

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge

RECEIVED
Dec 15 2020
SC Court of Appeals

Appellate Case No. 2020-001144
Case No. 2020-CP-23-2023

Kierra Johnson, Appellant,

v.

Greenville County, Greater Greenville Sanitation District, the
South Carolina Department of Transportation, American
Southern Insurance Company, and the State Fiscal
Accountability Authority Defendants,

Of which American Southern Insurance Company is, Respondent.

**REPLY MEMORANDUM IN SUPPORT OF
RESPONDENT’S MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN RECORD ON APPEAL**

The Respondent American Southern Insurance Company has filed a motion
to strike materials designated by the Appellant Kierra Johnson for inclusion in the

Record on Appeal that were never filed in the lower court record nor were presented to Judge Perry H. Gravely at the motion hearing held on July 24, 2020.

The Appellant has now filed a return to the motion offering no proof that the materials at issue may be properly designated for inclusion in the Record on Appeal. The Respondent's motion that was adjudicated by Judge Gravely was a Rule 12(b) Motion to Dismiss which was never converted into a Motion for Summary Judgment at the request of any of the parties. No affidavits or other evidence were submitted by any of the parties to the Court.

The Appellant does not dispute this. Instead, the Appellant suggests that her counsel's "demand letter" sent to American Southern was "discussed" during the hearing and that there is "no requirement" that paper copies of documents referenced be submitted to the Circuit Court. The extent of that discussion is the following comment by American Southern's counsel:

Well, when -- when the — when the Plaintiff's attorney said -- and -- and -- and, also, just to be fair, the Plaintiff's attorney sent American Southern a letter 10 days after the accident and demanded policy limits. That's all. They didn't -- didn't provide medical records, nothing. And -- and then American Southern sent a letter back, and said, give us what you got and we'll look into it. And then they file a lawsuit.

(Tr. 16:23-17:5). The Appellant made no attempt to refer to or proffer those documents for the record. Clearly, those documents do not belong in the Record on Appeal under these circumstances.

The other documents designated are unidentified and undisclosed letters and FOIA documents purportedly received from the Department of Insurance in 2018. Those documents are not mentioned in the hearing nor in any filings. The Respondent's counsel do not even know precisely what they are.¹ The accident at issue occurred on January 7, 2020, and the Complaint was filed on April 7, 2020. So, these other "Insurance Department" records from a 2018 FOIA request pre-date the accident and the subject of this litigation by more than a year. There is also a good chance that those documents would be inadmissible as hearsay and for lack of proper authentication. In short, there is no justification whatsoever for including such documents in the Record on Appeal for what was a Rule 12(b) motion. The Appellant baldly states that these documents "are directly related to the appeal," but they offer no support for such a claim. They do not even describe for the Court what those documents are and why they were designated for inclusion in the Record on Appeal in the first place.

¹ The Appellant concedes that the letters and FOIA documents received from the Department of Insurance are not in the possession of the Respondent's counsel. The Appellant notes that the demand letter and the "denial letter" (which is mischaracterized as such) are in the Respondent's possession.

In sum, the Appellant has clearly violated the letter and spirit of Rule 210(c), SCACR. The Respondent's motion should be granted.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

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Counsel for Respondent

American Southern Insurance Company

December 15, 2020

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Accountability Authority Defendants,

Of which American Southern Insurance Company is, Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (c)(6) of the Supreme Court’s Order RE: Operation of the Appellate Courts During the Coronavirus Emergency Appellate Case No. 2020-000447 (as amended May 29, 2020), the undersigned employee of Lindemann & Davis, P.A., counsel for the Respondent American Southern Insurance Company, does hereby certify that service of the **Reply Memorandum in Support of Respondent’s Motion to Strike Materials Designated by Appellant for Inclusion**

in Record on Appeal and Copy of Motion Hearing Transcript was made upon all counsel of record by email only this the 15th day of December 2020:

Joshua T. Hawkins, Esquire
Helena L. Jedziniak, Esquire
Hawkins & Jedziniak, LLC
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s/ Andrew F. Lindemann



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December 15, 2020

Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

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Dec 15 2020
SC Court of Appeals

RE: Kierra Johnson v. Greenville County, the Greater Greenville Sanitation District and the South Carolina Department of Transportation
Appellate Case Number: 2020-001144
Civil Action Number: 2020-CP-23-2023
Claim Number: 7045583-CJ
Our File Number: 23.20315

Dear Ms. Kitching:

Pursuant to Section (c)(6) of the Supreme Court's Order RE: Operation of the Appellate Courts During the Coronavirus Emergency Appellate Case No. 2020-000447 (as amended May 29, 2020), please find enclosed for filing by email only the **Reply Memorandum in Support of Respondent's Motion to Strike Materials Designated by Appellant for Inclusion in Record on Appeal** and **Copy of Motion Hearing Transcript** in the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (g)(3) of this same order.

Thank you very much for your consideration of this request.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/
Enclosures

The Honorable Jenny Abbott Kitchings
December 15, 2020
Page Two

cc: Joshua T. Hawkins, Esquire (*w/ Enclosures, Via Email Only*)
Helena L. Jedziniak, Esquire (*w/ Enclosures, Via Email Only*)