

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Circuit Court

Thomas A. Russo, Circuit Court Judge

Appellate Case No.2018-00001144

RECEIVED
FEB 20 2019
SC Court of Appeals

In the Matter of: Estate of Thomas G. Moore

Michael Dennis Moore,Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, and Phillip Frederick Moore,..... Respondents.

RESPONDENT THOMAS PAUL MOORE'S MEMORANDUM
IN SUPPORT OF RESPONDENT THOMAS PAUL MOORE'S MOTION TO FILE BRIEFS IN
RESPONSE TO CROSS-APPELLANTS' INITIAL BRIEFS

C. Pierce Campbell (SC Bar #72539)
Turner, Padgett, Graham & Laney P.A.
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Florence, SC 29502
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ATTORNEYS FOR RESPONDENT THOMAS P. MOORE

Procedural Background and History

Appellant Michael Dennis Moore (“Appellant”) timely filed a Notice of Appeal on June 18, 2018, appealing the order of the Honorable Thomas A. Russo dated April 25, 2018 and filed May 8, 2018. After Appellant filed his initial brief, Respondent Thomas Paul Moore (“Respondent”), as primary respondent, filed his initial brief with this Court on November 28, 2018. Subsequently, Respondents Phillip Frederick Moore, Francine Laura Lawhon and Linda Kaye Moore (collectively “Cross-Appellants”) filed their initial briefs.

In their initial briefs, Cross-Appellants sought reversal of a key lower court finding on the doctrine of integration. After what was in effect a cross-appeal, Respondent Moore then attempted to file a brief in response. Respondent Moore also filed motions to dismiss Cross-Appellants’ appeal as untimely filed. Those motions are pending. Respondent Moore’s brief was then rejected because the SCACR do not allow a respondent to file a reply brief in response to another respondent.

Respondent Moore seeks an Order from this Court allowing him to file a respondent’s brief in response to the Cross-Appellants’ purported initial briefs.

- I. The Court of Appeals should allow Respondent Moore to file a brief in response to Cross-Appellants’ initial briefs because they are appellants for purposes of this appeal and Rule 208(a)(2), SCACR, gives a respondent the right to file a response to an appellant’s brief.**
 - a. Cross-Appellants are appellants because they have taken a stance adverse to Respondent Moore (and consistent with Appellant) by seeking to overturn the lower court’s ruling on the doctrine of integration.**

There are two types of parties to an appeal: (1) an appellant and (2) a respondent.¹ To determine which party gets which designation, Rule 202(a), SCACR, informs only that the

¹ Rule 202(a), SCACR.

appealing party is the appellant and the adverse party is the respondent.² Thus, under the rule, if a party is acting adverse to a respondent by seeking to overturn a lower court finding, he or she is an appellant for purposes of the SCACR.

Further, Rule 203(c), SCACR, allows a respondent to institute a cross-appeal against an adverse party. Effectively, filing a cross-appeal allows a respondent to take on the role of an appellant for purposes of the issues which are adverse to another party to the appeal. This is what Cross-Appellants have done in their purported initial briefs.

Cross-Appellants' purported initial briefs seek to overturn the lower court's ruling regarding the doctrine of integration and its application in this case. Both Cross-Appellants' briefs and Appellant's brief seek reversal for different reasoning as described in each of their briefs. Respondent Moore, on the other hand, seeks to affirm the lower court's ruling regarding the issue of integration and its application in this case. Thus, Cross-Appellants are directly adverse to Respondent Moore on this particular issue, and the parties' interests are in opposition. As such, the purported initial brief is not really a respondent's brief, but rather a cross-appeal. Therefore, Cross-Appellants are appellants for purposes of the SCACR.

- b. Because Cross-Appellants are an adverse party—and thus appellants for purposes of this appeal—Rule 208(a)(2), SCACR, gives Respondent Moore the right to file a brief in response to Cross-Appellants' initial brief.**

Rule 208(a)(2), SCACR, sets forth the rules for a respondent's initial brief. It states that "within 30 days after service of Appellant's brief, respondent *shall* serve one copy of his brief on all parties to the appeal . . ."³ The rule permits the respondent to file a brief in response to any appellant's initial brief. For the reasons stated above Cross-Appellants are considered to be

² Black's Law dictionary defines "adverse party" as any "party whose interests in a transaction, dispute, or lawsuit are opposed to another party's interests." PARTY, Black's Law Dictionary (10th ed. 2014).

³ Rule, 208(a)(2), SCACR (emphasis added).

appellants for purposes of this appeal. Therefore, Rule 208(a), SCACR, gives Respondent the right to file a brief in response to the Cross-Appellants' initial briefs.

