

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

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MAY 16 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
REPLY TO APPELLANT'S RETURN TO 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
Telephone: (803) 359-2828
Facsimile: (803) 359-0642
Attorney for Appellant

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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REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

COMES NOW Respondent Liberty Mutual Insurance Company (“Liberty Mutual”), by and through its undersigned counsel, pursuant to Rule 240(f), SCACR, and offers the following Reply to the Appellant’s Return to Liberty Mutual’s Motion to Dismiss. In support of Liberty Mutual’s Motion to Dismiss, we show unto the Court following:

Appellant’s Return does not dispute Liberty Mutual’s contention that Appellant received the transcript of the underlying proceeding on February 26, 2019. It offers no rational basis for Appellant’s failure to notify the Court of such receipt, or for Appellant’s failure to submit her Appellate brief within 30 days as required by Rule 208(a)(1), SCACR.

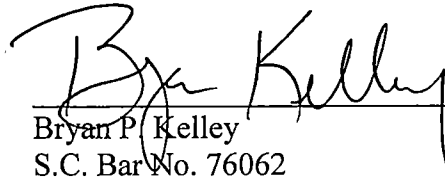
To the extent Appellant’s Return contends Liberty Mutual’s Motion to Dismiss failed to comply with Rule 240, SCACR, Liberty Mutual disputes such contention and simply rests upon the form and content of its Motion as submitted to the Court and provided to the parties. To the extent Appellant’s Return contends Liberty Mutual failed to provide counsel with a full and complete copy of its Motion to Dismiss as required by Rule 240(d), SCACR, Liberty Mutual disputes such contention and directs the Court to the Affidavit of Christine McBride. (Exhibit A.)

Finally, we note that Appellant’s Return fails to comply with Rule 240(e) in that it was served on May 10, 2019, more than 10 days after Liberty Mutual’s Motion to Dismiss was served on April 12, 2019.

Wherefore, based on the foregoing and on the underlying Motion to Dismiss, Liberty Mutual prays that this Court enter an Order dismissing this appeal pursuant to Rule 208(a)(4), SCACR.

SIGNATURE ON FOLLOWING PAGE

May 15, 2019

A handwritten signature in black ink, appearing to read "Bryan P. Kelley", is written over a horizontal line.

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

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AFFIDAVIT OF CHRISTINE MCBRIDE

Personally appeared before me, Christine McBride, who being duly sworn, deposes and says:

1. My name is Christine McBride, and I am over the age of eighteen (18) years; and legally competent to make this Affidavit.
2. This Affidavit is based upon my personal knowledge and experience regarding the facts stated herein.
3. That I have been employed with the law firm of Elmore Goldsmith, P.A. since 2010.
4. That I have been a Certified Paralegal since 2015.

5. Over the last nine years, I have diligently sent out hundreds of envelopes containing documents.

6. I have never received any complaints from anyone that enclosures I referenced in a letter were not included in the envelope.

7. On April 12, 2019, I diligently prepared Liberty Mutual Insurance Company's Motion to Dismiss and the Proof of Service for filing with the State of South Carolina Court of Appeals pursuant to the South Carolina Appellate Court Rules.

8. I copied the requisite number of copies of the Motion to Dismiss to be sent to the Court and prepared a letter to the V. Claire Allen, Deputy Clerk, of the South Carolina Court of Appeals copying all parties.

9. I also copied the requisite number of copies of the Motion to Dismiss to be sent out to John Cheatham, Appellant's Counsel and Albert D. Bone and Robert G. Bone, Respondents.

10. I diligently double-checked each envelope to confirm that the enclosure of the clerk's letter and Liberty Mutual Insurance Company's Motion to Dismiss and Proof of Service were included.

11. I placed all documents referenced in Paragraph 9 above in a Federal Express Envelope addressed to V. Claire Allen, Deputy Clerk, of the South Carolina Court of Appeals.

12. I placed all documents referenced in Paragraph 9 above in separate envelopes to John Cheatham, Albert D. Bone, and Robert G. Bone, respectively.

13. The envelope addressed to Mr. Cheatham bore the following address: John E. Cheatham, Law Office of John E. Cheatham, P.A., 102 Harmon Street, Lexington, South Carolina, 29072.

