

66563

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Carmen Tevis Mullen, Circuit Court Judge

Case No. 2008-CP-07-03656

Ernest Alvin Timmons as Trustee of the  
Ernest A. Timmons Revocable Trust..... Appellant

v.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer, Joseph Gray Peeples,  
Brian M. Hinson, Karen B. Hinson, George R. Dickey, H. Alvin Dobson, Jr.,  
Kimberly A. Dobson, Gene G. Slice, Andrea C. Klucsarits, Becky P. Hildebrand,  
Gregory T. Hildebrand, Marsha Dean Ford, Harriet H. Ford, Lucas W. Durham,  
Marianne Durham, John D. Meyer, Meryl V. Truett, Christian W. Kern,  
Russel V. Schumpert, Carlton Mark Schumpert, Elizabeth O'Neal Schumpert,  
Russell C. Amick, Pamela S. Burnett, Mary Alice Broderick, Ellen N. Gifford,  
Robert M. McAlister, Barbara M. Vaughan, Margie J. Crews, Will Mills,  
Tracy Mills, BDM Investments, LLC, James P. Thomas, Lillian M. Thomas,  
J. Wyman Wall, III, Karl A. Overcash, Patsy V. Coppage, Steven M. Robison,  
Charles Schmid, Larry M. Bane, Renee C. Bane, Robert Gallina, Margaret E. Gallina,  
Bert Kerwin, Richard C. Guarneri, Maria Guarneri, and James P. Thomas,  
if any of these persons are living, and if not living, then the heirs, devisees or successors  
in title to them; and all persons unknown having or claiming to have any right, title,  
interest in, easement upon, or lien upon the real property described in the complaint  
herein being designated collectively as John Doe and Mary Roe; including all persons  
who may be deceased, minors, in the Armed Forces of the United States,  
Non Compos Mentis or under any other disability,

of whom George R. Dickey is .....Respondent.

RESPONDENT'S MOTION TO DISMISS  
APPELLANT'S APPEAL PURSUANT TO  
RULES 240 AND 260 SCACR

RECEIVED

DEC 14 2012

SC Court of Appeals

G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Attorneys for the Respondent

Pursuant to Rules 240 and 260 SCACR, the Respondent George R. Dickey (hereinafter “Dickey”), by and through his undersigned counsel, moves for an Order from this Court dismissing the appeal of the Appellant Ernest Alvin Timmons as Trustee of the Ernest A. Timmons Revocable Trust on the grounds that he has failed to timely respond to the Court’s written request for the status of reconstruction of the record in the lower court pursuant to Rule 207 SCACR and has failed to prosecute his appeal so that he has failed to comply with the South Carolina Appellate Court Rules.

#### BACKGROUND AND ARGUMENT

This appeal arises out of the Final Order Granting Judgment in Favor of the Defendants of the Honorable Carmen T. Mullen filed May 27, 2010, a copy of which is attached hereto as Exhibit “A”. In that Order, Judge Mullen declared the easement at issue in the case to be a valid, appurtenant easement crossing Mr. Timmons’ servient estate located in the Lands End section of St. Helena Island. *Id.* Judge Mullen ruled the easement is an appurtenant easement based upon the language contained in the Grant of Easement, the facts presented at the trial of the case, and applicable law. *Id. citing Tupper v. Dorchester County*, 326 S.C., 318, 487 S.E.2d 187 (1997); *Smith v. Commissioners of Public Works*, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994).

On June 4, 2010, the Plaintiff filed a Motion to Reconsider pursuant to Rule 59(e) SCRCF. That motion was denied on June 29, 2010, and on July 9, 2010, Mr. Timmons filed his Notice of Appeal. On July 15, 2010, Mr. Timmons’ counsel wrote to Ms. Susan Perron requesting a copy of the transcript of the trial on November 16, 2009. (Exhibit “B”) It turns out Ms. Priscilla Nay was the Court Reporter for the trial and not Ms.

Perron. Counsel for Mr. Timmons requested the transcript from Ms. Nay, and Court Administration granted her an extension to prepare the transcript.

On January 7, 2011, Counsel was notified that the Court Reporter, Priscilla Nay, was previously granted an extension to prepare and deliver the transcript from the lower court matter until November 21, 2010 as demonstrated by Exhibit "C". On January 10, 2011, Counsel for the Appellant notified this Court that the extension was granted until December 21, 2010 per the Notice issued by this Court on December 6, 2010 as demonstrated by Exhibit "D". On January 10, 2011, Counsel for the Appellant notified Court Administration that the trial transcript requested from the court reporter, Ms. Priscilla Nay, was not received in his office as of the date of the correspondence as demonstrated by Exhibit "E". Counsel for the Appellant failed to notify the Office of Court Administration, this Court and the court reporter within ten (10) days of the expiration of the granted extension for receipt of transcript pursuant to Rule 207 (a)(5) SCACR.

On January 19, 2011, Ms. Nay wrote to Counsel for the Appellant and copied Court administration advising that she could not produce the transcript of the trial of the case due to a "corrupted" disk as demonstrated by Exhibit "F".

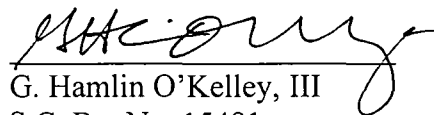
On January 24, 2011, Counsel for the Appellant filed a Motion to Remand with this Court because the court reporter was unable to produce the transcript from the trial court as demonstrated by Exhibit "G". In fact, the Court Reporter had lost the transcript creating the need for the Motion to Remand. This Court granted the Appellant's Motion to Remand for the reconstruction of the record from the trial court by Order filed February 11, 2011 as demonstrated by Exhibit "H". Since that time, this Court has

continued to request updates regarding the status of the reconstruction of the record from Counsel for the Appellant in correspondence dated May 20, 2011, October 14, 2011, February 15, 2012, March 2, 2012, July 24, 2012, and November 14, 2012 as demonstrated by the letters attached in Exhibit "I".

The latest correspondence from this Court on November 14, 2012, advised counsel that if there were no response by November 24, 2012, then the appeal would be dismissed. (Nov. 14, 2012 letter, *id.*). There has been no response from counsel within the required ten day period. Accordingly, the Respondent Dickey moves to have this Court dismiss the appeal as indicated in the correspondence of November 14, 2012. The Appellant has had since February 11, 2011, to recreate the record on appeal after this Court remanded the matter to Judge Mullen for that specific purpose. To date, no record has been recreated and the dilatory prosecution of the appeal continues to cause a burden for the Respondent Dickey and the other Respondents. The failure of the Appellant to comply with this Court's rules should result in the dismissal of this appeal.

Respectfully submitted,

Mt. Pleasant, SC  
December 12, 2012



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Attorneys for the Respondent George R.  
Dickey

# Exhibit "A"

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

2010 MAY 27 PM 2:57  
THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
Case Number. 2008-CP-07-3656  
JERRY W. ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

Ernest Alvin Timmons as Trustee of the Ernest  
A. Timmons Revocable Trust,  
  
Plaintiff,

**FINAL ORDER GRANTING  
JUDGMENT IN FAVOR OF THE  
DEFENDANTS**

vs.

Neil O. Gifford, Amy E. Gifford, Johnny L.  
Brewer, Joseph Gray Peebles, Brian M. Hinson,  
Karen B. Hinson, George R. Dickey, H. Alvin  
Dobson, Jr., Kimberly A. Dobson, Gene G.  
Slice, Andrea C. Klucsarits, Becky P.  
Hildebrand, Gregory T. Hildebrand, Marsha  
Dean Ford, Harriet H. Ford, Lucas W. Durham,  
Marianne Durham, John D. Meyer, Meryl V.  
Truett, Christian W. Kern, Russel V. Schumpert,  
Carlton Mark Schumpert, Elizabeth O'Neal  
Schumpert, Russell C. Amick, Pamela S.  
Burnett, Mary Alice Broderick, Ellen N. Gifford,  
Robert M. McAlister, Barbara M. Vaughan,  
Margie J. Crews, Will Mills, Tracy Mills, BDM  
Investments, LLC, James P. Thomas, Lillian M.  
Thomas, J. Wyman Wall, III, Karl A. Overcash,  
Patsy V. Coppage, Steven M. Robison, Charles  
Schmid, Larry M. Bane, Renee C. Bane, Robert  
Gallina, Margaret E. Gallina, Bert Kerwin,  
Richard C. Guarneri, Maria Guarneri, and James  
P. Thomas; if any of these persons are living,  
and if not living, then the heirs, devisees or  
successors in title to them; and all persons  
unknown having or claiming to have any right,  
title, interest in, easement upon, or lien upon the  
real property described in the complaint herein  
being designated collectively as John Doe and  
Mary Roe; including all persons who may be  
deceased, minors, in the Armed Forces of the  
United States, Non Compos Mentis or under any  
other disability,

Defendants.

This matter came before the Court for a trial on the merits on November 17, 2009, in Beaufort. The parties and counsel present were as follows:

1. The Plaintiff Ernest Timmons and his counsel, James J. Wegmann;
2. The Defendant George R. Dickey and his counsel, G. Hamlin O'Kelley, III;
3. The Defendant Karl A. Overcash and his counsel M. Anderson Griffith;
4. A.G. Solomons, Jr., counsel for the Defendants Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dodson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, J. Wyman Wall, III, and Barbara M. Vaughn;
5. Gregory T. Hildebrand and Becky P. Hildebrand, *pro se*;
6. Johnny L. Brewer, *pro se*;
7. Steven Robinson, *pro se*;
8. Russell Amick, *pro se*.

