeal on August 22, 2017 and served Shamsy Madani
("Respondent") contemporaneously. Respondent does not contest the filing or receipt of the
Notice of Appeal. On August 24, 2017 this Court mailed a Notice of Deficiency to
Appellants, copying Respondent, requesting that the Request for Transcript be forwarded to
the Office of Court Administration. A copy of this Court's correspondence alerting the
parties to the deficiency is hereby attached as **Exhibit A**. Appellants timely cured the

deficiency. On October 4, 2017 Appellants filed their Initial Brief, Letter of Status of Transcript and Designation of Matter on Appeal and contemporaneously served Respondent. A copy of the Court's record of Appellants' Initial Brief, page 1, Proof of Service and Designation of Matter as filed on October 4, 2017 is hereby attached as **Exhibit B**. On November 14, 2017 this Court notified Appellants that Respondent had failed to serve and file her initial brief and designation of matter and further requested Appellants to proceed with filing and serving their final brief and record pursuant to Rules 210(b) and 211(a) of the South Carolina Court Rules; Respondent was contemporaneously copied on this correspondence. Rules 210(b), 211(a), SCACR. A copy of the Court's record of correspondence informing Respondent of her failure to respond is hereby attached as **Exhibit C**. On November 30, 2017 Appellant filed their Final Brief and Record on Appeal and served Respondent contemporaneously. A copy of the Courts record of Appellants' Proof of Service is hereby attached as **Exhibit D**. Respondent does not contest filing or service of Appellants Final Brief or Record on Appeal. Respondent now requests this Court to either dismiss Appellants' appeal or grant leave to file a final brief upon allegations Appellants' either failed to file, or failed to serve, their initial brief and/or designation of matter on appeal. Respondent's Motion comes not less than eighty-five (85) days after filing and, disputed, service of Appellants' Initial Brief and Designation of Matter on Appeal, not less than (44) days after undisputed notification from this Court that Respondent was in default of its obligation to file an initial brief and not less than twenty-eight (28) days after the undisputed filing and service of Appellants' Final Brief and Record on Appeal.

ARGUMENT

THE INITIAL BRIEF AND DESIGNATION WERE PROPERLY FILED AND SERVED

Respondent seeks dismissal or, in the alternative, leave to file a final brief and designation of matter where she alleges Respondents failed to file and serve their Initial Brief or Designation of Matter on Appeal. However, as evinced by this Court's record and **Exhibit B** attached above, Appellants clearly filed their Initial Brief and Designation of Matter on Appeal on October 4, 2017. Additionally, Appellants served their Initial Brief as provided in

Exhibit B's Proof of Service on October 4, 2017. Finally, **Exhibit C** further contradict Respondent's argument with regard to notice where this Court notified Respondent on November 14, 2017 that she had failed to file a final brief or designation of matter on appeal. Where Respondent seeks relief on erroneous conclusions of fact or has, otherwise, ignored a courtesy notice of default from this Court for not less than forty-four (44) days and receipt of Appellants' Final Brief for not less than twenty-eight (28) days, her Motion should be denied.

CONCLUSION

Respondent's allegation that Appellants have failed to timely file an Initial Brief or Designation of Matter on Appeal is clearly refuted upon review of this Court's Record of October 4, 2017 and, where erroneously relied upon, should result in the denial of her Motion. Respondent's accompanying allegation that Appellants failed to serve an Initial Brief or Designation of Matter on Appeal is refuted upon review of this Court's Record of October 4, 2017 of Appellants' filed Proof of Service and this Court's courtesy notice to her on November 14, 2017 informing Respondent of her default. For these reasons Respondent's Motion should also be denied.

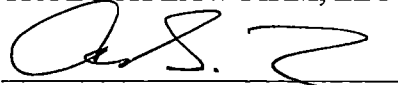
WHEREFORE, having fully set forth in this Return in Opposition to Respondents Motion to Dismiss or, In the Alternative, Leave to File Designation of Matter and Final Brief Appellants pray that this Honorable Court order as follows:

1. Denying Respondent's request for dismissal upon allegations Appellants' failed to file and serve their Initial Brief and Designation of Matter on Appeal where clearly refuted by this Court's Record;
2. Denying Respondent's request for leave to file a final brief and designation of matter on appeal where their request is untimely and not supported by factually or legally sufficient grounds;
3. An Order be entered for such other and further relief as may be just and proper.