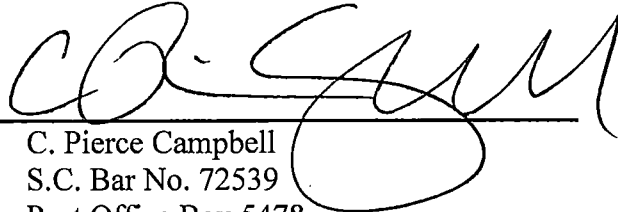
In light of Cross-Appellants' filing of two cross-appeals, Respondent Moore has been prejudiced in his ability to respond fully and efficiently to Cross-Appellants' allegations and arguments. As such, and on this basis, Respondent Moore submits that he is entitled to an Order from this Court accepting the briefs previously filed in response to the Cross-Appellants' initial briefs to address the arguments of Cross-Appellants.

CONCLUSION

For the aforementioned reasons, this Court should allow Respondent Moore to file a respondent's brief in opposition to both Cross-Appellants' purported initial briefs.

TURNER, PADGET, GRAHAM & LANEY, P.A.

Florence, S.C.
February 18, 2019

By: 
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ATTORNEYS FOR RESPONDENT
THOMAS P. MOORE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
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In the Matter of: Estate of Thomas G. Moore **SC Court of Appeals**

Michael Dennis Moore Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, and Phillip Frederick Moore..... Respondents,

**RESPONDENT THOMAS PAUL MOORE'S MOTION
TO FILE A BRIEF IN RESPONSE TO
RESPONDENTS/CROSS-APPELLANTS' INITIAL BRIEFS**

and

**RESPONDENT THOMAS PAUL MOORE'S MEMORANDUM
IN SUPPORT OF RESPONDENT THOMAS PAUL MOORE'S MOTION TO
FILE BRIEFS IN RESPONSE TO CROSS-APPELLANTS' INITIAL BRIEFS**

CERTIFICATE OF SERVICE

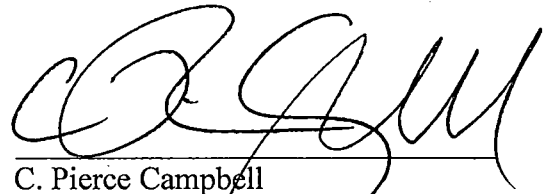
I certify that I have served the above entitled Motion and Memorandum in Support of said Motion, and this Certificate of Service, on February 18, 2019, via U.S. mail, to the Deputy Clerk, South Carolina Court of Appeals, 1220 Senate Street, Columbia, SC 29201 and by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

Norwood DuRant, Jr., Esquire
Law Offices of N. David DuRant
P.O. Box 14722
Surfside Beach, SC 29587
Attorney for Appellant

James R. Snell, Jr., Esquire
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ATTORNEYS FOR RESPONDENT
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February 18, 2019

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SC Court of Appeals

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

Re: Michael Dennis Moore v. Thomas Paul Moore, Francine Laura Lawhon, Linda Kay Moore, and Phillip Frederick Moore
Appellate Case No.: 2018-001144
TPGL File No.: 13272.101

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the following for filing in the above case:

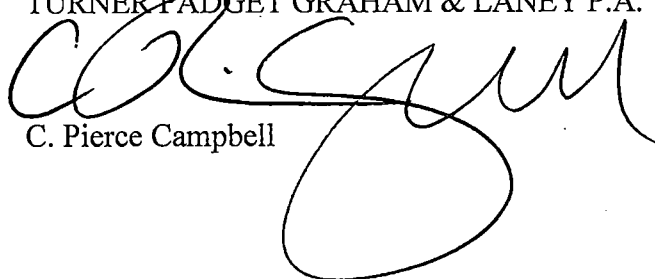
1. Respondent Thomas Paul Moore's Motion to File a Brief in Response to Respondents/Cross-Appellants' Initial Briefs,
2. Respondent Thomas Paul Moore's Memorandum in Support of Respondent Thomas Paul Moore's Motion to File a Brief in Response to Respondents/Cross-Appellants' Initial Briefs, and
3. Certificate of Service.

South Carolina Court of Appeals
Re: Moore Estate
February 18, 2019
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Please file the originals with the Court, file-stamp the copies for us and return them to us in the enclosed self-addressed, stamped envelope. We are serving copies of the Motion and Memorandum in Support on all parties of record via United States mail. Thank you for your assistance in this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.



C. Pierce Campbell

CPC/met
Enclosures

cc(w/encs): Norwood D. DuRant, Jr., Esq.
James R. Snell, Jr., Esq.
Thomas P. Moore
Francine M. Lawhon
Linda K. Moore

Hasler

FIRST-CLASS MAIL

02/18/2019

US POSTAGE \$001.60⁰⁰



ZIP 29502
011E11680426

TURNER PADGET

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13272.101

Honorable Jenny Abbott Kitchings
Deputy Clerk, SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals