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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case No: 2019-000051
Case No.: 2016-CP-02-02576

RECEIVED
APR 15 2019
SC Court of Appeals

In the Matter of Albert D. Bone,
An Incapacitated Person, Respondent

Vivy Haynes Bone,

Appellant,

v.

Robert G. Bone, Conservator;
and Liberty Mutual Insurance
Company,

Respondents.

RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY'S
MOTION TO DISMISS

Bryan P. Kelley
S.C. Bar No. 76062
Elmore Goldsmith, P.A.
Post Office Box 1887
Greenville, South Carolina 29602
(864) 255-9500

Other Counsel of Record:

John E. Cheatham
Law Office of John E. Cheatham, P.A.
102 Harmon Street
Lexington, South Carolina 29072
(803) 359-2828

Pro Se:

Robert G. Bone
888 Currytown Road
North Augusta, South Carolina 29861
Respondent

Albert D. Bone
803 Vancouver Road
North Augusta, South Carolina 29841
Respondent

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MEMORANDUM IN SUPPORT OF LIBERTY MUTUAL'S MOTION TO DISMISS

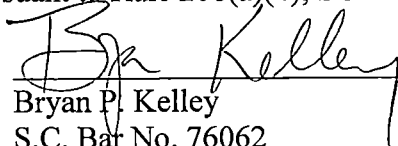
COMES NOW Respondent Liberty Mutual Insurance Company ("Liberty Mutual"), by and through its undersigned counsel, pursuant to Rule 240, SCACR, for an Order dismissing this Appeal for failure to prosecute on the basis that Appellant has failed to comply with Rule 208, SCACR. In support of this Motion, Liberty Mutual shows unto the Court the following:

Appellant filed a Notice of Appeal in the Court of Common Pleas for Aiken County, South Carolina on January 14, 2019. On January 19, 2019, counsel for Appellant transmitted two Transcript Requests to Brenda J. Sigwald via e-mail. (Exhibit A.) On February 25, 2019, Appellant's counsel e-mailed Ms. Sigwald again to indicate he was transmitting payment for the requested transcripts. (Exhibit B.) Ms. Sigwald reports to the undersigned counsel that the transcript was provided to counsel for the Appellant on February 26, 2019. (Exhibit C; Exhibit D.)

Rule 208(a)(1), SCACR, provides that the appellant's brief shall be filed and served within 30 days after receiving the transcript. As of the date of this Motion, more than 30 days have passed since Appellant's counsel received the transcript and Appellant has failed to serve its Appellate Brief on the undersigned counsel.

Based on Appellant's failure to timely file the appellate brief, Liberty Mutual prays that this Court enter an Order dismissing this appeal pursuant to Rule 208(a)(4), SCACR.

April 12, 2019


Bryan P. Kelley
S.C. Bar No. 76062
ELMORE GOLDSMITH, P.A.
Post Office Box 1887
Greenville, South Carolina 29602
(864) 255-9500
Attorney for Respondent Liberty Mutual
Insurance Company

Bryan Kelley

From: John E. Cheatham <jcheathamlaw@gmail.com>
Sent: Saturday, January 19, 2019 6:06 PM
To: Sigwald, Brenda J.; transcripts@sccourts.org; Bryan Kelley
Subject: Bone Transcripts
Attachments: Transcript Request Form 2-20-18.docx; Transcript Request Form 9-24-18.docx

Ms. Sigwald,

I am sending you a Transcript Request Form for February 20, 2018, which I believe you have already provided, but I am in the middle of a contested domestic case, so I am including it just in case.

I am also sending you a Transcript Request Form for September 24, 2018.

I am serving opposing counsel by this email, and I am providing one to Court Administration as required by the Rules. I will also forward the he Court of Appeals by mail, as well as to the Bone Brothers.

Please advise as to what financial arrangements I need to make.