The remaining Defendants did not appear. Notice was provided to the Defendants prior to the hearing.

This case seeks a declaratory judgment pursuant to S.C. Code Ann. §15-53-10, *et seq.*, regarding a ten (10') foot, non-exclusive pedestrian easement providing access to the beach at Lands End on St. Helena Island. For the reasons stated herein, the Court finds that the easement more fully described below is an appurtenant easement; that the easement satisfies the requirements of an appurtenant easement as set forth in *Tupper v. Dorchester County*, 326 S.C., 318, 487 S.E.2d 187 (1997); and that the Defendants have the right to continue to use the easement for access to the beach at Lands End; and this Order shall be in favor of the Defendants.

## PROCEDURAL HISTORY

Mr. Timmons filed this action on September 19, 2008, seeking a declaratory judgment to determine the scope of the easement more fully described herein. All of the Defendants were served, either personally or by publication pursuant to Court order. The Court appointed Karl D. Twenge as Guardian ad Litem. The following Defendants filed answers in the case:

1. Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dodson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, J. Wyman Wall, III, and Barbara M. Vaughn by their counsel A.G. Solomons, Jr.;
2. Karl A. Overcash by his counsel M. Anderson Griffith;
3. George R. Dickey by his counsel G. Hamlin O'Kelley, III;
4. Johnny Brewer, *pro se*;
5. Gregory T. Hildebrand and Becky P. Hildebrand, *pro se*;
6. Steven M. Robinson, *pro se*;
7. Mary Alice Broderick, *pro se*;
8. Russell C. Amick, *pro se*.

The remaining Defendants failed to file any answer. The Guardian ad Litem filed an Answer on behalf of John Doe and Mary Roe. The Honorable J. Earnest Kinard, Jr., Administrative Judge, assigned this case to this Court for a final hearing which occurred on November 17, 2009.

Interestingly, this is not the first case filed by Mr. Timmons regarding this easement. On January 29, 2003, in the case of *Timmons v. Wall*, Case No. 02-CP-07-1298, the Honorable Thomas Kemmerlin ruled that the easement in question in this case was a valid easement and that "obviously the lots could be subdivided so [the Court] could not assume that [Mr. Wall]

bought them only to have eight single family units use the easement.” (Order, Jan. 9, 2003). This Order has not been appealed and is part of the law of the case.

### FINDINGS OF FACT

This case arises out of a ten (10’) foot, non-exclusive pedestrian easement providing access to the beach at Lands End on St. Helena Island. On March 23, 1994, in consideration in the amount of Ten Thousand (\$10,000.00) Dollars, Mavin H. Dukes executed and delivered to J. Wyman Wall, III, his heirs and assigns, that certain Grant of Easement as follows:

A non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary of Lot 15 of the Bessie G. Sanders Subdivision, St. Helena Island, Beaufort County, South Carolina. Lot 15 is shown on a Plat prepared by David S. Youmans, Registered Surveyor of Beaufort Surveying, Inc., dated May 13, 1991, and recorded in the RMC Office for Beaufort County, South Carolina, in Plat Book 41 at Page 63.

**The purpose of said Easement is to provide beach access for the Grantee, his heirs and assigns of lots 1 through 8 in Longwood Plantation, St. Helena Island, Beaufort County, South Carolina, as shown on a Plat thereof recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 45 at Page 68.**

(Grant of Easement attached hereto)(emphasis added)(hereinafter the “easement”).

Longwood Plantation is part of the Land Ends community on St. Helena Island. Lands End borders the Beaufort River near where it empties into Port Royal Sound.

There are no limitations in the grant of the easement excepting its width and its pedestrian quality. *Id.* The easement references a plat by David Youmans recorded in Plat Book 41 at Page 63 demonstrating the easement running along Lot 15 of the Bessie G. Sanders Subdivision on St. Helena Island. The easement is recorded in the Beaufort County Register of Deeds Office in Book 694 at Page 2338. This easement accompanied the sale of Lots 1 through 8 in Longwood Plantation to J. Wyman Wall, III, by the Dukes Real Estate Company as set forth in a deed

recorded in the Beaufort County Register of Deeds Office in Book 694 at Page 2334. (Warranty Deed). The easement provides access to the beach at Lands End for the lots conveyed to Mr. Wall by the Dukes Real Estate Company. Without this easement, the lots would not have pedestrian access to the beach.

In 1998, Earnest Timmons and Vera K. Timmons purchased Lots 14 and 15 of the Bessie G. Sanders Subdivision from Marvin Dukes by deed recorded in Book 1003 at Page 2407 in the Office of the Register of Deeds for Beaufort County. (Deed from Mr. Dukes to Mr. and Mrs. Timmons) The easement runs along Lot 15 purchased by Mr. Timmons. This is the same Lot 15 referenced in the Plat of David Youmans recorded in Plat Book 41 at Page 63 in the Office of the Register of Deeds for Beaufort County. The easement burdens Lot 15 as described in the Grant of Easement.

Mr. Timmons testified at trial that he took title to Lots 14 and 15 knowing of the existence of the easement at the time of the conveyance of Lots 14 and 15 to him. He further testified that he continued to own Lot 15 subject to the ten foot (10') pedestrian easement.

In 2008, Vera K. Timmons conveyed her interest in Lots 14 and 15 to Mr. Timmons by deed recorded in Book 2726 at Page 369 in the Office of the Register of Deeds for Beaufort County (Deed from Vera Timmons to Earnest Timmons). On June 13, 2008, Mr. Timmons conveyed the property to himself as Trustee of the Earnest A. Timmons Revocable Trust dated March 8, 2006, as demonstrated by that deed recorded in Book 2733 at Page 1042 in the Office of the Register of Deeds for Beaufort County (Deed from Earnest Timmons to Earnest Timmons, Trustee).

After purchasing Lots 1 through 8 at Longwood Plantation, J. Wyman Wall, III, subdivided Lots 1 through 4 into twenty-eight (28) lots as shown on a plat by David Gasque recorded in the Office of the Register of Deeds for Beaufort County in Book 65 at Page 119.

Mr. Wall also subdivided Lot 7 of Longwood Plantation into six lots as shown on a plat by David Gasque recorded in Plat Book 63 at Page 73.

As demonstrated at the trial of this case, there are several facts in this case agreed upon by all parties. There is no dispute that the Defendant J. Wyman Wall, III, subdivided the Lots at Longwood Plantation for sale to some of these Defendants. Further, there is no dispute that some of the original Lots at Longwood Plantation have been sold by J. Wyman Wall, III, to some of these Defendants or their predecessors in title. There is no dispute that the other Defendants are subsequent owners of either the original lots at Longwood Plantation or the owners of the subdivided lots at Longwood Plantation. There is no dispute that the Defendants are the subsequent owners of the original lots or subdivided lots as described in the Grant of Easement. (Plaintiff's Trial Exhibits 9-23(d)). Several of the Defendants can point to a specific reference or reiteration of the easement in the deeds transferring their respective lots to them. There is no dispute that the deeds into the Defendants George Dickey, J. Wyman Wall, III, Karl Overcash, Johnny Brewer and Steven M. Robinson contain an express reference or re-iteration of the easement. (Plaintiff's Trial Exhibits 22(a), 22(b), 17, 23(a), 23(b), 23(c), 12 and 14). Most importantly, all parties stipulated to the validity of the Grant of Easement and that Mr. Timmons took title knowing of the burden of the easement upon Lot 15.

Immediately prior to the ~~Grant~~ Grant of Easement, Mr. Wall took title to Lots 1 through 8 of Longwood Plantation. (Deed, Plaintiffs' Trial Ex. 2). The Deed references a plat recorded in Plat Book 45 at Page 63. (Plat, Book 45, Page 63) This plat shows an access easement running

across the property acquired by Mr. Wall. (*Id.*) This access easement has been dedicated to Beaufort County as a road as demonstrated by that plat recorded in Plat Book 65 at Page 119 and is now known as "Fort Fremont Road". (Plaintiff's Trial Ex. 1). At the time, Mr. Wall received title to Lots 1 through 8 at Longwood Plantation, this access easement terminated on Mr. Wall's property. (Plaintiff's Trial Exhibit 7). This access easement now known as Fort Fremont Road is not the pedestrian easement at issue in this case; however, it becomes of import regarding the easement at issue as will be discussed below more fully. Fort Fremont Road is the current terminus for the easement at issue in this case. *Id.*

Mr. Timmons has asked that this Court determine whether or not the Defendants have an easement to cross Lot 15, whether the easement in question is an easement appurtenant or an easement in gross; whether or not an easement, if in gross, is transferable; and, if transferable, who are the owners; whether or not the easement has been overly burdened, and whether or not Mr. Timmons has a right to lock and gate the entrance to the easement. As set forth below more fully, as the Court has determined this is a valid, appurtenant easement, the Court need not address any of the remaining issues.

### **CONCLUSIONS OF LAW**

This Court has been asked to determine whether or not the easement at issue in this case is valid and, if so, whether the easement is an easement appurtenant or an easement in gross. As the parties to this matter have stipulated as to the validity of the easement, the Court finds that the easement is a valid, enforceable easement. The question then becomes whether or not the easement is appurtenant or in gross.

