

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Alison Renee Lee, Presiding Judge

Case No. 2016-CP-32-01385

Appellate Case No. 2018-002157

Richie D. Barnes,..... Respondent,

v.

James Reese,..... Appellant.

RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal:

ORDERS

1. Order Granting Plaintiff's Motion for Partial Summary Judgment filed on February 15, 2018
2. Form 4 Order (Relieving Counsel) filed on July 17, 2018
3. Verdict filed on November 8, 2018
4. Form 4 Order (Jury Verdict/Judgment) filed on November 8, 2018

PLEADINGS

5. Amended Complaint filed on October 16, 2017
6. Reply filed on November 15, 2017
7. Notice of Appeal filed on December 7, 2018

TRIAL EXHIBITS

8. Residential Lease dated March 9, 2013

9. Contractor's Repair Estimate
10. Summary of Actual Damages
11. Judge's Notes

I certify that this designation contains no matter which is irrelevant to this appeal.



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Attorney for Respondent

April 16, 2020

C.J.S. Appeal and Error §§ 554, 561, 564, 569.

C.J.S. Public Administrative Law and Procedure §§ 213, 327, 346 to 347, 403 to 407.

Notes of Decisions

In general 1

where victim did not plead elements of negligence in her complaint. *Kleckley v. Northwestern Nat. Cas. Co.* (S.C. 2000) 338 S.C. 131, 526 S.E.2d 218. Insurance ☞ 3379

1. In general

Slip and fall victim's cause of action against premises owner's insurer for bad faith refusal to pay benefits did not include a negligence action,

The only matter that should not appear in the appellate record are those items a party believes to be not relevant to the appeal. *Forner v. Butler* (S.C.App. 1995) 319 S.C. 275, 460 S.E.2d 425.

RULE 210. RECORD ON APPEAL

(a) **Time for Service.** Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court.

(b) **Time for Filing.** The appellant must file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The appellate court may require an appellant to file additional copies of the Record on Appeal.

(c) **Content.** The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

Where witness testimony is included in the Record on Appeal, the first page of each witness's direct, cross, redirect and recross examination must show the name of the witness, the phase of examination and the name of the counsel conducting the examination. If this information is not already reflected on the page, the top of the page shall be annotated with the required information in the following form: John H. Doe—Direct (Cross) (Redirect) (Recross) Examination by Mr. Smith.

(d) **Title.** The title page shall contain the caption as set forth in Rule 267. Nothing shall be printed on the title page except the caption.

(e) **Index.** Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters,

opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins.

(f) **Exhibits.** Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time. Where they are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record on Appeal, but shall be filed separately. All exhibits other than paper exhibits must be retained in the trial court and delivered to the appellate court only upon receipt of an order from the clerk of the appellate court.

(g) **Certificate of Counsel.** Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

(h) **Review Limited to Record on Appeal.** Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

[Adopted effective September 1, 1990. Amended effective July 1, 1993. Renumbered and amended effective June 1, 1999. Amended effective May 3, 2007; May 1, 2008; April 29, 2009.]

Cross References

Probate code, appeals, see § 62-1-308.

Library References

Administrative Law and Procedure ¶676.

Appeal and Error ¶516 to:543, 605, 614, 620 to 633, 671 to 711.

Criminal Law ¶1088.E to:1088:20, 1105 to 1108.

Westlaw Topic Nos. 15A, 30, 110.

C.J.S. Appeal and Error §§ 564 to 572, 629; 635, 643 to 644, 646 to 651, 680 to 683.

C.J.S. Public Administrative Law and Procedure §§ 213, 327, 346 to 347, 403 to 407.

Law Review and Journal Commentaries

Handbook of South Carolina trial and appellate practice: Exceptions. 11 SCLQ Supp., 245, 259.

Notes of Decisions

In general 1

Arguments of counsel 4

Content of record 3

Preservation for review 2

1. In general

The object of an exception is to present some distinct principle or question of law which the appellant claims to have been violated by the court in the trial of the case from which the appeal is taken, and to present it in such form that it may be properly reviewed. *Hewitt v Reserve Life Ins. Co.* (1959) 235 SC 201, 110 SE2d 852. *Fruehauf Trailer Co. v McElmurray* (1960) 236 SC 141, 113 SE2d 756. *Winter v United States Fidelity & Guaranty Co.* (1962) 240 SC 561, 126 SE2d 724. *Shell v Brown* (1963) 243 SC 380, 134 SE2d 214. *Brownie Knitting Mills, Inc. v Picow* (1964) 244 SC 422, 137 SE2d 450. *Solley v Weaver* (1966) 247 SC 129, 146 SE2d 164. *Boyer v Loftin-Woodard, Inc.* (1966) 247 SC 167, 146 SE2d 606. *Odom v County of Florence* (1972) 258 SC 480, 189 SE2d 293.

