

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
In The Circuit Court

The Honorable Allison Lee, Circuit Court Judge
The Honorable Jocelyn Newman, Circuit Court Judge

RECEIVED

MAR 26 2020

SC Court of Appeals

Appeal No.: 2019-001279

Amy Potts..... Respondent

v.

McCarty Enterprises, LLC, John Miles McCarty, Audrey S. McCarty, a/k/a Audrey
J. McCarty and Jane Doe..... Appellants

**MOTION FOR AN EXTENSION OF TIME AND PERMISSION
TO SERVE THE RECORD ON APPEAL OUT OF TIME**

The appellants, McCarty Enterprises, LLC, John Miles McCarty, Audrey S. McCarty, a/k/a Audrey J. McCarty and Jane Doe, by and through their undersigned Counsel, hereby move before the South Carolina Court of Appeals, pursuant to South Carolina Appellate Court Rules 210 and 240, for an extension of time until and permission to serve the Record on Appeal out of time on March 26, 2020, due to the unavailability of the Exhibits designated by Respondent in her designation of Matter.


The undersigned consulted Respondent's Counsel by email on March 5, 2020, and advised him that while assembling the Record on Appeal it was discovered that Appellants had never received the Exhibits Respondent designated in Designation of Matter. At the Damages Hearing, the undersigned was never provided copies of the Exhibits by Respondent. (See Exhibit A)

Instead, Respondent indicated that Respondent's Counsel and Appellant would just "have to share it." (See Exhibit B). Appellant followed the Court Reporter's instructions to try to obtain copies by first pursuing the exhibits from the Lexington County Clerk. Appellant's counsel then contacted the Saluda County's Clerk's Office. Saluda County's Clerk first forwarded the wrong Exhibits from the Motion hearing in front of Judge Keesley on April 28, 2016, rather than the Damages hearing in front of Judge Lee on April 5, 2019. (See Exhibit C)

Finally, on the late afternoon of Monday, March 23, 2020, the Saluda County Clerk sent the correct exhibits. (See Exhibit D). As indicated it would be in Exhibit A, the Record on Appeal has now been served on Respondent's counsel within three (3) days of receipt of the Exhibits. (See Proof of Service filed contemporaneously herewith.)

As such, Appellant seeks, pursuant to South Carolina Appellate Court Rules 210 and 240, for an extension of time until and permission to serve the Record on Appeal out of time on March 26, 2020, due to the unavailability of the exhibits designated by Respondent in her Designation of Matter and afford the parties an additional twenty (20) days from today to serve their final briefs.

The undersigned certifies that she consulted with Respondent's Counsel regarding this matter on March 5, 2020 and again on March 26, 2020, but such consultations were not fruitful.


Candy M. Kern, Esq. (SC Bar 11392)
Upstate Law Group, LLC
POB 238
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Candy@UpstateLawGroup.com
(864) 226-8938

-- and --

Peter A. Rutledge, Esq. (SC Bar #15899)
Rutledge Law LLC
66 Faris Road
Greenville, SC 29605
Peter@PRutLaw.com
(864) 906-2521

March 26, 2020

ATTORNEY FOR APPELLANT

EXHIBIT A

Candy M. Kern-Fuller, Esq.

From: Candy M. Kern-Fuller, Esq. <candy@upstatelawgroup.com>
Sent: Thursday, March 5, 2020 9:18 PM
To: 'Lakecottage@comporium.net'; 'EVANLACKE@lackelawfirm.com'
Cc: 'Peter Rutledge'
Subject: FW: AMY POTTS VS. McCARTY ENTERPRISES, ET AL. 2015CP41-00139 4/5/19 JUDGE LEE LEXINGTON

Importance: High

Dear Mr. Potts/Mr. Lacke:

As you will see from below, the Court Reporter did not provide as part of the transcript the exhibits you have designated in your designation of matter. I will attempt to get the exhibits from the Clerk tomorrow. However, will you consent to allowing me three days from my receipt of the Exhibits to serve the Record on Appeal on you both?

The Record is assembled and I am only missing these three exhibits. I will send a preliminary draft of it by separate email this evening.