The Court finds that the easement is an appurtenant easement based upon the language contained in the Grant of Easement, the facts, and the law applied. The grant and nature of an

easement is determined by the nature of the right and the intention of the parties creating the easement. *Smith v. Commissioners of Public Works*, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994). The Grant of Easement must be construed to carry out its intention as gathered from the language of the instrument creating the easement. *Id.* at 466, 411 S.E.2d 335; *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414; 143 S.E.2d (1965); 23 Am.Jur.2d *Easements and Licenses* § 23 (1966). Courts should carry out the parties' intentions in easements unless that contravenes some well-settled rule of law or public policy. *Lighthouse Tennis Club Village Horizontal Property Regime LXVI v. South Island Pub. Serv. Dist.*, 355 S.C. 529, 586 S.E.2d 146. (Ct. App. 2003). In this case, the intent of the parties is clearly set forth in the Grant of Easement. J. Wyman Wall, III, paid Marvin Dukes Ten Thousand and No/100 (\$10,000.00) Dollars for the **“non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary of Lot 15 ...to provide beach access for [Mr. Wall] his heirs and assigns of Lots 1 through 8 in Longwood Plantation.”** (Grant of Easement, emphasis added). The clear language of the Grant of Easement, stipulated to by the parties, and further acknowledged by the Plaintiff, can easily be used to determine the intent of the parties. The language of the easement conclusively establishes that Mr. Dukes and Mr. Wyman sought to create an open, non-exclusive, pedestrian easement for those persons owning Lots 1 through 8, and any heirs or assigns, to have access to the beach at Lands End. There are no words limiting the scope of the easement contained in the Grant of Easement.

That Lots 1 through 8 of Longwood Plantation have been subdivided is not controlling. Mr. Timmons urged this Court to make a determination that the subsequent subdivision of Lots 1 through 8 of Longwood Plantation creates an unreasonable burden on the easement. This case is almost directly on point with the case of *Smith v. Commissioners of Public Works*, 312 S.C. 460,

441 S.E.2d 331 (Ct. App. 1994). In *Smith*, the Smith family brought a declaratory judgment seeking to confirm their access easement to a canal. *Id.* at 462, 441 S.E.2d 333. The Smiths requested that the court declare they had every right to cross land belonging to the Commissioners of Public Works for the City of Charleston (the “CPW”). *Id.* Much like in this case, the Smiths and the CPW were grantees of a common predecessor in title, Benjamin Kitteredge. Both J. Wyman Wall, III, and Earnest Timmons were grantees of a common grantor, Marvin Dukes.

In *Smith*, the easement provided that “Kitteredge and all future owners of Dean Hall Plantation and Cypress Gardens shall have the right and the same is hereby granted to them, of ingress, egress and regress to the banks of and across the canal....” *Id.* at 463, 441 S.E.2d at 333. Prior to his death, Mr. Kitteredge deeded five hundred acres of his property to his trustees. *Id.* at 463, 441 S.E.2d 334. Of that five hundred acres, a little over seventy-one were deeded to the Smith family. *Id.* The Smiths desired to have their access to the canal confirmed. Much like Mr. Timmons, the CPW argued that the Smiths should have no easement due to the subdivision of the property and that there was alternate access via a boat landing. *Id.* at 464, 441 S.E.2d at 334. The CPW argued that the easement should have terminated. Mr. Timmons’ argument is not that the easement should have terminated but that it should be considered to be an easement in gross to Mr. Wyman only.

The Master appointed to the *Smith* case found the easement agreement to be clear and unambiguous, confirming the easement to the Smiths as successor in title to Mr. Kitteredge as a “future owner of Dean Hall Plantation.” *Id.* The CPW appealed and lost. The Court of Appeals affirmed the Master, with a few modifications. *Id.*

In its decision, the Court of Appeals confirmed there was an express grant of easement supporting the conclusion that the agreement established an unambiguous appurtenant easement. *Id* at 467, 441 S.E.2d 336. The easement in *Smith* was for all “future owners” and bound the successors to Mr. Kitteredge. It was clear from the language that Mr. Kitteredge intended to have the easement attach to the land and to attribute alienability to the easement. *Id*. The easement in this case has similar language. This easement, too, was to be alienable as Mr. Dukes granted the easement to Mr. Wall, his heirs and assigns. (Plaintiff’s Trial Ex. 8). The purpose of the easement in this case is to provide beach access to Mr. Wall, his heirs and assigns of Lots 1 through 8 at Longwood Plantation. *Id*. Much like access to the canal in *Smith*, the easement in this case provides access to the beach for all of the “heirs and assigns” of Mr. Wyman and those who own Lots 1 through 8 in Longwood. The intent of the parties demonstrated by the grant of easement was for an appurtenant easement to provide beach access. As easements in gross are not favored by the courts, an easement will never be presumed personal when it may fairly be construed as appurtenant. *Smith, supra* (citing 25 Am.Jur.2d *Easement and License* § 13 (1966)). The clear, unambiguous language of the easement in this case indicates that the parties intended this easement is appurtenant.

At trial, Mr. Timmons argued that some of the parties to this case should be barred from using the easement as there is no express grant of easement in their deeds. This is an argument without merit. In *Smith*, the Court of Appeals went so far as to state that there is “no merit” in the CPW’s contention that significance should have been placed on the failure of the Smiths’ deed to mention the easement from Mr. Kitteredge’s trustees. *Smith, id.* at 467, 441 S.E.2d at 336. The absence of mention of the easement is not relevant. *Id*. As easement runs with the land of the dominant estate even if the conveyance of the dominant estate does not mention it.

*Id.* at 468; 441 S.E.2d at 336; *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975).

In this case, the language of the Defendants' deeds transfers are right, title and interest of the grantors. As the grantor – Mr. Wall – had the right to the easement, such right passed with each subsequent deed. Additionally, a change of ownership or transfer due a subdivision of lots does not void the easement. *Smith, id.* at 466, 441 S.E.2d at 335; *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644 (1944)(subdivision or change in name of the development does not void easement). The Defendants in this case should be allowed to use the easement accordingly.

The Court must find that this easement is appurtenant. The easement satisfies the test for the determining if an easement is appurtenant or in gross. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). In *Tupper*, the Supreme Court established the following five factors to determine if an easement is appurtenant:

- a. The easement inheres in the land;
- b. Concerns the premises;
- c. Has one terminus on the land of the party claiming it;
- d. Is essentially necessary to the enjoyment thereof; and
- e. Passes with the dominant estate.

*Tupper, id* (citing *Smith, supra*).

Looking at the easement in question and the facts of the case, the easement satisfies these requirements as follows:

- a. The easement inheres across the northern boundary of Lot 15 as stated in the Grant of the Easement and as set forth in Mr. Timmons deed and as acknowledged by Mr. Timmons;

- b. The easement concerns the premises, being both Lot 15 and Lots 1 through 8 at Longwood Plantation and which easement was to provide a pedestrian access to the beach;
- c. The easement terminated on the land of the party claiming it, that land being Lot 1 at Longwood Plantation owned by J. Wyman Wall, III, as set forth in the Plat recorded in Book 45 at Page 68 in the Office of the Register of Deeds for Beaufort County. This Lot contained the terminus of the easement, which terminated on that certain access easement now called Fort Fremont Road. (Plaintiff's Trail Exhibits 2 and 7). The terminus was clearly on land of the party claiming the easement as shown on the plat.
- d. The easement is necessary for the enjoyment of the properties by providing pedestrian access to the beach and which access was paid for with a premium by Mr. Wall and which added to the value of the amounts paid by the Defendants for their lots.
- e. The easement passes by conveyance with the dominant estate which is clearly demonstrated by the Grant of Easement in that it states that the easement would be to Mr. Wall, his heirs and assigns. The deeds to George Dickey, J. Wyman Wall, III, Karl A. Overcash, Johnny L. Brewer and Steven L. Robinson all contain specific reference to the easement indicating not only the desire for the easement to pass with the dominant estate but that it actually did pass with the dominant estate. (Plaintiff's Trial Exhibits 22(a), 22(b), 17, 23(a), 23(b), 23(c), 12 and 14).

Based upon the language of the easement, it is clear that the intent of the parties was to create an appurtenant easement that would satisfy these factors. Were it to have been otherwise, then the deeds from Mr. Wall to several of the Defendants would not have contained the language of the easement.

## CONCLUSION

Based upon the foregoing, the Court finds and orders as follows:

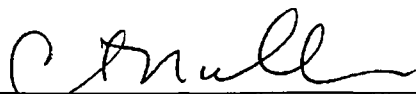
1. The Grant of Easement is a valid, enforceable easement and the ten (10') foot pedestrian access easement in favor of the Defendants is confirmed as set forth in the Grant of Easement recorded in the Office of the Register of Deeds for Beaufort County in Book 694 at Page 2338 being that certain ten (10') foot pedestrian access easement running along the northern boundary of Lot 15 of the Bessie G. Sanders Subdivision; St. Helena Island, South Carolina, as shown on that Plat prepared by David S. Youmans dated May 13, 1991, and recorded in Plat Book 41 at Page 63 in the Office of the Register Deeds for Beaufort County.
2. There are no words restricting the scope or use of the ten (10') foot pedestrian access easement providing access to the beach at Lands End.
3. The Grant of Easement is an easement appurtenant for the use of the heirs and assigns of J. Wyman Wall, III, those being any and all persons who have purchased Lots 1 through 8 at Longwood Plantation, as may have been subsequently subdivided, as shown on that Plat recorded in the Register of Deeds Office for Beaufort County in Plat Book 45 at Page 68.
4. As this is an appurtenant easement without any limitations restricting the scope or use in the Grant of Easement, the Court need not determine the remaining issues that Mr. Timmons seeks to have this Court rule upon as set forth in his Complaint.
5. The Defendants, their heirs, successors, and assigns, have the right to use the non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary

of Lot 15 as owned by Mr. Timmons and as shown on the Plant of David S. Youmans dated May 13, 1991, and recorded in the Register of Deeds Office for Beaufort County in Plat Book 41 at Page 63.

