

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

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Case No. 2018-CP-40-01318  
Appellate Case No. 2020-000451

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Rufus Rivers and Merle Rivers, pro se . . . . . Appellant,

v.

James Smith, Jr. . . . . Respondent.

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**RESPONDENT’S MOTION TO STRIKE APPELLANTS’ AFFIDAVIT**

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Pursuant to Rule 240, SCACR, Respondent James Smith, Jr., submits his Motion to Strike the Affidavit of Appellants Rufus Rivers and Merle Rivers (together “Appellants”).

**STATEMENT OF THE CASE**

On July 15, 2020, Appellants filed the instant Affidavit in this Court. In this Affidavit, Appellants jointly attest to various facts surrounding their experiences dealing with the Magistrate Court in March and May 2020. (Affidavit.) For the reasons set forth below, Respondent respectfully requests that this Court strike the Affidavit.<sup>1</sup>

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<sup>1</sup> For a thorough description of the procedural posture of this matter and the relevant facts, Respondent Smith respectfully refers this Court to Respondent’s Return to Appellants’ Emergency Motion for Stay or an Injunction Pending Appeal, filed on May 4, 2020.

## **ARGUMENT**

Respondent respectfully requests that this Court strike the Affidavit of Rufus and Merle Rivers filed with this Court on July 15, 2020 (the “Affidavit”) because it does not relate to the subject matter of Appellants’ instant Appeal and because Appellants did not consult Respondent prior to filing the Affidavit nor obtain leave from this Court to file the Affidavit.

Although Appellants have not yet filed their opening Brief in this Appeal, Appellants allege in the Affidavit that the basis of the Appeal is that “the Magistrate lacked subject matter jurisdiction because there was legal action pending in circuit court when the plaintiff filed eviction papers and had already been served on August 14, 2018.” (Affidavit, ¶ 4.) However, the rest of the Affidavit refers to events which occurred after Appellants filed their Notice of Appeal on March 12, 2020. The question of the Magistrate Court’s subject matter jurisdiction at the time that this action commenced is not affected in any way by events which occurred after the Magistrate Court has been divested of jurisdiction by the Court of Appeals. Therefore, this Affidavit does not relate to the subject matter of this Appeal and should be stricken by this Court.

Even if Appellants’ Affidavit did relate to Appellants’ Appeal and is intended to supplement the Record on Appeal, it is improper. Per Rule 212(b), SCRAP, “With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent ... a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so.” Here, Appellants neither requested Respondent’s consent to file the Affidavit, nor did

Appellants move the Appellate Court for leave to do so. Therefore, Appellants' submission of this Affidavit to this Court is improper regardless of its contents.

### **CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that this Court strike the Affidavit of Rufus and Merle Rivers.

Respectfully submitted,

s/ Sarah J.M. Cox \_\_\_\_\_  
Kathleen McDaniel (SC Bar No. 74826)  
Sarah J.M. Cox (SC Bar No. 104316)  
BURNETTE SHUTT & MCDANIEL, PA  
P.O. Box 1929  
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[scox@burnetteshutt.law](mailto:scox@burnetteshutt.law)

**ATTORNEYS FOR JAMES SMITH, JR.**

Columbia, South Carolina

July 22, 2020

**RECEIVED**

**Jul 22 2020**

**SC Court of Appeals**

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Case No. 2018-CP-40-01318  
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Rufus Rivers and Merle Rivers, pro se . . . . . Appellant,

v.

James Smith, Jr. . . . . Respondent.

**CERTIFICATE OF SERVICE**

I do hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same via Certified Mail, Return Receipt Requested with proper postage on the date below to the following:

DOCUMENT SERVED: Respondent's Motion to Strike Appellants' Affidavit

PARTIES SERVED: Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, SC 29039  
**Pro Se Appellants**



Traci Wolfe, PP

Columbia, South Carolina

July 22, 2020

**RECEIVED**

**Jul 22 2020**

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Rufus Rivers and Merle Rivers, pro se . . . . . Appellant,

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James Smith, Jr. . . . . Respondent.

**PROOF OF SERVICE**

The undersigned hereby certifies that a true copy of Respondent’s Motion to Strike Appellants’ Affidavit in the above-referenced matter has been served on all parties of record by Certified Mail, Return Receipt Requested a copy of the same to the following:

Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, SC 29039  
**Pro Se Appellants**

s/Sarah J.M. Cox  
Sarah J.M. Cox (Bar No. 104316)  
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**ATTORNEY FOR RESPONDENT JAMES SMITH JR.**

July 22, 2020  
Columbia, South Carolina



**BURNETTE SHUTT MCDANIEL**

Moving law forward.

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**Traci B Wolfe, PP**  
803-907-7921  
[twofel@burnetteshutt.law](mailto:twofel@burnetteshutt.law)

**RECEIVED**

**Jul 22 2020**

**SC Court of Appeals**

July 22, 2020

**Via US Mail and Certified Mail, Return Receipt Requested**

**Tracking No:9415 5118 32433380 67**

Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, South Carolina 29039-9538

**RE: Rufus Rivers and Merle Rivers vs. James F. Smith**  
**Civil Action No.: 2018-cp-40-1318**  
**BSM file No.: 6301.002**

Dear Mr. and Mrs. Rivers:

Please find enclosed a copy of Respondent's Motion to Strike Appellants' Affidavit in the above reference matter.

With kind regards, I am

Sincerely,

Traci B. Wolfe, PP

/tw  
Encl.  
Cc: James Smith (via electronic mail)