14. The correct postage was added to each envelope addressed to John Cheatham, Albert D. Bone, and Robert G. Bone and all envelopes were placed in our firm's mail bin to be delivered by the United States Postal Service.

15. As of the date of this Affidavit, the copy of Liberty Mutual Insurance Company's Motion that was mailed to John Cheatham has not been returned by the United States Postal Service as undeliverable.

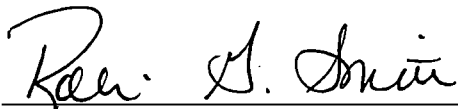
16. I declare that the information provided herein is true and correct to the best of my knowledge, information, and belief.

FURTHER AFFIANT SAYETH NAUGHT.



Christine McBride, CP
Certified Paralegal to Bryan P. Kelley

Sworn to and subscribed before me
this 15th day of May 2019.



Notary Public, State of South Carolina
My commission expires: 4-13-25

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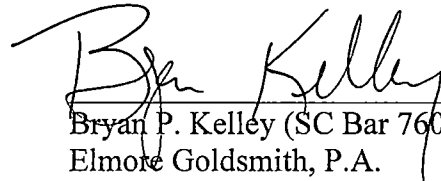
Respondents.

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PROOF OF SERVICE

I certify that I have served Respondent Liberty Mutual Insurance Company's Reply to Appellant's Return to Motion to Dismiss on Appellant via facsimile (#803-359-0642) and by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2019, addressed to her attorney of record, John E. Cheatham, 102 Harmon Street, Lexington, South Carolina, 29072. A copy of the Reply 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 States Mail, postage prepaid, on May 15, 2019.

May 15, 2019


Bryan P. Kelley (SC Bar 76062)
Elmore Goldsmith, P.A.
Post Office Box 1887
Greenville, South Carolina 29602
(864) 255-9500
*Attorney for Respondent Liberty Mutual
Insurance Company*

May 15, 2019

Via Facsimile and Federal Express

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

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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 Respondent Liberty Mutual Insurance Company's Reply to Appellant's Return to Motion to Dismiss in connection with the above-referenced matter. 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 via facsimile and U.S. Mail, and Robert G. Bone, and Albert D. Bone via U.S. Mail.

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 (*via facsimile and U.S. Mail w/enc.*)
cc Robert G. Bone (*via U.S. Mail w/enc.*)
cc Albert D. Bone (*via U.S. Mail w/enc.*)

ELMORE GOLDSMITH, P.A.

CHRISTINE MCBRIDE
ELMORE GOLDSMITH, PA
55 BEATTIE PLACE, SUITE 1050

SHIP DATE: 05/14/19
ACTWGT: 0.50 LB
CAD: 2560298/INET4100

GREENVILLE, SC 29601
UNITED STATES US

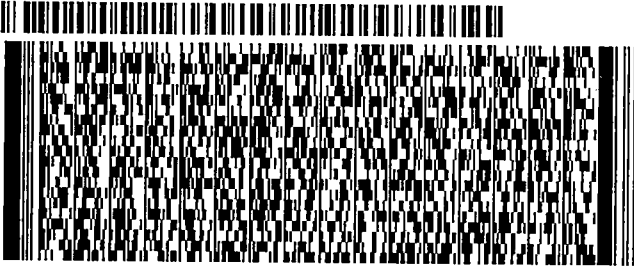
BILL SENDER

TO **V. CLAIRE ALLEN, DEPUTY**
THE SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

565J1/D66C/23AD

COLUMBIA SC 29201

(803) 734-1890 REF: 1030-96
INV:
PO: DEPT:



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Express



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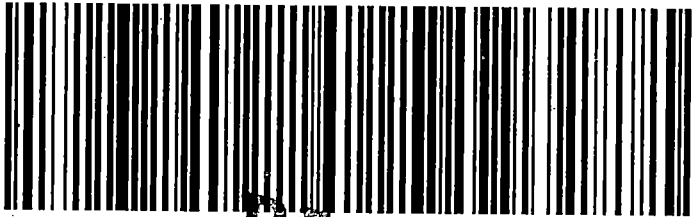
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