

The South Carolina
IN THE
COURT OF APPEALS

DOCKET NO. 2016-002019

Appeal From The Orangeburg County
Court of Common Pleas

Honorable Maité Murphy
Civil Action No. 2014-CP-38-1603

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JUN 26 2017

SC Court of Appeals

Belinda Davis-Branch and Zipporah Sumpter,

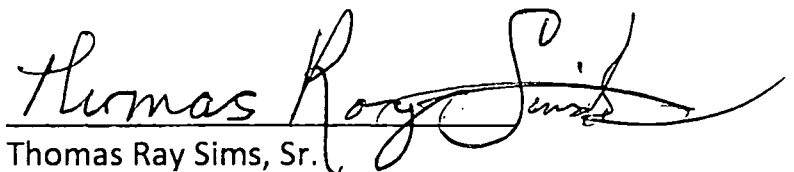
Appellants,

v.

Elizabeth Jackson, Melvin Jackson, individually and as parents of M , M ,
and M Jackson,

Respondents.

INITIAL BRIEF OF APPELLANTS



Thomas Ray Sims, Sr.

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Attorney for Appellants

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STATEMENT OF THE ISSUE ON APPEAL

Whether the Lower Court erred by not including the Respondents' Confession of Judgment in its Final Order?

STATEMENT OF THE CASE

On December 31, 2014, Appellants filed a Breach of Contract action against the Respondents. Appellants were hired by Respondents to represent them in a case against Claflin Development Center (CDC), Civil Action Docket Number 2014-CP-38-1603, in the Court of Common Pleas, Orangeburg County. On June 11, 2010, the Respondents ended their contractual relationship with Appellants by terminating Appellants' representation. Respondents retained new counsel to represent them in their case against CDC. By letter dated September 3, 2010, in accordance with Appellants' Retainer Agreement with Respondents, Appellants notified Respondents' new attorney that they were placing a lien on Respondents' file for non-payment of fees and costs. On September 3, 2010, the new attorney acknowledged Appellants' lien. In the Spring of 2011, Appellants learned that the Respondents had settled their case against the CDC. However, the Respondents did not honor Appellants' lien for fees and costs.

On April 14, 2016, the case herein was called for trial before the Honorable Maité Murphy. During Appellants' case in chief, Appellant Davis-

Branch testified regarding the fees and costs incurred by Appellants in three separate actions, (hereinafter referred to as the State Court Action, Federal Court Action and Bankruptcy action). (See Transcript at page 47, lines 18-19). After the direct testimony of Appellant Davis-Branch, Counsel for Respondents' commenced cross examination. During Respondents' examination, the Court interrupted Respondents' Counsel, and asked Counsel the following question:

"... I was just actually reviewing the court record as we were going through it and there does not appear to be an Answer in the court record. Was an Answer filed in this matter?"

In response Counsel for Respondents admitted that he had not filed an Answer on behalf of his client. (See Transcript at page 42, lines 21-24).

Thereafter, the Court concluded that since an Answer had not been filed the case would proceed as a Damages hearing. (See Transcript at page 42, lines 3-5 and Transcript at page 43 lines 8 and 9). During the Damages hearing, Respondents' Counsel confessed to judgment in the State Court action. (See Transcript at page 46, lines 16-21). After counsel for Respondents confessed judgment, Counsel continued his cross examination which led the Court to order the parties to submit briefs regarding damages for the State, Federal and Bankruptcy actions. On August 3, 2016, the Court issued its opinion denying Appellants' requested attorney fees. Rather the Court awarded Appellants one

third of Respondents' alleged settlement in the amount of \$1,666.67, plus costs in the amount of \$4,290.00. The Court did not address Respondents' Confession of Judgment. This Appeal follows.

Argument

Whether the Lower Court erred by not including Respondents' Confession of Judgment in its Final Order?

During the Respondents' cross examination of Appellant Davis-Branch, Counsel for Respondents stated:

"... Your Honor, to save the Court's time, my clients will be willing to confess to judgment for the amount of this as tallied on here on the itemized amount at the rates billed plus the costs and I think under the complaint that would be the sum total of damages."

The Court: That would be on exhibit number 16?

Mr. Owen: That would be on exhibit number 16. Yes, your Honor.

The Court: What is that amount again, Mr. Owen? Do I need to recalculate it? ...

Mr. Owen: But we would consent to whatever the Court would tally out based upon the itemized hours set forth in exhibit 16 and at the hourly rates, that being \$200.00 per hour until January 4th of 2006 and then \$300.00 per hour thereafter. Plus I think they have got itemized costs in the amount of \$4,920. I believe. (See Transcript at page 46, lines 16-25 and page 47, lines 5-10).

