

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 15 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court Judge William P. Keesley

CASE No. 2016- CP-10-4122

MICHELE BLANKAppellant

Vs.

PATRICIA TIMMONS, TRUSTEE
OF THE GORDON H. TIMMONS
EXEMPT FAMILY TRUST.....Respondent

**APPELLANT’S REPLY TO RESPONDENT’S RETURN TO
APPELLANT’S MOTION TO STRIKE ITEMS IN
RESPONDENT’S DESIGNATION OF MATTER**

Appellant herewith submits this Reply to Respondent’s Amended Designation of Matter filed in lieu of a Return to Appellant’s Motion to strike certain Items in Respondent’s Designation of Matter to be Included in the Record on Appeal.

None of Appellant’s arguments to strike the Designated Items have been or are subject to rebuttal. Neither Respondent’s Initial Brief nor its Designation of Matter contains specific pages of the Trial Transcript of the four witnesses identified in its Designation of Matter, Gordon Timmons, Michele Blank, Cleve Gillette and Rob Arrington, in violation of R 208(b)(4) and 209(a) S.C.A.C.R. For these reasons, these Items also violate R 209(c) because they cannot be determined to be relevant without the

appropriate citation to facts in the Brief. See Motion at pages 3-5. Therefore, these Items should be stricken. Also, another reason for exclusion of any transcript references for witnesses Gillette and Arrington (identified by Respondent as surveyors) is that their testimony is not relevant to the issues on appeal, i.e. slander of title and nuisance; according to Respondent's Initial Brief at pages 6 and 17, they only testified about the location of the common boundary line, an issue decided against her which Respondent has not appealed. See Motion at page 5-6.

Respondent did not file any Return to Appellant's Motion to strike Certain Designated Items to address these deficiencies but instead served an Amended Designation of Matter to be Included in the Record on Appeal. Appellant urges this Court to reject this Amended Designation in lieu of a Return because Respondent failed to obtain leave of Court to file an Amended Designation or to address the deficiencies raised in Appellant's Motion. Since this Court has extended Respondent the courtesy of two extensions of time to file a Return to this Motion, this Court should decide Appellant's Motion without further delay and grant the relief requested.

Appellant also asserts that this Court should deny Respondent's attempt to file an Amended Designation, despite the fact that it contains specific citations to the Trial Transcript of David Franklin, Jennifer Smith, Michele Blank and Gordon Timmons, because none of these citations are contained in Respondent's Initial Brief as supporting facts alleged therein, as required by R. 208(b)(4), S.C.A.C.R. Without such references, Respondent may not properly certify compliance with R. 209(c), S.C.A.C.R. as to their relevancy.

Moreover, Respondent's Amended Designation contains further revisions of the Designation of Matter which are substantial and unjustified. The Amended Designation contains Trial Transcript references to five more witnesses not even mentioned in its original Designation of Matter, of which three witnesses specifically Chris Lanning, Jennifer Smith and Joel Evans, Amended Designation at pages 2,3&4, are not even mentioned in Respondent's Initial Brief. See Respondent's Brief at pages 1-17. There are no Transcript citations in Respondent's Initial Brief to the other two witness whose names are mentioned, David Franklin and Respondent, Patricia Timmons. Id. In addition, the Amended Designation of Matter asks for inclusion of all of Respondent's Trial Exhibits admitted into evidence, Amended Designation at page 6, without identifying them specifically and again violating R. 209(b)&(c). Also, in Respondent's Initial brief, there are only two of Respondent's exhibits referenced, Exhibit 2& 4. See Respondent's Brief at pages 1-11. These are the only defense Exhibits that should be allowed to be included in the Record on Appeal. See R. 208(b)(4), S.C.A.C.R. Therefore, by filing the Amended Designation, Respondent continues to violate this Court's Rules despite Appellant's objection to these violations that gave rise to this Motion.

By submitting this Amended Designation of Matter, Respondent is burdening this Court and Appellant with the task of identifying what relevance these citations have to the issues on appeal. This Court should firmly reject that attempt and deny any further Amendment to Respondent's Designation of Matter and grant Appellant's Motion to strike the Designated Items in its Motion.

This remedy is just under the circumstances. Appellant's Counsel served the entire Trial Transcript upon Respondent's Counsel on October 13, 2019 and filed the Initial Brief and Designation of Matter on November 13, 2019. Respondent's Counsel failed to file any Initial Brief or Designation of Matter within the time prescribed by R. 208(a)(2), S.C.A.C.R. By letter dated January 6, 2020, the Clerk advised Respondent's Counsel that he had until January 16, 2020 to file an Initial Brief and Designation of Matter or it would not be considered. By letter dated January 14, 2020, Respondent's Counsel's firm requested a 30-day extension due to a personal emergency. On February 4, 2020 Respondent filed an Initial Brief and Designation of Matter. By Order filed March 6, 2020, this Court accepted Respondent's Initial Brief and Designation of Matter for filing and directed Appellant to file her Reply Brief within 30 days.

On March 13, 2020, Appellant filed a Motion to Strike Designated Items from Respondent's Designation of Matter. Respondent then filed a Motion for a 30-day Extension to file a Return on April 13, 2020 and a second Motion for an extension on May 13, 2020.

It is beyond doubt that Respondent's Initial Designation of Matter violated R. 208(b)(4) and 209(a) & (b), S.C.A.R. By filing an Amended Designation of Matter containing substantial changes without obtaining leave of Court and containing similar rule violations, Respondent's Counsel has demonstrated a persistent disregard for this Court's procedures. There is no reasonable basis for any further relief to Respondent.

CONCLUSION

Appellant respectfully urges this Court to grant Appellant's Motion to Strike certain Items as set forth therein and to deny Respondent any further efforts to amend its Designation of Matter based upon a demonstrated pattern of neglect of the Appellate Court Rules.

Respectfully submitted,

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Dated: June 15, 2020