(Signature page to follow)

January 3, 2018

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)

1720 Main Street, Suite 104

Columbia, SC 29201

(803) 556-7285

Attorney for Appellant

EXHIBIT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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August 24, 2017

Mr. Christopher Stephen Truluck, Esquire
1720 Main Street, Suite 104
Columbia SC 29201

Re: Shamsy Madani v. Rickey Phelps
Appellate Case No. 2017-001761

Dear Counsel:

Upon reviewing your request for the transcript, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- A copy of this document was not provided to the Office of Court Administration as required by the SCACR. The address for Court Administration is 1220 Senate Street, Suite 200, Columbia, SC 29201.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Andrew James Toney, Esquire

EXHIBIT B

STATE OF SOUTH CAROLINA

In The Court of Appeals

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Marvin H. Dukes, III, Circuit Court Judge

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SC Court of Appeals

Case No. 2016-CP-07-01475

Shamsy Madani, Respondent,

v.

Rickey Phelps and Christy Phelps Appellants.

INITIAL BRIEF OF APPELLANT

Chris S. Truluck, (S.C. Bar 77829)

1720 Main Street, Suite 104

Columbia, SC 29201

(803) 556-7285

Attorney for Appellant

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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SC COURT OF APPEALS

Shamsy Madani, Respondent,

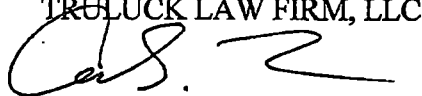
v.

Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Initial Brief and Letter of Status of Transcript and Designation of Matter on Appeal in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by U.S. Mail, postage prepaid, on October 4, 2017 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

October 4, 2017

TRULUCK LAW FIRM, LLC

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellant

STATE OF SOUTH CAROLINA

In The Court of Appeals

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DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

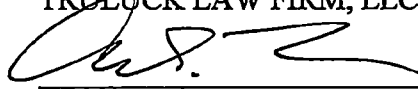
Appellant proposes the following to be included in the Record on Appeal:

1. Appellants' Complaint
2. Respondent's Answer
3. Partial Transcript
4. Verdicts
5. Order of Judge Sadler; June 1, 2016
6. Order of Judge Dukes; August 3, 2017

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

[Signature page to follow]

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)

1720 Main Street, Suite 104.

Columbia, SC 29201

(803) 556-7285

Attorney for Appellant

October 4, 2017

EXHIBIT C



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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November 14, 2017

Mr. Christopher Stephen Truluck, Esquire
1720 Main Street, Suite 104
Columbia SC 29201

Re: Shamsy Madani v. Rickey Phelps
Appellate Case No. 2017-001761

Dear Counsel:

Please be advised our records indicate that the respondent has not served and filed an initial brief and designation of matter. Therefore, you should proceed to serve and file your final brief and file the record on appeal, as provided in Rules 210(b) and 211(a) of the South Carolina Appellate Court Rules, within twenty (20) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Andrew James Toney, Esquire

EXHIBIT D

STATE OF SOUTH CAROLINA

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APPEAL FROM BEAUFORT COUNTY
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Marvin H. Dukes, III, Circuit Court Judge

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Shamsy Madani, Respondent,

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Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Final Brief and Record on Appeal in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by U.S. Mail, postage prepaid, on November 30th, 2017 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

TRULUCK LAW FIRM, LLC

November 30th, 2017

Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellant

STATE OF SOUTH CAROLINA

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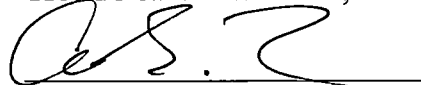
Rickey Phelps and Christy Phelps Appellants.

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Return in Opposition to Respondents Motion to Dismiss, or in the Alternative, Leave to File Designation of Matter and Final Brief in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by U.S. Mail, postage prepaid, on January 3, 2018 at Post Office Box 5969, Hilton Head Island, South Carolina 29938.

January 3, 2018

TRULUCK LAW FIRM, LLC



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