Best regards,

John E. Cheatham

Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

| Requestor's Information | | | |
|--|---|--|--------------------------|
| Full Name <u>John E. Cheatham</u> | 803-447-5291 | Email Address <u>jcheathamlaw@gmail.com</u> | |
| Mailing Address <u>102 Harmon St.</u> | Lexington | State <u>SC</u> | Zip Code <u>29072</u> |
| Transcript Information | | | |
| Docket Number <u>C/A#2016-CP-02-2576</u> | Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Vivv H. Bone v Robert G. Bone, et al</u> | | |
| Date(s) of Proceeding <u>February 20, 2018</u> | Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/> | County <u>Aiken</u> | |
| Presiding Judge <u>Honorable Doyet A. Early III</u> | Expedited Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | | |
| Court Reporter(s) <u>Brenda Sigwald</u> | Opposing Counsel <u>Robert G. Bone, pro se, Albert D. Bone, pro se, Bryan P. Kelley for Liberty Mutual Ins</u> | | |

Requestor's Signature: s/John E. Cheatham
(Typed name will serve as signature)

Date: 1-19-19

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

| For Court Reporter Use Only | | | |
|--|------------------------|------------------------|-------------------|
| Full Name _____ | Date Received _____ | Email Address _____ | |
| Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____ | | | |
| Mailing Address for Payment _____ | City _____ | State _____ | Zip Code _____ |

Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter [and](mailto:transcripts@sccourts.org) to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

| Requestor's Information | | | |
|---|--|---|--------------------------|
| Full Name <u>John E. Cheatham</u> | 803-447-5291 | Email Address <u>jcheathamlaw@gmail.com</u> | |
| Mailing Address <u>102 Harmon St.</u> | Lexington | State SC | Zip Code 29072 |
| Transcript Information | | | |
| Docket Number <u>C/A#2016-CP-02-2576</u> | Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Vivv H. Bone v Robert G. Bone, et al</u> | | |
| Date(s) of Proceeding <u>September 24, 2018</u> | Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/> | County <u>Aiken</u> | |
| Presiding Judge <u>Honorable Doyet A. Early III</u> | Expedited Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | | |
| Court Reporter(s) <u>Brenda Sigwald</u> | Opposing Counsel <u>Robert G. Bone, pro se, Albert D. Bone, pro se, Bryan P. Kelley for Liberty Mutual Ins</u> | | |

Requestor's Signature: s/John E. Cheatham
(Typed name will serve as signature)

Date: 1-19-19

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

| For Court Reporter Use Only | | | |
|---|-------------------------------|-------------------------------|--------------------------|
| Full Name _____ | Date Received _____ | Email Address _____ | |
| Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____ | | | |
| Mailing Address for Payment _____ | City _____ | State _____ | Zip Code _____ |

Bryan Kelley

From: John E. Cheatham <jcheathamlaw@gmail.com>
Sent: Monday, February 25, 2019 2:33 PM
To: Sigwald, Brenda J.; transcripts; Bryan Kelley
Subject: Re: Transcripts

Ms. Sigwald,

I will put a check in the mail for \$45.00 today.

Regards,

John E. Cheatham

On Mon, Feb 25, 2019 at 7:08 AM Sigwald, Brenda J. <bsigwald@sccourts.org> wrote:
?Mr. Cheatham,

I have the transcripts ready. I can send them both email, but there is an additional charge of \$45 to send a transcript both through the US mail and email. Please let me know if you still want me to mail one through US Mail.

Thank you!

Brenda J. Sigwald
Circuit Court Reporter
To the Honorable Doyet A. Early III
P.O. Box 206
Jackson, SC 29831

From: John E. Cheatham <jcheathamlaw@gmail.com>
Sent: Monday, February 18, 2019 1:39 PM
To: Sigwald, Brenda J.; transcripts; Bryan Kelley
Subject: Transcripts

Ms Sigwald,

I would like an email of both and a hard copy of the September transcript.

John E. Cheatham

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**Bryan Kelley**

---

**From:** Sigwald, Brenda J. <bsigwald@sccourts.org>  
**Sent:** Wednesday, April 10, 2019 2:20 PM  
**To:** Bryan Kelley; transcripts  
**Cc:** Christine McBride; John E. Cheatham  
**Subject:** Re: Transcripts

Good Afternoon, Mr. Kelley,

Your email will serve as a request for the transcript.

Do you want the transcripts sent via email for you to print if needed; or would you like for me to send you hard copies?

Mr. Cheatham received the transcripts on the 26th of February, 2019.

Thank you!

Brenda J. Sigwald  
Circuit Court Reporter  
Second Judicial Circuit  
P.O. Box 206  
Jackson, SC 29831

---

**From:** Bryan Kelley <bkelley@elmoregoldsmith.com>  
**Sent:** Wednesday, April 10, 2019 10:28 AM  
**To:** Sigwald, Brenda J.; transcripts  
**Cc:** Christine McBride; John E. Cheatham  
**Subject:** RE: Transcripts

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Sigwald:

Thank you for your reply. You are correct in that I had not previously submitted a formal order, but would like to proceed with submitting one. I am also interested in the date that Mr. Cheatham's request was fulfilled, for the purpose of monitoring the appeal. Are you able to provide this?

