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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-002095

RECEIVED

JUL 30 2019

SC Court of Appeals

Jeanne Knollinger,

Appellant,

v.

Ryan Noel Oliver,

Respondent.

RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S
DESIGNATED MATTER IN THE RECORD ON APPEAL

Pursuant to Rules 240 and 210, S.C.A.C.R., Respondent seeks an Order from the Court excluding the majority of documents contained in Appellant's Designation of the Record on Appeal. "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210, S.C.A.C.R. A party must "provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

This appeal concerns a defense verdict for the Respondent in a trial conducted in Richland County from September 4, 2018, to September 5, 2018. In her Designation of Matter to be included in the Record on Appeal, the Appellant has designated numerous documents which were not introduced in the trial of this matter. Thus, these items are not proper for inclusion here, and the Respondent moves to a) strike them from any Record submitted in this appeal; and b) strike any corresponding reference to them found in the Appellant's Initial Brief.

NATURE OF THIS CASE

This case involves a vehicular accident involving Appellant and Respondent which occurred on December 11, 2014. At the time of the accident, Respondent was operating a truck he rented from Enterprise Leasing Company – Southeast, LLC, d/b/a Enterprise Rent-A-Car (“Enterprise Leasing”). Plaintiff brought an Action against both Respondent and Enterprise Leasing. In its Answer, Enterprise Leasing asserted a counterclaim for property damage against Appellant. During the course of discovery, Enterprise Leasing produced internal documentation and provided Rule 30(b)(6), S.C.R.C.P. deposition testimony. Appellant also took the *de benne esse* deposition of an ex-Enterprise Leasing employee. Enterprise Leasing eventually voluntarily dismissed its counterclaim against the Appellant. Appellant subsequently dismissed Enterprise Leasing as a party.¹

¹ Enterprise Leasing succeeded at summary judgment in having the Court dismiss the negligent entrustment cause of action against it. The Court's ruling on Appellant's negligence cause of action was held in abeyance pending Enterprise Leasing's production of certain documents to Appellant. Once Enterprise Leasing satisfied the Court's request and renewed its Motion for Summary Judgment, Appellant dismissed Enterprise Leasing entirely.

Prior to the trial, Respondent moved in limine to exclude, *inter alia*, a) the internal documentation produced by Enterprise Leasing; b) the *de benne esse* testimony of the ex-Enterprise Leasing employee; c) a statement from an unidentified witness allegedly made at the scene of the accident; and d) evidence that Enterprise Leasing had asserted a counterclaim. The trial judge granted Respondent's motions as to these issues. Once the trial began, Appellant never raised any of these issues and did not proffer any evidence she deemed improperly excluded at the pre-trial stage. After a verdict for the Respondent, Appellant filed this appeal alleging error in the trial judge: a) not admitting the evidence excluded pre-trial; and b) not granting Appellant's post-trial motions.

ARGUMENT

Appellant has designated twenty-one (21) documents in her Designation of the Matter to be Included in the Record on Appeal. Of those, only the following are appropriate inclusions:

1. Summons and Complaint
2. Answer and Counterclaim
3. Appellant's Answer to Counterclaim
14. Respondent's Motions in Limine
15. Transcript of Proceedings (Including all Exhibits)
16. Appellant's Motion to Alter or Amend
17. Respondent's Response to Appellant's Motion to Alter or Amend
18. Order Denying Appellant's Motion to Alter or Amend
19. Notice of Appeal

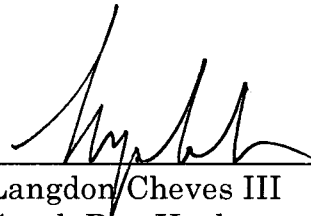
The remainder of the documents proposed by Appellant relate to matters that were never presented to the Court during the trial of this matter and are improper in a Record on Appeal.

Some of the documents improperly sought to be included in the Record, such as emails between counsel, would not be allowed under any circumstance. Moreover, motions and memoranda relating to motions for summary judgment also have no bearing this Appellate Court's determination of whether the trial judge committed reversible error. Primarily, the impermissible documents relate to issues deemed inadmissible by the trial judge in ruling on Respondent's motion in limine, which were argued during pre-trial proceedings. A ruling on a motion in limine is not the ultimate disposition on the admissibility of evidence, which is subject to change based upon developments at trial. State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). If the court excludes the evidence in its in limine ruling, the proponent must proffer it during trial to preserve any error on appeal. See Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App. 1992) (Motions in limine are not final determinations of whether evidence will be admitted at trial); See also State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996) (a ruling in limine is not a final ruling on the admissibility of evidence; unless a final ruling is made, the issue is not preserved for review).

Because Appellant never made a proffer of the excluded evidence, Appellant is barred from asking this Appellate Court to consider it. The failure to proffer excluded evidence prevents consideration of the issue. State v. Nelson, 322 S.C. 377, 471 S.E.2d 767 (Ct. App. 1996), *rev'd on other grounds*, State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). "It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly

what the rejected testimony would have been.” State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979); *see also* State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984) (failure to make an offer of proof prevents the appellate court from determining whether the exclusion of testimony is prejudicial and thus precludes the appellant from raising the issue on appeal).

For these reasons, Respondent respectfully requests this Court strike from Appellant’s Designation of Matter to be Included in the Record on Appeal nos. 4 – 13 and 20 – 21.



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ATTORNEYS FOR RESPONDENT

July 29, 2019

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CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Turner Padgett Graham & Laney, P.A., attorneys for Respondent Ryan Noel Oliver, do hereby certify that I have served Appellant and all counsel in this Action with a copy of the Motion hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Motion: Respondent's Motion to Strike Portions of Appellant's Designated Matter in the Record on Appeal

Counsel Served: Ryan C. Andrews
Cobb Dill & Hammett, LLC
222 W. Coleman Blvd.
Mt. Pleasant, S.C. 29464

Anna M. Brock

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Legal Assistant

Greenville, S.C.
July 29, 2019

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Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Jeanne Knollinger v. Ryan Noel Oliver
Docket No.: 2016-CP-40-02573
TP File No.: 09594.00256

Dear Sir or Madame:

Enclosed please find the original and six copies of Respondent's Motion to Strike Portions of Appellant's Designated Matter in the Record on Appeal in regards to the above-referenced matter. Please file the original and return the clocked copies to me at your earliest convenience in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I remain,

Sincerely,

TURNER PADGET GRAHAM & LANEY, P.A.



Anna Brock
Paralegal to Langdon Cheves, III

Enclosures

cc: Ryan Andrews

Hasler

FIRST-CLASS MAIL

07/29/2019

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