6. This appurtenant easement cannot be gated nor can access to the easement be restricted by Mr. Timmons, his heirs, successors or assigns, and

**AND IT IS SO ORDERED!**

Beaufort, South Carolina  
5-27, 2010

  
The Honorable Carmen T. Mullen  
Presiding Judge

# Exhibit "B"

copy

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address  
Post Office Box 1727  
Beaufort, South Carolina 29901

From the Desk of:  
James J. Wegmann  
wegmannj@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

July 15, 2010

Susan Perron  
Court Reporter for:  
The Honorable Carmen T. Mullen  
PO Box 31865  
Charleston, SC 29417

Re: Court Transcript

Dear Ms. Perron:

I would like to request a copy of the Court's Transcript for the entire proceeding in the below matter which was held on November 17, 2009, in Beaufort County Common Pleas, the Honorable Carmen T. Mullen presiding.

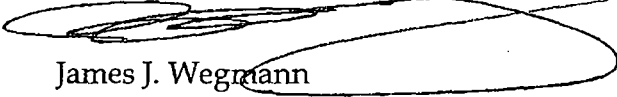
Trial in the Matter of: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case No. 08-CP-07-3656  
Date & Time of Trial: November 17, 2009 at 2:00 p.m.

Please forward the Transcript and your invoice to my attention at:

Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, South Carolina 29907

Thank you for your time and assistance, if you have any questions or concerns, please do not hesitate to call.

Sincerely,



James J. Wegmann

JJW/tlm

cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
South Carolina Court of Appeals  
Office of Court Administration  
client  
file

# Exhibit "C"



## The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

January 7, 2011

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29902-1569

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

Our records indicate that Court Reporter, Priscilla Nay, was granted an extension to prepare and deliver the transcript in the above matter up to and including November 21, 2010. As of today's date, we have received no information that the court reporter has been granted an additional extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per Rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of Court Administration  
1015 Sumter Street, Suite 201  
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript with ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/laf

cc: A.G. Solomons, Jr., Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
M Anderson Giffith, Esquire  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson  
Karl D. Twenge, Esquire

# Exhibit "D"

COPY

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address  
Post Office Box 1727  
Beaufort, South Carolina 29901

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

From the Desk of:  
Tracy L. Miller  
officemanager@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

January 10, 2011


Tanya A. Gee, Clerk / V. Claire Allen, Deputy Clerk  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
2010166447

Dear Tanya Gee / V. Claire Allen:

Our office is in receipt of your letter dated January 7, 2011 regarding the court transcript in the above matter. Enclosed herein is a copy of an Extension granted to Ms. Nay that expired December 21, 2010. As of today's date we have not received the transcript from Ms. Nay and have been working with Court Administration. Also enclosed herein is a copy of the letter sent to Court Administration today.

As always, if you have any questions or I can be of further assistance, feel free to contact our office.

Sincerely,  
  
Tracy L. Miller  
Legal Assistant to James J. Wegmann, Esquire  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004  
Attorney for the Appellant

Cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
Tracy Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
Office of Court Administration  
client



## The Supreme Court of South Carolina

( Ernest Alvin Timmons, et al  
(  
(  
(  
TITLE OF ( V. 2008CP0703656  
CASE ( )  
( )  
( )  
( Neil O. Gifford, et al  
( )  
( )

---

### Notice

---

Upon request and for good cause shown, Priscilla Nay, Court Reporter, is hereby granted an extension up to and including December 21, 2010 to prepare and deliver the Transcript of Record in the above case.

*Desiree Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
12/06/2010

cc: Tracy L. Miller  
Priscilla Nay

# Exhibit "E"

COPY

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address:  
Post Office Box 172  
Beaufort, South Carolina 29901

From the Desk of:  
James J. Wegmann  
wegmannj@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

January 10, 2011

SC Office of Court Administration  
1015 Sumter Street Suite 201  
Columbia, SC 29201

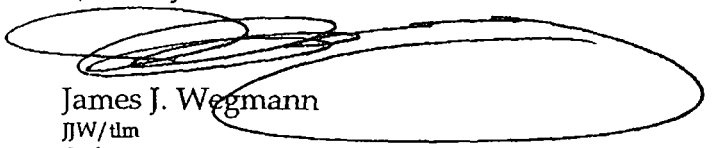
Re: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case Tracking #2010166447

Dear Sir / Ma'am:

This letter is to notify your office that the trial transcript requested from Ms. Priscilla Nay in the above matter has not been received in our office as of today's date. Enclosed herein are copies of letters and emails sent to Ms. Nay requesting the transcript and following up. We have attempted on numerous occasions to make contact with Ms. Nay and have been unsuccessful in reaching her. As of the date of this letter we have not received any correspondence from Ms. Nay or the Court Transcript.

As always, if you have any questions or I can be of further assistance, feel free to contact our office.

Sincerely,



James J. Wegmann  
JJW/tlm  
Enclosures

- cc: M. Anderson Griffith, Esquire
- AG Solomons, Jr., Esquire
- G. Hamlin O'Kelley, III, Esquire
- Karl D. Twenge, Esquire
- Russell Amick
- Johnny L. Brewer
- Gregory & Becky Hildebrand
- Steven M. Robinson
- Mary Alice Broderick
- The Honorable Carmen Tevis Mullen
- South Carolina Court of Appeals
- Ms. Priscilla Nay
- client
- file

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*Protecting Your Family & Your Business*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mail Address  
Post Office Box 1727  
Beaufort, South Carolina 29901

From the Desk of:  
Tracy L. Miller  
office manager@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

July 21, 2010

Priscilla A. Nay  
Court Reporter for:  
The Honorable Carmen T. Mullen  
PO Box 50923  
Columbia, SC 29250

Re: Court Transcript

Dear Ms. Nay:

I would like to request a copy of the Court's Transcript for the entire proceeding in the below matter which was held on November 17, 2009, in Beaufort County Common Pleas, the Honorable Carmen T. Mullen presiding.

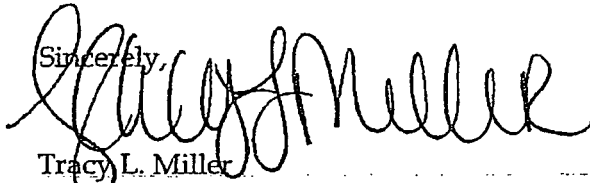
Trial in the Matter of: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case No. 08-CP-07-3656  
Date & Time of Trial: November 17, 2009 at 2:00 p.m.

Please forward the Transcript and your invoice to my attention at:

Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, South Carolina 29907

Thank you for your time and assistance, if you have any questions or concerns, please do not hesitate to call.

Sincerely,



Tracy L. Miller  
Legal Assistant to James J. Wegmann

JJW/tlm

cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
South Carolina Court of Appeals  
Office of Court Administration  
client  
file

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address  
Post Office Box 1722  
Beaufort, South Carolina 29904

From the Desk of:  
Tracy L. Miller  
office manager@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

September 20, 2010

Priscilla A. Nay  
Court Reporter for:  
The Honorable Carmen T. Mullen  
PO Box 50923  
Columbia, SC 29250

Re: Court Transcript  
Trial in the Matter of: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case No. 08-CP-07-3656  
Date & Time of Trial: November 17, 2009 at 2:00 p.m.

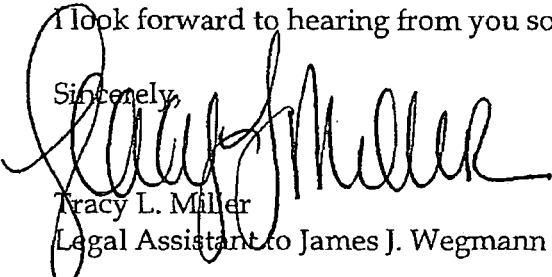
Dear Ms. Nay:

On July 21, 2010 we sent the enclosed letter requesting a copy of the transcript from the above trial. Pursuant to the South Carolina Rules of Court, the transcript was due to our firm on or before September 19, 2010. Pursuant to the Court Rules, on September 29, 2010 if we have not received the transcript or you have not requested an extension we are required to notify the Court of Appeals and the Office of Court Administration in writing.

I am writing to inquire as to the status of receiving the transcript. If it has crossed in the mail then please disregard this letter. If the transcript has not been completed, per the Rules, you will need to apply for an extension with the Office of Court Administration.

I look forward to hearing from you soon.

Sincerely,

  
Tracy L. Miller  
Legal Assistant to James J. Wegmann.

JJW/tlm  
Enclosure

cc: client  
file

**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Thursday, December 02, 2010 1:42 PM  
**To:** 'pnay@sccourts.org'  
**Subject:** 2008-3656 / Timmons v. Gifford et al  
Ms Nay:

I am writing to inquire on the status of the transcript from the Timmons v. Gifford matter. The extension provided by Court Administration expired on November 21, 2010. As of today we have not received the transcript nor been advised of an additional extension.

Court administration has asked me to write a letter to them reporting that we have not received the transcript. Before we do that, I wanted to touch base with you. If you need additional time, please request another extension from Court administration.

Please respond to this email at your very earliest convenience. If I have not heard from you by Monday I will have no other choice than to send a letter to Court Administration, which we do not want to do, however we need to protect our client's interests and our timeline with the Court of Appeals.

I look forward to hearing from you soon.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-521-0004) or reply to this e-mail and delete all copies of this message.

**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Wednesday, January 05, 2011 10:23 AM  
**To:** 'pnay@sccourts.org'  
**Subject:** timmons court transcript  
Ms. Nay:

Can you give me an update on the progress with the Timmons Transcript? The other extension ran out on December 21<sup>st</sup> and as of today I have not received the transcript. Can you please advise if you are requesting another extension or when we can expect to receive the transcript?

I look forward to hearing from you soon.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-521-0004) or reply to this e-mail and delete all copies of this message.

**Tracy Miller**

---

**From:** Allen, Desiree [DAllen@sccourts.org]  
**Sent:** Friday, January 07, 2011 1:14 PM  
**To:** Tracy Miller  
**Cc:** Nay, Priscilla A.  
**Subject:** RE: timmons v. gifford, et. al.

No, she hasn't. Additionally, she has not responded to my request for the status which I sent to her on January 4, 2011 after receiving your initial inquiry. I am sorry that I did not respond more promptly. I was waiting get some information for you. I will try to reach Ms. Nay by phone and respond via email by the end of the day.

---

**From:** Tracy Miller [mailto:officemanager@beaufortlaw.com]  
**Sent:** Friday, January 07, 2011 1:10 PM  
**To:** Allen, Desiree  
**Cc:** Nay, Priscilla A.  
**Subject:** timmons v. gifford, et. al.

Ms. Allen:

The attached extension expired on December 21, 2010. As of today we have not received the transcript. Has Ms. Nay requested an additional extension?

Thanks.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-521-0004) or reply to this e-mail and delete all copies of this message.

# Exhibit "F"

**Tracy Miller**

---

**From:** Nay, Priscilla A. [pnay@sccourts.org]  
**Sent:** Thursday, January 20, 2011 11:45 AM  
**To:** Office Manager  
**Subject:** RE: Timmons v. Gifford 11/16/09 hearing transcript

**Attachments:** Timmons.Gifford letter.docx



Timmons.Gifford  
letter.docx (1...

Not sure why this wasn't attaching before but please let me know if it still does not attach.

---

**From:** Office Manager [officemanager@beaufortlaw.com]  
**Sent:** Wednesday, January 19, 2011 8:28 PM  
**To:** Nay, Priscilla A.  
**Cc:** Allen, Desiree  
**Subject:** Re: Timmons v. Gifford 11/16/09 hearing transcript

Ms. Nay:

I did not receive an attachment. Please resend.

Tracy Miller

On Wed, Jan 19, 2011 at 4:29 PM, Nay, Priscilla A. <pnay@sccourts.org<mailto:pnay@sccourts.org>> wrote:  
Dear Ms. Miller,

Please accept the attached letter concerning the hearing transcript referenced above.

Thanks,  
Priscilla Nay

--  
Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-521-0004) or reply to this e-mail and delete all copies of this message.

Tab M

January 19, 2011

Ms. Tracy L. Miller, Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907

Re: Timmons vs. Gifford transcript

Dear Ms. Miller:

I am writing to advise you that I cannot produce a transcript/record of the above-referenced hearing which was heard on 11/16/09. The floppy disk which contained the file for this hearing is corrupted. I had data recovery done during the holidays by "That Computer Store" in Irmo, SC and they were unable to retrieve any data from the disk. I also did not have backup tapes for the day so there is no record I can provide. I was, in fact, the court reporter for this hearing and acted in good faith when requesting extensions of time to provide the transcript for this case; however, it was just recently I discovered the disk corruption, around the time of the extension expiration toward the end of December 2010 and was awaiting the outcome of the viability of the disk.

I have requested a letter documenting the situation with the disk from the IT gentleman who performed the data recovery. I spoke with him again today to ask him to please send this letter as soon as possible; he is supposed to be sending that to me today and will forward that along to Desiree as soon as I receive it. I am truly sorry for the definite inconvenience.

Yours Truly,

Priscilla Nay  
Circuit Court Reporter  
P.O. Box 50923  
Columbia, S.C. 29250

CC: Ms. Desiree Allen,  
S.C.Court Administration

**Exhibit "G"**

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

COPY

"Protecting You, Your Family, & Your Business"

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address:  
Post Office Box 1727  
Beaufort, South Carolina 29901

From the Desk of:  
James J. Wegmann  
wegmannj@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

January 24, 2011

Tanya A. Gee, Clerk / V. Claire Allen, Deputy Clerk  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
2010166447

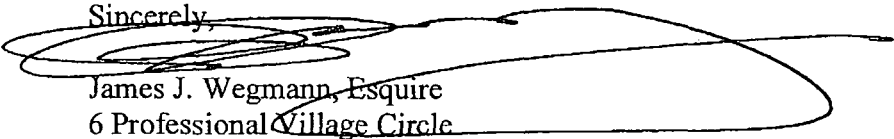
Dear Tanya Gee / V. Claire Allen:

Enclosed herein for filing is an original and six (6) copies of a Motion to Remand regarding the above matter, along with two (2) copies to be stamped and returned in the enclosed self addressed stamped envelope. Additionally, enclosed is our check in the amount of \$25.00 for the filing fee.

By copy of this letter I have served a copy of this Motion to Remand upon all counsel of record and *pro se* defendants, as indicated by the attached Proof of Service.

As always, if you have any questions or I can be of further assistance, feel free to contact our office.

Sincerely,

  
James J. Wegmann, Esquire  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004  
Attorney for the Appellant

Cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
Office of Court Administration  
client

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

---

Case No. 2008-CP-07-3656

---

Ernest Alvin Timmons as Trustee of the  
Ernest A. Timmons Revocable Trust, .....Appellant,

v.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer, Joseph Gray Peeples,  
Brian M. Hinson, Karen B. Hinson, George R. Dickey, H. Alvin Dobson, Jr.,  
Kimberly A. Dobson, Gene G. Slice, Andrea C. Klucsarits, Becky P.  
Hildebrand, Gregory T. Hildebrand, Marsha Dean Ford, Harriet H. Ford,  
Lucas W. Durham, Marianne Durham, John D. Meyer, Meryl V. Truett,  
Christian W. Kern, Russel V. Schumpert, Carlton Mark Schumpert,  
Elizabeth O'Neal Schumpert, Russell C. Amick, Pamela S. Burnett,  
Mary Alice Broderick, Ellen N. Gifford, Robert M. McAlister, Barbara M.  
Vaughan, Margie J. Crews, Will Mills, Tracy Mills, BDM Investments, LLC,  
James P. Thomas, Lillian M. Thomas, J. Wyman Wall, III, Karl A. Overcash,  
Patsy V. Coppage, Steven M. Robison, Charles Schmid, Larry M. Bane,  
Renee C. Bane, Robert Gallina, Margaret E. Gallina, Bert Kerwin, Richard C.  
Guarneri, Maria Guarneri, and James P. Thomas; if any of these persons  
living, and if not living, then their heirs, devisees or successors in title to them;  
and all persons unknown having or claiming to have any right, title, interest in,  
easement upon, or lien upon the real property described in the complaint herein  
being designated collectively as John Doe and Mary Roe; including all persons  
who may be deceased, minors, in the Armed Forces of the United States,  
Non Compos Mentis or under any other disability, .....Respondents.

---

MOTION TO REMAND

---

The Appellant respectfully moves this Honorable Court to remand this case back to the Circuit Judge to settle the Record on Appeal.

### **BACKGROUND FACTS**

The non-jury trial on this matter was heard on the 17<sup>th</sup> day of November 2009 by the Honorable Carmen T. Mullen, Circuit Court Judge, 14<sup>th</sup> Judicial Circuit. On May 27<sup>th</sup>, 2010, the Trial Court entered a final judgment on the matter. On June 4<sup>th</sup>, 2010, the Appellant filed a Motion to Alter or Amend Judgment (SCRCP 59(e)). On June 29<sup>th</sup>, 2010, the Honorable Carmen T. Mullen filed a Form 4 Order denying the Appellant's Motion to Alter or Amend Judgment without a hearing. The Appellant received the Form 4 Order denying his Motion to Alter or Amend Judgment on July 1<sup>st</sup>, 2010. On July 9<sup>th</sup>, 2010, the Appellant filed a Notice of Appeal and served the same upon the Respondents and the Honorable Carmen T. Mullen by first class US Mail.

On July 21<sup>st</sup>, 2010, the Appellant, requested the transcript from the court reporter. [Attached hereto as Tab A]. On September 20<sup>th</sup>, 2010, the Appellant sent a follow up letter to the court reporter to inquire into the status of the transcript and to remind the court reporter of the obligation to request an extension if it is not completed. [Attached hereto as Tab B]. Having not heard from the court reporter, the Appellant notified the SC Office of Court Administration that he had not received the transcript by letter dated September 29<sup>th</sup>, 2010. [Attached hereto as Tab C]. By correspondence dated October 18<sup>th</sup>, 2010, the Appellant was notified that the court reporter was granted an extension until October 21<sup>st</sup>, 2010. [Attached hereto as Tab D]. By correspondence dated October 27<sup>th</sup>, 2010, the Appellant was notified that the court reporter was granted a 2<sup>nd</sup> extension until November 21<sup>st</sup>, 2010. [Attached hereto as Tab E]. Again, having not heard

anything from the court reporter, the Appellant, on November 30<sup>th</sup>, 2010, emailed Court Administration inquiring into whether or not the court reporter had requested a third extension. [Attached hereto as Tab F]. On December 2<sup>nd</sup>, 2010, the Appellant emailed the directly requesting the status of the transcript. [Attached hereto as Tab G]. By correspondence dated December 6<sup>th</sup>, 2010, the Appellant was notified that the court reporter was granted a third extension until December 21<sup>st</sup>, 2010. [Attached hereto as Tab H]. On January 3<sup>rd</sup>, 2011, the Appellant emailed Court Administration with a copy to the court reporter inquiring if the court reporter had requested a fourth extension. [Attached hereto as Tab I]. On January 5<sup>th</sup>, 2011, the Appellant emailed the court reporter inquiring into the status of the transcript. [Attached hereto as Tab J].