Please let me know what else you need from me to facilitate the formal order.

Thanks in advance,

Bryan P. Kelley  
Attorney  
bkelley@elmoregoldsmith.com

Elmore Goldsmith, P.A.

55 Beattie Place, Suite 1050 (29601)  
Post Office Box 1887 | Greenville, SC 29602 T (864) 255.9500 | F (864) 255.9505 vCard | Website | Blog

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-----Original Message-----

From: Sigwald, Brenda J. <bsigwald@sccourts.org>

Sent: Monday, April 8, 2019 6:20 AM

To: Bryan Kelley <bkelley@elmoregoldsmith.com>; transcripts <transcripts@sccourts.org>

Cc: Christine McBride <cmcbride@elmoregoldsmith.com>; John E. Cheatham <jcheathamlaw@gmail.com>

Subject: Re: Transcripts

Good Morning, Mr. Kelley,

I have just returned from a week of vacation and received your emails.

These transcripts are complete. After reviewing all of the past emails regarding these transcripts, I do notice that you are copied on many, but I do not have an official order for a copy of these transcripts. They were emailed to Mr. Cheatham well within my 60 day allowed time.

if you would like to officially order a copy, please let me know and I will be glad to get them to you. I never send transcripts without that, as well as a commitment to pay for said transcripts.

I look forward to hearing from you.

Sincerely,

Brenda J. Sigwald  
Circuit Court Reporter  
Second Judicial Circuit  
P.O. Box 206  
Jackson, SC 29831

---

From: Bryan Kelley <bkelley@elmoregoldsmith.com>

Sent: Thursday, April 4, 2019 9:00 AM

To: transcripts

Cc: Christine McBride; John E. Cheatham; Sigwald, Brenda J.

Subject: FW: Transcripts

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Sir/Madam:

Please see the attached e-mail to Brenda Sigwald and her automated reply below. If Ms. Sigwald is out on extended leave, please advise as to whether another court reporter will be addressing the underlying transcript request from the

appellant, Vivy Bone. This transcript request relates to 2016-CP-02-2576. I am happy to provide additional information if needed.

Bryan P. Kelley  
Attorney  
bkelley@elmoregoldsmith.com

Elmore Goldsmith, P.A.

55 Beattie Place, Suite 1050 (29601)  
Post Office Box 1887 | Greenville, SC 29602 T (864) 255.9500 | F (864) 255.9505 vCard | Website | Blog

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-----Original Message-----

From: Sigwald, Brenda J. <bsigwald@sccourts.org>  
Sent: Thursday, March 28, 2019 10:01 AM  
To: Bryan Kelley <bkelley@elmoregoldsmith.com>  
Subject: Automatic reply: Transcripts

I am out of the office until Monday, July 13. I will respond to all emails as soon as possible when I return.  
~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

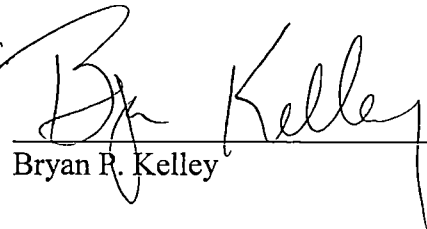
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF BRYAN P. KELLEY

Personally appeared before me, Bryan P. Kelley, who being sworn, deposes and states the following:

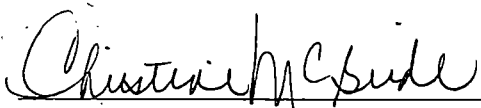
1. My name is Bryan P. Kelley, I am over the age of eighteen and make this Affidavit of my own personal knowledge.
2. I am counsel of record for Liberty Mutual Insurance Company (“Liberty Mutual”) in the matter In Re Albert Dempsey Bone, An Incapacitated Person; Vivy Haynes Bone v. Robert G. Bone, Conservator; and Liberty Mutual Insurance Company, a matter appealed to the Court of Appeals in the State of South Carolina from the Court of Common Pleas of Aiken County, bearing Civil Action No. 2016-CP-02-2576.
3. I have reviewed Exhibits A, B, and C to Liberty Mutual’s Motion to Dismiss this appeal.
4. Exhibits A, B, and C are true and correct copies of e-mails I received from jcheathamlaw@gmail.com and bsigwald@sccourts.org, respectively.
5. I am informed and believe that counsel for the Appellant, John E. Cheatham, owns and operates the e-mail account jcheathamlaw@gmail.com.