Additional discussion included the following:

The Court: So you're withdrawing your Confession of Judgment on 16?

Mr. Owen: No. We'll do 16, I think, as State Court; is that correct?

THE COURT: No. That's the bankruptcy case. The State Court is 14. 15 is Federal Court 16 is bankruptcy. That's what my notes indicate. I may be wrong. (See Transcript at page 48, lines 3-9).

Clearly the Respondents' Counsel confessed judgment to Appellants' State Court action, yet the Lower Court's decision did not include in the Final Order Respondents' Confession of Judgment. Rather the Court ordered the Respondents to pay Appellants the sum of One Thousand Six Hundred and Sixty Six Dollars and 67/100's (\$1,666.67) based upon a settlement amount not entered into evidence by Respondents. Appellant Davis-Branch briefly testified as to what Respondents' Co-Counsel had told her but no evidence as to the amount was entered into evidence. (See Transcript at page 30, lines 21-25 and page 31, lines 1-8), and costs which were entered into evidence in the amount of Four thousand Two Hundred and Ninety Dollars and 00/100 (\$4,290.00). Appellant Davis-Branch testified to a substantially higher amount of attorney fees, and the amount for each action, State, Federal and Bankruptcy for which invoices were submitted into evidence. (See Appellants' Exhibits 14, 15, and 16).

Appellants contend that Respondents' Confession of Judgment should have been included in the Final Order as Respondents' Counsel clearly stated they

would confess to same. Further when asked by the Court if he (Respondents' Counsel) was withdrawing the confession, he clearly stated, "No,...." (See Transcript page 48 lines 3-6).

Appellants contend that the Court was bound to include the matter of the Confession of Judgment as Respondents' judgment was orally confessed and all that was necessary was for it to be reduced to writing. The confession is required to be written according to South Carolina Code of Law Section 15-35-360:

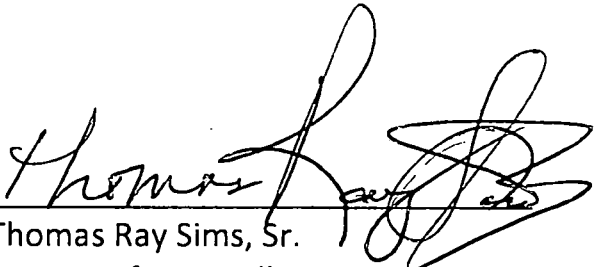
"Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect: (1) it must state the amount for which judgment may be entered and authorize the entry of judgment therefore; (2) If it be for the money due or to become due, it must state concisely the facts out of which it arose and must show that the sum confessed therefore is justly due or to become due; and (3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefore does not exceed the liability."

The Court's failure to address Respondents' Confession of Judgment has resulted in Appellants' being unable to collect on the Judgment.

Conclusion

Based upon the argument above this case should be remanded to the Lower Court and require Respondents to enter a judgment in accordance with

South Carolina Code of Laws Section 15-35-60.



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6/26, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Belinda Davis-Branch, Zipporah Sumpter.....Appellants

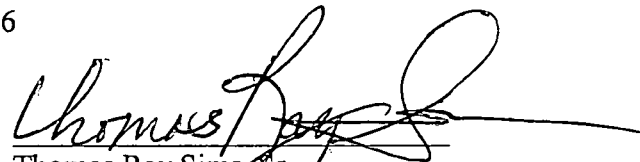
v.

Elizabeth Jackson, Melvin Jackson, individually and as parents of M M , and M
Jackson..... Respondents

CERTIFICATE OF SERVICE

I, Thomas Ray Sims, Sr. an attorney, hereby certify that I have, on the date indicated below, served Counsel below with Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

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June 26, 2017

The Honorable Jenny Abbot Kitchings
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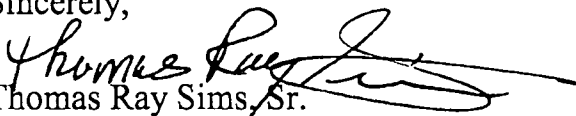
SC Court of Appeals

**Re: Belinda Davis-Branch, Zipporah Sumpter vs. Elizabeth Jackson,
Melvin Jackson, as parents of M Jackson, M Jackson and
M Jackson:
Case No.: 2016-002019**

Dear Ms. Kitchings:

Enclosed for filing is Appellants' Initial Brief, Designation of Matter to be Included in the Record on Appeal and Certification regarding the above referenced case.

Sincerely,


Thomas Ray Sims, Sr.

Enclosures

TS/cj