By email dated January 10<sup>th</sup>, 2011, the Appellant emailed court administration asking if they had heard from the court reporter. [Attached hereto as Tab K]. On January 10<sup>th</sup>, 2011, the Appellant notified Court Administration by letter with a copy to the court reporter that he had not received the transcript. [Attached hereto as Tab L]. By email with letter attached, the court reporter notified the Appellant that she could not produce the transcript and that the "floppy disk which contained the file for this hearing is corrupted". The court reporter also stated that she did not have backup tapes from the hearing. [Attached hereto as Tab M].

The original request for transcript was July of 2010 and in her letter of January 19<sup>th</sup>, 2011, the court reporter stated, "it was just recently I discovered the disk corruption ...." Until the Appellant received the letter of January 19<sup>th</sup>, 2011, the court reporter in question had never responded to any of the Appellant's inquires nor had she ever mentioned there was a problem with the disk or that she did not have the tape backups

from the hearing. The actions of the court reporter have seriously prejudiced the Appellants ability to prosecute an appeal in this case. The Appellant respectfully requests the Court of Appeals remand the case to the Circuit Court to settle the Record on Appeal. The Appellant is informed and believes that between the Trial Court's notes and the notes of the counsel involved, that the Trial Court should be able to decide and discern what was in the record which will enable the Appellant to pursue his appeal.

Respectfully Submitted,

Mikell, Weidner, Wegmann & Harper, LLC

By: 

James J. Wegmann  
6 Professional Village Circle  
Beaufort, South Carolina 29907  
(843) 521-0004  
Attorney for Appellant

January 24, 2011

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address  
Post Office Box 1727  
Beaufort, South Carolina 29901

From the Desk of:  
Tracy L. Miller  
officemanager@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

July 21, 2010

Priscilla A. Nay  
Court Reporter for:  
The Honorable Carmen T. Mullen  
PO Box 50923  
Columbia, SC 29250

Re: Court Transcript

Dear Ms. Nay:

I would like to request a copy of the Court's Transcript for the entire proceeding in the below matter which was held on November 17, 2009, in Beaufort County Common Pleas, the Honorable Carmen T. Mullen presiding.


Trial in the Matter of: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case No. 08-CP-07-3656  
Date & Time of Trial: November 17, 2009 at 2:00 p.m.

Please forward the Transcript and your invoice to my attention at:

Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, South Carolina 29907

Thank you for your time and assistance, if you have any questions or concerns, please do not hesitate to call.

Sincerely,



Tracy L. Miller  
Legal Assistant to James J. Wegmann

JJW/tlm

cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
South Carolina Court of Appeals  
Office of Court Administration  
client  
file

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address  
Post Office Box 1727  
Beaufort, South Carolina 29904

From the Desk of:  
Tracy L. Miller  
office manager@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

September 20, 2010

Priscilla A. Nay  
Court Reporter for:  
The Honorable Carmen T. Mullen  
PO Box 50923  
Columbia, SC 29250

Re: Court Transcript  
Trial in the Matter of: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case No. 08-CP-07-3656  
Date & Time of Trial: November 17, 2009 at 2:00 p.m.

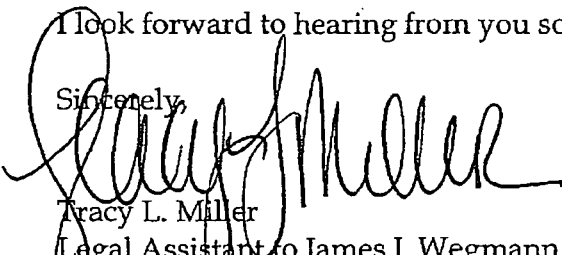
Dear Ms. Nay:

On July 21, 2010 we sent the enclosed letter requesting a copy of the transcript from the above trial. Pursuant to the South Carolina Rules of Court, the transcript was due to our firm on or before September 19, 2010. Pursuant to the Court Rules, on September 29, 2010 if we have not received the transcript or you have not requested an extension we are required to notify the Court of Appeals and the Office of Court Administration in writing.

I am writing to inquire as to the status of receiving the transcript. If it has crossed in the mail then please disregard this letter. If the transcript has not been completed, per the Rules, you will need to apply for an extension with the Office of Court Administration.

I look forward to hearing from you soon.

Sincerely,

  
Tracy L. Miller  
Legal Assistant to James J. Wegmann

JJW/tlm  
Enclosure

cc: client  
file

Tab B

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address:  
Post Office Box 1727  
Beaufort, South Carolina 29901

From the Desk of:  
James J. Wegmann  
wegmannj@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

September 29, 2010

SC Office of Court Administration  
1015 Sumter Street Room 200  
Columbia, SC 29201-3747


Re: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case Tracking #20101664477  
Court Transcript

Dear Sir / Ma'am:

This letter is to notify your office that the trial transcript requested from Ms. Priscilla Nay in the above matter has not been received in our office as of today's date. Enclosed herein are copies of letters sent to Ms. Nay requesting the transcript and following up. As of the date of this letter we have not received any correspondence from Ms. Nay or the Court Transcript.

As always, if you have any questions or I can be of further assistance, feel free to contact our office.

Sincerely,



James J. Wegmann

JJW/tlm

Enclosures

cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
South Carolina Court of Appeals  
Ms. Priscilla Nay  
client  
file

Tab C



The Supreme Court of South Carolina

( Ernest Alvin Timmons, et al  
(  
(  
(  
TITLE OF : ( V. 2008CP0703656  
CASE (   
(   
(  
( Neil O. Gifford, et al  
(  
(

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Notice

---

Upon request and for good cause shown, Priscilla Nay, Court Reporter, is hereby granted an extension up to and including October 21, 2010 to prepare and deliver the Transcript of Record in the above case.

*Dee Dee Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
10/18/2010

cc: Tracy L. Miller ✓  
Priscilla Nay

Tab D



**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Tuesday, November 30, 2010 3:32 PM  
**To:** 'Allen, Desiree'  
**Cc:** 'pnay@sccourts.org'  
**Subject:** FW: Emailing: 2008CP0703656Ext2.pdf

**Attachments:** 2008CP0703656Ext2.pdf  
Ms. Allen:

The attached extension expired on November 21<sup>st</sup>. As of today we have not received the transcript in this matter. Has Ms. Nay requested another extension?

I look forward to hearing from you soon.

Tracy L. Miller  
Legal Assistant to James J. Wegmann

---

**From:** Allen, Desiree [mailto:DAllen@sccourts.org]  
**Sent:** Wednesday, October 27, 2010 1:54 PM  
**To:** Nay, Priscilla A.  
**Cc:** 'officemanager@beaufortlaw.com'  
**Subject:** Emailing: 2008CP0703656Ext2.pdf

Please see attached extension.

Tab F

**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Thursday, December 02, 2010 1:42 PM  
**To:** 'pnay@sccourts.org'  
**Subject:** 2008-3656 / Timmons v. Gifford et al  
Ms Nay:

I am writing to inquire on the status of the transcript from the Timmons v. Gifford matter. The extension provided by Court Administration expired on November 21, 2010. As of today we have not received the transcript nor been advised of an additional extension.

Court administration has asked me to write a letter to them reporting that we have not received the transcript. Before we do that, I wanted to touch base with you. If you need additional time, please request another extension from Court administration.

Please respond to this email at your very earliest convenience. If I have not heard from you by Monday I will have no other choice than to send a letter to Court Administration, which we do not want to do, however we need to protect our client's interests and our timeline with the Court of Appeals.

I look forward to hearing from you soon.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

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Tab 6



**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Monday, January 03, 2011 4:11 PM  
**To:** 'DAllen@sccourts.org'  
**Cc:** 'pnay@sccourts.org'  
**Subject:** Timmons

**Attachments:** 101206 Notice.pdf

Ms. Allen:

The attached extension expired on Decmeber 21<sup>st</sup>. As of today we have not received the transcript in this matter. Has Ms. Nay requested another extension?

I look forward to hearing from you soon.

Tracy L. Miller  
Legal Assistant to James J. Wegmann

Tab I

**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Wednesday, January 05, 2011 10:23 AM  
**To:** 'pnay@sccourts.org'  
**Subject:** timmons court transcript  
Ms. Nay:

Can you give me an update on the progress with the Timmons Transcript? The other extension ran out on December 21<sup>st</sup> and as of today I have not received the transcript. Can you please advise if you are requesting another extension or when we can expect to receive the transcript?

I look forward to hearing from you soon.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

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Tab J

**From:** Tracy Miller [officemanager@beaufortlaw.com]  
**Sent:** Monday, January 10, 2011 10:02 AM  
**To:** 'Allen, Desiree'  
**Subject:** RE: timmons v. gifford, et. al.

**Attachments:** 110107 Letter from Court of Appeals.pdf  
Ms. Allen:

I just wanted to let you know that I am just trying to follow up on this matter for our client. I understand that problem is with Ms. Nay and that she is being non-responsive. Our client is simply frustrated at this point. So I apologize if it seemed that I was being pushy following up too soon after my original email.

Can you tell me was the last extension sent to the Court of Appeals that expired December 21?  
Attached is a copy of a letter I received in the mail this morning from the Court of Appeals.

Can you let me know have you heard from Ms. Nay? If not, I will have Mr. Wegmann prepare a letter to mail to Court Administration.

I look forward to hearing from you soon.

