

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas E. Player, Jr., Special Referee
Case No. 2013-CP-43-153
Appellate Case No. 2018-001277

RECEIVED

Jul 13 2020

SC Court of Appeals

Donna Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

RESPONDENT'S REPLY TO APPELLANT'S
RETURN TO THE MOTION TO STRIKE

Respondent Donna Erickson hereby submits this reply to Appellant's response to the motion to strike.

Appellant has, throughout this case, failed to follow the South Carolina Appellate Court Rules. She also fails to understand that the clerk's office will not provide any substantive comments as to a party's filing, and that the correct method to challenge material improperly included in an appeal is the filing of a motion to strike as Respondent properly did.¹ Instead,

¹ As to Appellant's failure to serve the undersigned, Mr. Coffey is not a member of the law firm Lewis Babcock, LLP and has never made an appearance in this matter at the appellate level.

Appellant seeks to relitigate this entire matter by introducing material from cases prior to this lawsuit or proceedings subsequent. The rules are clear: "[the] Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 209, SCACR. Rule 210(c), SCACR, states that "The Record **shall not, however, include matter which was not presented to the lower court or tribunal.**" (emphasis added). Respondent's repeated flouting of the rules has resulted in appeal has been pending for almost two years, and the final briefs and Record on Appeal have not yet been completed, while Respondent is not permitted to proceed with eviction proceedings² and has been forced to spend significant sums defending herself against this frivolous appeal. .

As to the specific items subject to the motion and in reply to Appellant's response:

1. Transcript of Proceedings on November 8, 2011. Appellant admits that this transcript was from a hearing in a matter in the Magistrate's Court. That case is entirely separate than this one and the transcript was never submitted to the Circuit Court. Thus, it cannot constitute the record in this case. Appellant cast aspersions as to Respondent, claiming she has acted fraudulently even though at all times, Respondent was represented by counsel and Respondent complied with all procedural rules. Moreover, while Respondent forcefully denies all such claims of fraud, the time for Respondent to have raised the claims was in the Circuit Court. She failed to do so.

2. Proof that the Appellants have paid for the said property in full. Again, Appellant wrongfully and without foundation claims fraud by the Respondent. The only documents in the

In addition, Respondent has a pattern of failing to serve either attorney, though service on Mr. Coffey is not required since he has not made an appearance in this appeal.

² Respondent acknowledges that the South Carolina Supreme Court issued an order prohibiting evictions during COVID19, but this case far preceded the current pandemic.

record are those submitted to the Circuit Court. Respondent had the opportunity to submit other documentation but failed to do so.

3. Order of November 2, 2011. Appellant again admits that this was a Magistrate Court order and that it was not a part of the Circuit Court's record. Thus, it must not be included in the Record on Appeal.

4. All receipts = proof of payment made by Ruff. Appellant again fails to identify any specific document that was part of the Circuit Court case. As such, all receipts should be struck.

5. Bank draft of certified cashier's checks (proving Property taxes paid to Erickson Again, Respondent fails to acknowledge that it was her burden to submit documents in the Circuit Court and that she failed to do so. Thus, pursuant to Rules 209 and 210, the cashier's check must be struck.

6. Several correspondences between Erickson and Ruff pertaining to proof of payment. Appellant admits that these handwritten correspondences were not a part of the Circuit Court's record. Appellant claims she was unaware of the hearing but she had been personally served with the lawsuit and, due to her avoidance of service or leaving the state for work, she was properly served with the date of the hearing by publication. Appellant's avoidance of the matter and failure to attend the hearing does not permit her to submit documents that were not before the Circuit Court.

7. Bankruptcy documents. See Paragraph 6. Moreover, the bankruptcy was dismissed as demonstrated by Respondent's Motion to Restore filed in the Court of Common Pleas (and that document would properly be included in the record as is noted by Respondent's Designation of Matter).

8. Documented proof of agreement between Erickson and Ruff's bankruptcy attorney for continued payment. See Paragraph 7.

9. Handwritten correspondence from Erickson requested that she pay taxes and Ruff pay her. As noted in the original motion to strike, this document was not a part of the Circuit Court case and thus should be struck pursuant to Rule 210. Moreover, Appellant's continued unfounded claims of fraud or suggestion that Respondent or her counsel have improperly withheld information from the Circuit Court or this Court should be disregarded.

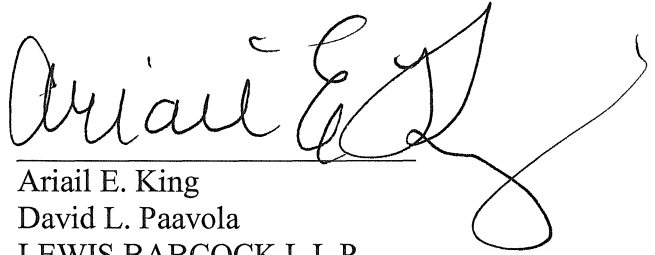
10. Proof of "extension" of contract of sale." Appellant claims she was unaware of the hearing but she had been personally served with the lawsuit and, due to her avoidance of service or leaving the state for work, she was properly served by publication. Appellant's failure to appear does not permit her to submit documents that were not before the Circuit Court.

11. As to reference on p. 5 of Appellant's brief. Any conversation of between the Appellant and Respondent's trial counsel cannot be a part of the record or referenced in the briefs on appeal. It was a verbal conversation and there is no transcript. Furthermore, the time frame of the call has no bearing on Mr. Coffey's representation of Respondent in this Court as he has made no such appearance.

In conclusion, Appellant clearly does not understand the South Carolina Rules of Civil Procedure, the Appellate Court Rules, and which documents are a deemed to be a part of the record in this case. Appellant failed to appear at the Circuit Court hearing in this matter or to submit any evidence on her behalf. Now, she attempts to correct that failing by claiming items that have no relevance to this matter should have been submitted by Respondent. Appellant has dragged this appeal on for two years by her repeated failure to abide by the rules, thereby staying the enforcement of the foreclosure order and requiring Appellant to spent significant sums on

attorney's fees. It would be patently unfair to allow Appellant to relitigate this matter on appeal.

Appellant respectfully requests that the Court grant the Motion to Strike in full.

A handwritten signature in black ink, appearing to read "Ariail E. King". The signature is written in a cursive style with a large, sweeping flourish at the end.

Ariail E. King
David L. Paavola
LEWIS BABCOCK L.L.P.
P.O. Box 11208
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(803)771-8000

Attorneys for Respondent Donna Erickson

Columbia, SC

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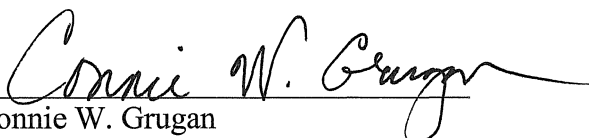
Felicia Ruff,

Appellant.

PROOF OF SERVICE

I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served Respondent's Reply to Appellant's Return to Motion to Strike upon Appellant Felicia Ruff, *pro se*, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following address:

Ms. Felicia Ruff
1455 Hidden Oaks Drive
Wedgfield, South Carolina 29168



Connie W. Grugan

This 13th day of July, 2020



LAW OFFICES OF
**LEWIS
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VIA EMAIL

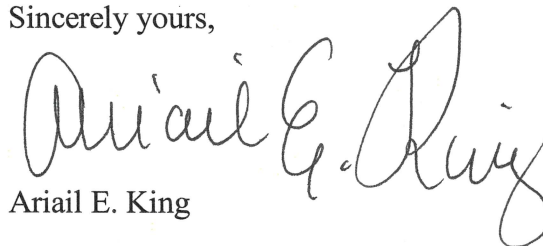
Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

Re: Donna Erickson v. Felicia Ruff, Appellate Case No. 2018-001277
Our File No. 19-116

Dear Ms. Kitchings:

Enclosed please find the Respondent's Reply to the Return to the Motion to Strike. The undersigned received the Return, via U.S. Mail, on July 7, 2020, though the Return itself is dated June 3, 2020.

Sincerely yours,



Ariail E. King

AEK:cg

Enclosure

cc: Ms. Felicia Ruff, *pro se*