Every ground of appeal ought to be so distinctly stated that the courts may at once see the point which it is called upon to decide without having to "grope in the dark" to ascertain the precise point at issue. *Brady v Brady* (1952) 222 SC 242, 72 SE2d 193. *Hewitt v Reserve Life Ins. Co.* (1959) 235 SC 201, 110 SE2d 852. *Fruehauf Trailer Co. v McElmurray* (1960) 236 SC 141, 113 SE2d 756. *Winter v United States Fidelity & Guaranty Co.* (1962) 240-SC-561, 126 SE2d 724. *Shell v Brown* (1963) 243 SC 380, 134 SE2d 214. *Solley v Weaver* (1966) 247 SC 129, 146 SE2d 164. *Boyer v Loftin-Woodard, Inc.* (1966) 247 SC 167, 146 SE2d 606.

Court of Appeals was unable to review on appeal issue of whether trial court erred in refusing to amend or clarify certain provisions of its order granting partial summary judgment to defendant, as Court was unable to discern from record whether plaintiff raised this issue in trial court. *Weston v. Kim's Dollar Store* (S.C.App. 2009) 385 S.C. 520, 684 S.E.2d 769, rehearing denied, certiorari granted, affirmed and remanded 399 S.C. 303, 731 S.E.2d 864. Appeal And Error ¶707(1).

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December 28, 2020

Mr. James Reese
717 Cindy Drive
Columbia, SC 29203

RECEIVED

DEC 30 2020

SC Court of Appeals

RE: Richie D. Barnes vs. James Reese
Appeal to South Carolina Court of Appeals

Dear Mr. Reese:

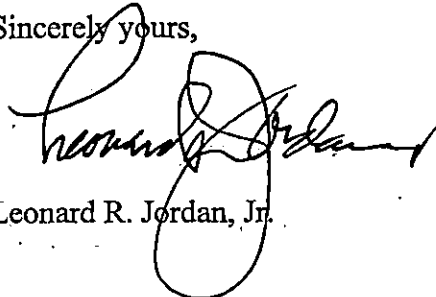
On December 26, 2020, I received your proposed Record of (sic) Appeal. It fails to include all of the items set forth in the Respondent's Designated Matters to be Included in the Record on Appeal.

I call attention to my letter to you dated December 15, 2020, whereby I reminded you of the Respondent's Designation of Matters to be Included in the Record on Appeal, a copy of which is enclosed.

I ask that you voluntarily serve a complete Record on Appeal so as to render unnecessary my having to file a formal Motion. In that regard, I enclose a copy of Rule 210. Record on Appeal along with a copy of Respondent's Designation of Matter to be Included in the Record on Appeal. Please serve (hand-deliver) a complete Record on Appeal no later than January 4, 2021.

Thanking you in advance for your anticipated cooperation, I am

Sincerely yours,



Leonard R. Jordan, Jr.

LRJjr/km
Enclosures

cc: South Carolina Court of Appeals

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December 15, 2020

Mr. James Reese
717 Cindy Drive
Columbia, SC 29203

RECEIVED

DEC 30 2020

SC Court of Appeals

RE: Richie D. Barnes vs. James Reese
Appeal to South Carolina Court of Appeals

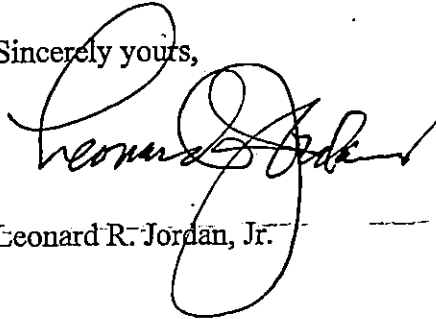
Dear Mr. Reese:

Please make sure the Record on Appeal includes all of the items set forth in the Respondent's Designated Matters to be Included in the Record on Appeal as well as those items set forth in the Appellant's Designated Matters to be Included in the Record on Appeal.

You can find these documents online at sccourts.org. Go to C-Track Public Access under Quick Links, click Accept on the next page and then type in Case Title under Case Search.

Thanking you in advance for your anticipated cooperation, I am

Sincerely yours,

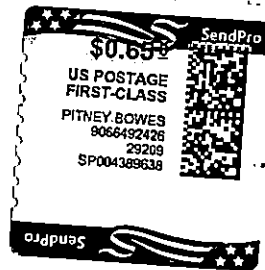


Leonard R. Jordan, Jr.

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COLUMBIA
SC 290
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PM 11



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DEC 30 2020

SC Court of Appeals

The Honorable V. Claire Allen
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