

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

AUG 19 2019

SC Court of Appeals

Jeanne Knollinger,

Appellant,

v.

Ryan Noel Oliver,

Respondent.

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

Respondent Ryan Noel Oliver respectfully submits this Reply to Return to Motion to Strike. For the reasons set forth below, and for the reasons set forth in Respondent's previously-filed Motion to Strike Portions of Appellant's Designated Matter in the Record on Appeal, Respondent requests this Court grant his Motion to Strike.

Appellant's Notice of Appeal filed with this Court on November 20, 2018, asserts that she is appealing the Final Judgment of the Honorable Jocelyn Newman of October 20, 2018. Judge Newman's judgment was a denial of Appellant/Plaintiff's post-trial motions after a jury verdict for the defendant. Therefore, the only

documents vital to a determination of whether Judge Newman made an error of law are the Trial Transcript with accompanying trial exhibits, post-trial filings and Judge Newman's Final Order. Respondent concedes the pleadings in a matter are often included in a Record on Appeal, as well. However, this Court should not consider any evidence which were either not considered by the jury or not preserved for appellate review through proffer to the Court during the trial.

Appellant's Return sets forth allegations of fact which were not considered by the jury. Appellant's failure to proffer evidence at trial substantiating these allegations is fatal to her argument that this Court should consider that evidence in determining whether judicial error occurred. Moreover, Appellant's reliance on Rule 208(b)(1)(C), S.C.A.C.R., is misplaced in that she suggests the "Statement of the Case" portion of a brief is a portal through which a party may remedy her failure to preserve evidence for review.

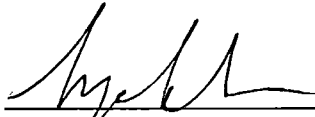
Appellant also sets forth a litany of cases standing for the proposition that a proffer of evidence is not necessary when a final judgment has been issued. However, in these cases, a "final judgment" is classified as a ruling which occurs not pre-trial, but instead just prior to the evidence at issue being introduced. *See State v. Mueller*, 319 S.C. 266, 268, 460 S.E.2d 409, 410 (Ct. App. 1995) ("[b]ecause no evidence was presented between the ruling and [witness's] testimony, there was no basis for the trial court to change its ruling"); see also *State v. Atieh*, 397 S.C. 641, 647, 725 S.E.2d 730, 733 (Ct. App. 2012) ("The exception [mentioned above]

regarding motions in limine is not applicable in this case because the former employees were not called as witnesses immediately after the motion in limine”).

In the matter at bar, all evidentiary rulings occurred pre-trial and prior to the introduction of any testimony or other forms of evidence. These rulings were preliminary, and the Appellant had ample opportunity to request the trial court redress any alleged errors it had made once the map of the case unfolded. Appellant failed to do so; therefore, the evidence Respondent seeks to strike from the Record on Appeal was not preserved.

In any event, even if the Court’s granting of Respondent/Defendant’s pre-trial motions in limine could be considered final judgments on the issues, Appellant/Plaintiff was still obligated to proffer the evidence for appropriate appellate review. The 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. 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).

For these reasons as well as the reasons raised in Respondent’s initial Motion, Respondent respectfully requests the Court grant its Motion to Strike Portions of Appellant’s Designated Matter in the Record on Appeal.



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August 14, 2019

ATTORNEYS FOR RESPONDENT

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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 Reply to Return to Motion to Strike hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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

Counsel Served: Ryan C. Andrews
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Anna M. Brock

Anna Brock
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Greenville, S.C.
August 14, 2019

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REPLY TO:
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August 15, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court for the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Jeanne Knollinger v. Ryan Noel Oliver
Civil Action No.: 2016-CP-40-2573

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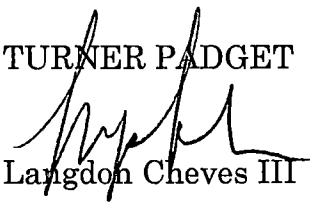
Dear Ms. Kitchings:

Please find enclosed the original and six copies of Respondent's Reply to Return to Motion to Strike Portions of Appellant's Designated Matter in the Record on Appeal.

With kind regards, I am

Sincerely,

TURNER PADGET


Langdon Cheves III

Enclosures

cc: Ryan C. Andrews, Esq.

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