****PLEASE NOTE NEW ADDRESS AND PHONE NUMBER ****

Candy M. Kern, Esq., Attorney
Upstate Law Group, LLC
P.O. Box 238
Anderson, SC 29622
(864) 226-8938 (Ph/Fax)

**** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 20 YEARS ****

RECEIVED

MAR 26 2020

SC Court of Appeals

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL OR FAX TO THE NUMBER INDICATED ABOVE. This firm is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose

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

From: Candy M. Kern-Fuller, Esq. <candy@upstatelawgroup.com>
Sent: Thursday, March 5, 2020 9:05 PM
To: 'LeBlanc, Steven' <sleblanc@sccourts.org>
Cc: 'susan@upstatelawgroup.com' <susan@upstatelawgroup.com>
Subject: RE: AMY POTTS VS. McCARTY ENTERPRISES, ET AL. 2015CP41-00139 4/5/19 JUDGE LEE LEXINGTON

Ok. I have just never gotten a trial transcript without them. I will inquire at the Clerk's office tomorrow.

Thank you,
Candy

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

From: LeBlanc, Steven <sleblanc@sccourts.org>
Sent: Thursday, March 5, 2020 8:38 PM
To: candy@upstatelawgroup.com
Subject: Re: AMY POTTS VS. McCARTY ENTERPRISES, ET AL. 2015CP41-00139 4/5/19 JUDGE LEE LEXINGTON

Ms. Kern-Fuller, the exhibits are retained by the Clerk of Court for Lexington County. Circuit court reporters never retain exhibits.

From: Candy M. Kern-Fuller, Esq. <candy@upstatelawgroup.com>
Sent: Thursday, March 5, 2020 6:39:49 PM
To: LeBlanc, Steven
Cc: susan@upstatelawgroup.com
Subject: RE: AMY POTTS VS. McCARTY ENTERPRISES, ET AL. 2015CP41-00139 4/5/19 JUDGE LEE LEXINGTON

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

Dear Mr. LeBlanc:

As I have begun preparing the Record on Appeal, I have discovered that we did NOT get the Exhibits. Mr. Potts has designated Exhibits 1, 4 and 6 to be included in the Record on Appeal.

Can you please email those to me ASAP as it does not appear I ever got any of them?

****PLEASE NOTE NEW ADDRESS AND PHONE NUMBER ****

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

From: LeBlanc, Steven <sleblanc@sccourts.org>
Sent: Monday, December 2, 2019 10:52 PM
To: susan@upstatelawgroup.com
Subject: AMY POTTS VS. McCARTY ENTERPRISES, ET AL. 2015CP41-00139 4/5/19 JUDGE LEE LEXINGTON