Tracy

---

**From:** Allen, Desiree [mailto:DAllen@sccourts.org]  
**Sent:** Friday, January 07, 2011 1:14 PM  
**To:** Tracy Miller  
**Cc:** Nay, Priscilla A.  
**Subject:** RE: timmons v. gifford, et. al.

No, she hasn't. Additionally, she has not responded to my request for the status which I sent to her on January 4, 2011 after receiving your initial inquiry. I am sorry that I did not respond more promptly. I was waiting get some information for you. I will try to reach Ms. Nay by phone and respond via email by the end of the day.

---

**From:** Tracy Miller [mailto:officemanager@beaufortlaw.com]  
**Sent:** Friday, January 07, 2011 1:10 PM  
**To:** Allen, Desiree  
**Cc:** Nay, Priscilla A.  
**Subject:** timmons v. gifford, et. al.

Ms. Allen:

The attached extension expired on December 21, 2010. As of today we have not received the transcript. Has Ms. Nay requested an additional extension?

Thanks.

Tracy

Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC

Tab K

# MIKELL, WEIDNER, WEGMANN, & HARPER, LLC

*"Protecting You, Your Family, & Your Business"*

J. Thomas Mikell  
Larry W. Weidner, II (SC & PA)  
James J. Wegmann (SC & TX)  
Frampton L. Harper, II

Mailing Address:  
Post Office Box 1777  
Beaufort, South Carolina 29901

From the Desk of:  
James J. Wegmann  
wegmannj@beaufortlaw.com  
Telephone (843) 521-0004  
Fax (843) 521-9390

Mikell Office  
14 Professional Village Circle  
Beaufort, South Carolina 29907

Weidner, Wegmann, Harper Office  
6 Professional Village Circle  
Beaufort, South Carolina 29907

January 10, 2011

SC Office of Court Administration  
1015 Sumter Street Suite 201  
Columbia, SC 29201

Re: Ernest Alvin Timmons, et. al. v. Neil O. Gifford, et. al.  
Case Tracking #2010166447

Dear Sir / Ma'am:

This letter is to notify your office that the trial transcript requested from Ms. Priscilla Nay in the above matter has not been received in our office as of today's date. Enclosed herein are copies of letters and emails sent to Ms. Nay requesting the transcript and following up. We have attempted on numerous occasions to make contact with Ms. Nay and have been unsuccessful in reaching her. As of the date of this letter we have not received any correspondence from Ms. Nay or the Court Transcript.

As always, if you have any questions or I can be of further assistance, feel free to contact our office.

Sincerely,

  
James J. Wegmann

JJW/tlm  
Enclosures

cc: M. Anderson Griffith, Esquire  
AG Solomons, Jr., Esquire  
G. Hamlin O'Kelley, III, Esquire  
Karl D. Twenge, Esquire  
Russell Amick  
Johnny L. Brewer  
Gregory & Becky Hildebrand  
Steven M. Robinson  
Mary Alice Broderick  
The Honorable Carmen Tevis Mullen  
South Carolina Court of Appeals  
Ms. Priscilla Nay  
client  
file

Tab L

**Tracy Miller**

---

**From:** Nay, Priscilla A. [pnay@sccourts.org]  
**Sent:** Thursday, January 20, 2011 11:45 AM  
**To:** Office Manager  
**Subject:** RE: Timmons v. Gifford 11/16/09 hearing transcript  
**Attachments:** Timmons.Gifford letter.docx



Timmons.Gifford  
letter.docx (1...

Not sure why this wasn't attaching before but please let me know if it still does not attach.

---

**From:** Office Manager [officemanager@beaufortlaw.com]  
**Sent:** Wednesday, January 19, 2011 8:28 PM  
**To:** Nay, Priscilla A.  
**Cc:** Allen, Desiree  
**Subject:** Re: Timmons v. Gifford 11/16/09 hearing transcript

Ms. Nay:

I did not receive an attachment. Please resend.

Tracy Miller

On Wed, Jan 19, 2011 at 4:29 PM, Nay, Priscilla A. <pnay@sccourts.org<mailto:pnay@sccourts.org>> wrote:  
Dear Ms. Miller,

Please accept the attached letter concerning the hearing transcript referenced above.

Thanks,  
Priscilla Nay

--  
Tracy L. Miller  
Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907  
843-521-0004 ph  
843-521-9390 fx

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Tab M

January 19, 2011

Ms. Tracy L. Miller, Office Manager/Paralegal  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907

Re: Timmons vs. Gifford transcript

Dear Ms. Miller:

I am writing to advise you that I cannot produce a transcript/record of the above-referenced hearing which was heard on 11/16/09. The floppy disk which contained the file for this hearing is corrupted. I had data recovery done during the holidays by "That Computer Store" in Irmo, SC and they were unable to retrieve any data from the disk. I also did not have backup tapes for the day so there is no record I can provide. I was, in fact, the court reporter for this hearing and acted in good faith when requesting extensions of time to provide the transcript for this case; however, it was just recently I discovered the disk corruption, around the time of the extension expiration toward the end of December 2010 and was awaiting the outcome of the viability of the disk.

I have requested a letter documenting the situation with the disk from the IT gentleman who performed the data recovery. I spoke with him again today to ask him to please send this letter as soon as possible; he is supposed to be sending that to me today and will forward that along to Desiree as soon as I receive it. I am truly sorry for the definite inconvenience.

Yours Truly,

Priscilla Nay  
Circuit Court Reporter  
P.O. Box 50923  
Columbia, S.C. 29250


CC: Ms. Desiree Allen,  
S.C.Court Administration

Thomas, if any of these persons are not living, and if not living, then the heirs, devisees, or successors in title to them; and all persons unknown having or claiming to have any right, title, interest in, easement upon, or lien upon the real property described in the complaint herein being designated collectively as John Doe and Mary Roe; including all persons who may be deceased, minors, in the Armed Forces of the United States, Non Compos Mentis or under any other disability,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Remand on Karl Overcash, Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson, Ellen N. Gifford, Robert M. McAlister, Barbara M. Baughan, BDM Investments, LLC, J. Wyman Wall III, George R. Dickey, Russell Amick, Johnny L. Brewer, Gregory & Becky Hildebrand, Steven M. Robinson, and Mary Alice Broderick by depositing a copy of it in the United States Mail, postage prepaid, on January 24, 2011, addressed to their attorneys of record, M. Anderson Griffith (Respondent), PO Drawer 2009, Aiken, SC 29801, AG Solomons, Jr. (Respondent), PO Box 969, Estill, SC 29918, G. Hamlin O'Kelley (Respondent) 652 Coleman Blvd Suite #200, Mt. Pleasant, SC 29464, Karl D. Twenge (Guardian Ad Litem Nisi) 1001 Paris Avenue, Port Royal, SC 29935, Russell Amick (Pro Se Respondent) 252 McNeary Ferry Road, Leesville, SC 29070, Johnny L. Brewer (Pro Se Respondent) 96 Fort Freemont Road, St. Helena Island, SC 29920, Gregory & Becky Hildebrand (Pro Se Respondents) 201 Blaine Lane, Lexington, SC 29072, Steven M. Robinson (Pro Se Respondent) 7 Klebold Road, St. Helena Island, SC 29920, Mary Alice Broderick (Pro Se Respondent) 5 Fort Freemont Road, St. Helena Island, SC 29920, and to the Circuit Court Judge, The Honorable Carmen Tevis Mullen, PO Box 1128, Beaufort, SC 29901.

January 24<sup>th</sup>, 2011

Mikell, Weidner, Wegmann & Harper, LLC  
By:   
James J. Wegmann  
6 Professional Village Circle  
Beaufort, South Carolina 29907  
(843) 521-0004  
Attorney for Appellant

# Exhibit "H"



## The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

February 11, 2011

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29902-1569

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

Enclosed is a copy of an Order of the Court regarding your Motion in the above case.

The Appellant is to notify this court within ten days after reconstruction of the transcript.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

TAG/laf

cc: A.G. Solomons, Jr., Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
M Anderson Giffith, Esquire  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson  
Karl D. Twenge, Esquire  
The Honorable Jerri Roseneau

# The South Carolina Court of Appeals

Ernest Alvin Timmons as Trustee of the Ernest  
A. Timmons Revocable Trust,

Appellant,

v.

Neil O. Gifford, Amy E. Gifford, Johnny L.  
Brewer, Joseph Gray Peeples, Brian M. Hinson,  
Karen B. Hinson, George R. Dickey, H. Alvin  
Dobson, Jr., Kimberly A. Dobson, Gene G.  
Slice, Andrea C. Klucsarits, Becky P.  
Hildebrand, Gregory T. Hildebrand, Marsha  
Dean Ford, Harriet H. Ford, Lucas W. Durham,  
Marianne Durham, John D. Meyer, Meryl V.  
Truett, Christian W. Kern, Russel V.  
Schumpert, Carlton Mark Schumpert, Elizabeth  
O'Neal Schumpert, Russell C. Amick, Pamela  
S. Burnett, Mary Alice Broderick, Ellen N.  
Gifford, Robert M. McAlister, Barbara M.  
Vaughan, Margie J. Crews, Will Mills, Tracy  
Mills, BDM Investments, LLC, James P.  
Thomas, Lillian M. Thomas, J. Wyman Wall,  
III, Karl A. Overcash, Patsy V. Coppage,  
Steven M. Robison, Charles Schmid, Larry M.  
Bane, Renee C. Bane, Robert Gallina, Margaret  
E. Gallina, Bert Kerwin, Richard C. Guarneri,  
Maria Guarneri, and James P. Thomas; if any  
of these persons are living, and if not living,  
then the heirs, devisees or successors in title to  
them; and all persons unknown having or  
claiming to have any right, title, interest in,  
easement upon, or lien upon the real property  
described in the complaint herein being  
designated collectively as John Doe and Mary  
Roe; including all persons who may be  
deceased, minors in the Armed Forces of the  
United States, Non Compos Mentis or under  
any other disability,

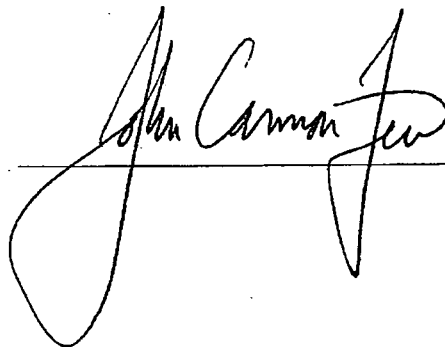
Respondents.