FURTHER AFFIANT SAYETH NAUGHT



Bryan R. Kelley

SWORN AND SUBSCRIBED
Before me this 12th day of April, 2019



Notary Public for SOUTH CAROLINA
My Commission Expires:

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APR 15 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case No: 2019-000051
Case No.: 2016-CP-02-02576

In the Matter of Albert D. Bone,
An Incapacitated Person, Respondent

Vivy Haynes Bone,

Appellant,

v.

Robert G. Bone, Conservator;
and Liberty Mutual Insurance
Company,

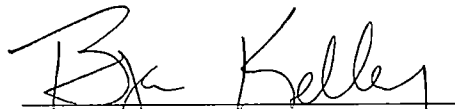
Respondents.

RECEIVED
APR 15 2019
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served Liberty Mutual Insurance Company's Motion to Dismiss on Appellant by depositing a copy of it in the United State Mail, postage prepaid, on April 12, 2019, addressed to her attorney of record, John E. Cheatham, 102 Harmon Street, Lexington, South Carolina, 29072. A copy of the Motion was also served on Respondent Robert G. Bone, 888 Currytown Road, North Augusta, South Carolina, 29861 and Respondent Albert D. Bone, 803 Vancouver Road, North Augusta, South Carolina, 29841 by depositing a copy of it in the United State Mail, postage prepaid, on April 12, 2019.

April 12, 2019


Bryan P. Kelley (SC Bar 11704)
Elmore Goldsmith, P.A.
Post Office Box 1887
Greenville, South Carolina 29602
(864) 255-9500
*Attorney for Respondent Liberty Mutual
Insurance Company*

April 12, 2019

Via Federal Express

V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
APR 15 2019
SC Court of Appeals

Re: *Vivy Haynes Bone v. Robert Bone, et al.*
Appellate Case No. 2019-000051

Dear Ms. Allen:

Enclosed please find one original and six copies of Liberty Mutual Insurance Company's Motion to Dismiss in connection with the above-referenced matter. Also enclosed is our firm's check in the amount of \$50 to cover the filing fee. Please process according to your usual procedures, and return a filed copy to my attention in the enclosed return envelope.

By copy of this letter and enclosures, we are serving Appellant's counsel, Robert G. Bone, and Albert D. Bone with the Motion to Dismiss.

Should you have any questions, please do not hesitate to contact this office.

Very truly yours,

ELMORE GOLDSMITH, P.A.



Christine McBride, CP
Certified Paralegal to Mason A. Goldsmith, Jr.
and Bryan P. Kelley

/cm

Enclosures

cc John E. Cheatham (w/enc.)
Robert G. Bone (w/enc.)
Albert D. Bone (w/enc.)

ELMORE GOLDSMITH, P.A.

ORIGINATOR (004) 233-9300
CHRISTINE MCBRIDE
ELMORE GOLDSMITH, PA
55 BEATTIE PLACE, SUITE 1050

SHIP DATE: 12 APR 19
ACTWGT: 1.00 LB
CAD: 2560298/INET4100

GREENVILLE, SC 29601
UNITED STATES US

BILL SENDER

TO V. CLAIRE ALLEN, DEPUTY CLERK
SC COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29201

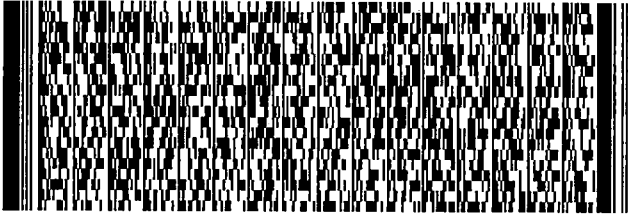
(803) 734-1890
INV:
PO:

REF: 1030-96

DEPT:

RECEIVED
APR 15 2019
SC Court of Appeals

566J1J07E523AD



FedEx
Express



J191019070701ur

MON - 15 APR 10:30A
PRIORITY OVERNIGHT

TRK# 7749 6114 0449

DSR

XH USCA

29201

SC-US CAE