Susan, attached hereto please find above referenced matter. I will mail overpayment to you. Thank you for your patience. Steve.

~~~~ 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.

# EXHIBIT B

1 surgery in one of her legs, one of her rear legs. I don't  
2 remember which one it was at this time, but it was a TPLO  
3 surgery which is very extensive which involves cutting away  
4 part of the bone, putting some metal in the knee and whatever  
5 and it was an extensive recovery and rehabilitation. I worked  
6 with her every day and I think I bonded with her even more  
7 because dogs don't understand why these things are happening  
8 to them and I felt real bad for her, but I just had, I just  
9 really bonded with her during this time.

10 Q. Was that a \$2600.00 surgery?

11 A. Yes. It was expensive for us. At any rate, so she  
12 recovered. She was never able - she could run and she didn't  
13 limp or whatever, but it did permanently affect her in some  
14 ways, but she was a healthy happy dog and that's all I can say  
15 is that she just was my best friend. I was her person and she  
16 was my dog and I never had that before and I loved her.

17 Q. Amy, I'm going to hand you something. Can you tell  
18 the Court what they are?

19 MS. KERN-FULLER: Your Honor, Mr. Potts, do you have  
20 a copy for me while she is testifying?

21 MR. POTTS: No. We'll have to share it.

22 BY THE WITNESS:

23 A. It's just pictures.

24 THE COURT: Just make sure she sees whatever  
25 documents or photographs before you pass them up.

# EXHIBIT C

**Candy M. Kern-Fuller, Esq.**

---

**From:** Candy M. Kern-Fuller, Esq. <candy@upstatelawgroup.com>  
**Sent:** Wednesday, March 18, 2020 3:13 PM  
**To:** 'E.Rodgers@saludacounty.sc.gov'  
**Cc:** 'susan@upstatelawgroup.com'  
**Subject:** FW: [External] Exhibits from April 5, 2019 Hearing  
**Attachments:** Image.tif; Image (2).tif; Image (3).tif

Dear Ms. Rodgers:

We have still been unable to get copies of the trial exhibits for creating our Record on Appeal. I thank you for sending the attached exhibits; however, I believe these are the exhibits from the motion hearing in front of Judge Keesley on April 28, 2016. The Exhibits we need are Exhibits 1, 4 and 6 from the April 5, 2019, damages hearing in front of the Honorable Alison Renee Lee.

Can you locate the trial exhibits and email them to us? I appreciate it! If there is something else we need to do, please let us know. If you need to reach me, my cell is 864-905-3610.

Thank you,

**\*\*PLEASE NOTE NEW ADDRESS AND PHONE NUMBER \*\***

Candy M. Kern, Esq., Attorney  
Upstate Law Group, LLC  
P.O. Box 238  
Anderson, SC 29622  
(864) 226-8938 (Ph/Fax)

**\*\* CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 20 YEARS \*\***

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**This firm is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose**

# EXHIBIT D

**Candy M. Kern-Fuller, Esq.**

---

**From:** Rodgers, Erin <E.Rodgers@saludacounty.sc.gov>  
**Sent:** Monday, March 23, 2020 3:50 PM  
**To:** candy@upstatelawgroup.com; Susan@upstatelawgroup.com  
**Subject:** Exhibits 1,4,6 of Case # 2015-CP-41-00139  
**Attachments:** Scanned from a Saluda County Xerox multifunction device.pdf

I hope this is everything that you needed.  
If you have any more questions please feel free to email or call me.

Thanks,  
Erin Rodgers

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

**From:** COCXerox@saludacounty.sc.gov [mailto:COCXerox@saludacounty.sc.gov]  
**Sent:** Monday, March 23, 2020 3:43 PM  
**To:** Rodgers, Erin <E.Rodgers@saludacounty.sc.gov>  
**Subject:** Scanned from a Saluda County Xerox multifunction device

Please open the attached document. It was sent to you using a Saludda County Xerox multifunction printer.

**Sent by:** [COCXerox@saludacounty.sc.gov]  
**Attachment File Type:** pdf, Multi-Page

**Multifunction Printer Location:** Clerk of Court Back  
**Device Name:** XRX9C934E962B3F.saludacountysc.local

For more information on Xerox products and solutions, please visit  
<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.xerox.com&data=02%7C01%7Ce.rodgers%40saludacounty.sc.gov%7Ce58bc059f9ea4dc3c87f08d7cf623f9a%7Ce9f8d01480d84f27b0d6c3d6c085fcdd%7C1%7C0%7C637205893189853998&sdata=cmB3dtz1Nm06P2qRmhps1dWP56L2DGD7AUAtGMk2g%2Fo%3D&reserved=0>

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**PROOF OF SERVICE**

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On this March 26, 2020, the undersigned certifies that pursuant to Supreme Court Order 2020-03-20-01, she filed a copy of the Appellants' Motion for Extension and to Serve the Record on Appeal Out of Time by faxing the same to **The Honorable Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals** at 803-734-1839.

Appellant further served the Respondent with the above Motion and with an electronic copy of the Record on Appeal on March 26, 2020, by emailing the same to Respondent's counsel at their AIS email addresses as follows:

Mr. Frank S. Potts, Esq.  
[lakecottage1945@gmail.com](mailto:lakecottage1945@gmail.com)

Mr. M. Evan Lacke, Esq.  
[EVANLACKE@lackelawfirm.com](mailto:EVANLACKE@lackelawfirm.com)



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March 26, 2020

**ATTORNEY FOR APPELLANT**

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864-226-8938  
Susan@UpstateLawGroup.com



# Fax

|                             |                                         |
|-----------------------------|-----------------------------------------|
| <b>To:</b> Ms. Claire Allen | <b>From:</b> Candy M. Kern, Esq.        |
| <b>Fax:</b> 803-734-1839    | <b>Pages:</b> 16 (including cover page) |
| <b>Phone:</b>               | <b>Date:</b> March 26, 2020             |
| <b>Re:</b> Subject          | <b>cc:</b> Name                         |

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

Pursuant to Supreme Court Order 2020-03-20-01, please see attached for filing. If there is a Motion Fee, please advise. Thank you!

Candy M. Kern, Esq.

Cc: Mr. Frank Potts, Esq. (via AIS email)  
Mr. Evan Lacke, Esq. (via AIS email)

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