The Honorable Carmen T. Mullen  
Beaufort County  
Trial Court Case No. 2008-CP-07-03656

ORDER

Appellant asks this Court to remand this matter to the trial court for a reconstruction of the record because the court reporter is unable to produce the transcript. Several Respondents filed returns, agreeing that reconstruction is necessary. Accordingly, we grant Appellant's motion, and hold the appeal in abeyance. Once the reconstruction has taken place, Appellant shall notify this Court within ten days.

IT IS SO ORDERED.

 \_\_\_\_\_, C.J.

Columbia, South Carolina

cc: James John Wegmann  
A.G. Solomons, Jr.  
George Hamlin O'Kelley, III  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
M Anderson Giffith  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson  
Karl D. Twenge

**FILED**  
2/11/11 

# Exhibit "I"



## The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

May 20, 2011

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29902-1569

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

Please provide a status update of the transcript within ten days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

TAG/laf

cc: A.G. Solomons, Jr., Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
M Anderson Giffith, Esquire  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson  
Karl D. Twenge, Esquire



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[www.sccourts.org](http://www.sccourts.org)

October 14, 2011

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29902-1569

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

Please provide the Court with a written update on the status of the reconstruction of the record in the lower court within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/ma

cc: A.G. Solomons, Jr., Esquire  
George H. O'Kelley, Jr, Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
Mary Alice Broderick  
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Karl D. Twenge, Esquire



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February 15, 2012

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

Please provide the Court with a written update on the status of the reconstruction of the record within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/ma

cc: A.G. Solomons, Jr., Esquire  
George H. O'Kelley, Jr, Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
Mary Alice Broderick  
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Karl D. Twenge, Esquire



## The South Carolina Court of Appeals

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FAX: (803) 734-1839  
www.sccourts.org

March 2, 2012

James John Wegmann, Esquire  
Mikell, Weidner, Wegmann & Harper, LLC  
6 Professional Village Circle  
Beaufort, SC 29907

Re: Timmons, Ernest v. Gifford, Neil  
2010166447

Dear Mr. Wegmann:

As of today's date we have received no response to our letter of February 15, 2012. Please provide the Court with a written update on the status of the reconstruction of the record within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

TAG/ma

cc: A.G. Solomons, Jr., Esquire  
George H. O'Kelley, Jr., Esquire  
George Hamlin O'Kelley, III, Esquire  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson  
Karl D. Twenge, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

July 24, 2012

Mr. James John Wegmann  
6 Professional Village Circle  
Beaufort SC 29907

Re: Timmons, Ernest v. Gifford, Neil  
Appellate Case No. 2010-166447

Dear Counsel:

Please provide the Court with a written update on the status of the above matter within ten (10) days of the date of this letter.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: George H. O'Kelley, Jr.  
A. G. Solomons, Jr.  
George Hamlin O'Kelley, III  
Karl D. Twenge  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson

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**SC Court of Appeals**



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
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COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

November 14, 2012

Mr. James John Wegmann  
6 Professional Village Circle  
Beaufort SC 29907

Re: Timmons, Ernest v. Gifford, Neil  
Appellate Case No. 2010-166447

Dear Counsel:

Please provide the Court with a written update on the status of the reconstruction of the record in the above matter within ten (10) days of the date of this letter or this appeal may be dismissed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: George H. O'Kelley, Jr.  
A. G. Solomons, Jr.  
George Hamlin O'Kelley, III  
Karl D. Twenge  
Gregory and Becky Hildebrand  
Johnny L. Brewer  
Mary Alice Broderick  
Russell Amick  
Steven M. Robinson

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Carmen Tevis Mullen, Circuit Court Judge

---

Case No. 2008-CP-07-03656

---

Ernest Alvin Timmons as Trustee of the  
Ernest A. Timmons Revocable Trust..... Appellant

v.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer, Joseph Gray Peeples,  
Brian M. Hinson, Karen B. Hinson, George R. Dickey, H. Alvin Dobson, Jr.,  
Kimberly A. Dobson, Gene G. Slice, Andrea C. Klucsarits, Becky P. Hildebrand,  
Gregory T. Hildebrand, Marsha Dean Ford, Harriet H. Ford, Lucas W. Durham,  
Marianne Durham, John D. Meyer, Meryl V. Truett, Christian W. Kern,  
Russel V. Schumpert, Carlton Mark Schumpert, Elizabeth O'Neal Schumpert,  
Russell C. Amick, Pamela S. Burnett, Mary Alice Broderick, Ellen N. Gifford,  
Robert M. McAlister, Barbara M. Vaughan, Margie J. Crews, Will Mills,  
Tracy Mills, BDM Investments, LLC, James P. Thomas, Lillian M. Thomas,  
J. Wyman Wall, III, Karl A. Overcash, Patsy V. Coppage, Steven M. Robison,  
Charles Schmid, Larry M. Bane, Renee C. Bane, Robert Gallina, Margaret E. Gallina,  
Bert Kerwin, Richard C. Guarneri, Maria Guarneri, and James P. Thomas,  
if any of these persons are living, and if not living, then the heirs, devisees or successors  
in title to them; and all persons unknown having or claiming to have any right, title,  
interest in, easement upon, or lien upon the real property described in the complaint  
herein being designated collectively as John Doe and Mary Roe; including all persons  
who may be deceased, minors, in the Armed Forces of the United States,  
Non Compos Mentis or under any other disability,

of whom George R. Dickey is .....Respondent.

---

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---

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DEC 14 2012

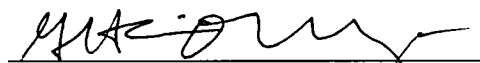
**SC Court of Appeals**

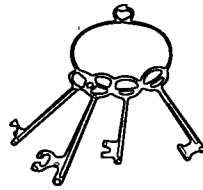
I hereby certify that I have served the Respondent's Motion to Dismiss the Appellant's Appeal Pursuant to Rules 240 and 260 SCACR by depositing a copy of same in the U.S. Mail, postage prepaid, on December 12, 2012, addressed to the following parties or counsel of record as follows:

James J. Wegmann, Esq., Mikell, Weidner, Wegmann & Harper, LLC, 6 Professional Village Circle, Beaufort, South Carolina, 29907, *Attorneys for the Appellant*; George H. O'Kelley, Jr., Esq., P.O. Box 1072, Beaufort, South Carolina 29901, *Attorneys for Karl A. Overcash*; A. G. Solomons, Jr., Esq., Solomons & Lawton, PC, P.O. Box 969, Estill, South Carolina 29918, *Attorneys for Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, Barbara M. Vaughn and J. Wyman Wall, III*; Karl D. Twenge, Esq., 1001 Paris Avenue, Port Royal, South Carolina 29935, *Guardian ad Litem*; Mr. Russell Amick, 252 McNeary Ferry Road, Leesville, South Carolina 29070, Defendant *Pro Se*; Mr. Johnny L. Brewer, 96 Fort Freemont Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*; Mr. Gregory Hildebrand and Ms. Becky Hildebrand, 201 Blaine Lane, Lexington, South Carolina 29072, Defendants *Pro Se*; Mr. Steven M. Robinson, 7 Klebold Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*; Ms. Mary Alice Broderick, 5 Fort Freemont Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*;

Mt. Pleasant, South Carolina

December 12, 2012

  
G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Attorneys for Respondent



December 12, 2012

**BUIST, BYARS & TAYLOR, LLC**  
ATTORNEYS AT LAW

MARIA E. KIEHLING  
ASSOCIATE ATTORNEY  
maria.kiehling@buistbyars.com

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

Re: Timmons v. Gifford, et al.  
Case No.: 2008-CP-07-3656  
Ct. App. No. **20100166447**  
Client File No.: 2009060036

Dear Ms. Kitchings:

Enclosed are the following for filing in the above-referenced matter:

1. An original and (7) copies of the Respondent's Motion to Dismiss Appellant's Appeal Pursuant to Rules 240 and 260 SCACR;
2. An original and one (1) Proof of Service re same.

Please also find enclosed our firm's check in the amount of \$25.00 for the motion filing fee. Please file the originals and return the extra copy of each to me in the enclosed envelope. By copy of this letter, I am serving same as indicated in the Proof of Service.

Should you have any questions, please feel free to contact me. With kind regards, I remain

Sincerely,

Maria E. Kiehling

DEC 14 2012

Enclosures

cc. (w/enc.):

James J. Wegmann, Esq.  
A.G. Solomons, Jr., Esq.  
George H. O'Kelley, Jr., Esq.  
Karl D. Twenge, Esq.

Mr. Russell Amick  
Mr. Johnny L Brewer  
Mr. Gregory Hildebrand  
Ms. Becky Hildebrand  
Mr. Steven M. Robinson  
Ms. Mary Alice Broderick

**SC Court of Appeals**

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