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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
James W. Peterson, Jr., Special Referee

Case No. 2015-CP-21-02451

Appellate Case No. 2021-000135

Estate of Artrell Davis, by and through her Personal Representatives, Lynette Gibss and Jerome Davis,

Plaintiffs/Respondents,

v.

Elroy Jackson and Michael Laverne Marks, Jr.,

Of whom Elroy Jackson is the Appellant.

MOTION TO STRIKE

Pursuant to Rules 209, 210, and 240 of the South Carolina Appellate Court Rules, Appellant Elroy Jackson respectfully requests this Court strike numerous items from Respondents Estate of Artrell Davis, by and through her Personal Representatives, Lynette Gibss and Jerome Davis's ("Respondents") Designation of Matter to be Included in the Record on Appeal, filed on June 14, 2021. Of the forty-five items Respondents designated, twenty-nine of them were never offered into evidence before the lower court and therefore are improper for inclusion in the record on appeal. Specifically, Appellant moves to strike numbers 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 from Respondents' Designation of Matter as these items are new pieces of evidence Respondents attempt to offer for

the first time on appeal. *See* Rule 210 (stating the Record on Appeal shall not include any matter which was not presented to the lower court and “the appellate court will not consider any fact which does not appear in the Record on Appeal”).

Respondent attempts to include property tax bills, lawsuits, and tickets presumably related to Appellant and correspondence presumably between Respondents and Greenville Casualty Insurance Company.¹ Respondent further attempts, for the first time, to submit correspondence to Appellant from November 10, 2016. However, as discussed in Appellant’s initial brief, Respondents repeatedly refused to allow Appellant an opportunity to see this correspondence at the hearing and refused to submit this correspondence into evidence before the lower court. (App. Br. pp. 26–27 (“In fact, when Appellant’s counsel requested to see the notice letters or a certificate of service, Respondents’ counsel responded by stating ‘Well it’s not required. We’re not gonna build your record for you’ and ‘we’re not doing discovery in the middle of a hearing.’)). These designations are clearly improper as the Record on Appeal may only include matter which was present to the lower court. Rule 210(c) (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”). Accordingly, Appellant respectfully requests

¹ As these items were not submitted into evidence before the lower court, Appellant does not have a copy of the documents Respondents are attempting to designate for the Record on Appeal. Further, in addition to objecting to the correspondence as it was not before the lower court, Appellant further objects to this being included in the Record on Appeal as it is not relevant to this case as Greenville Casualty Company is not a party to this action. *See* Rule 209(b) (“A party shall not include any matter in his Designation which is not relevant to the appeal.”). This appeal concerns Appellant’s due process rights, and whether Respondents properly gave Appellant proper notice of the default damages hearing required by Rule 55(b)(2) of the South Carolina Rules of Civil Procedure. Likewise, the other documents Respondents attempt to designate are also not relevant to this action.

this Court strike these designations and the portions of Respondents' brief that cite to this improper evidence and not consider this new evidence.²

RESPECTFULLY SUBMITTED,

s/ Shanon N. Peake

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July 1, 2021.

² Respondents refer to this improper evidence on at least thirteen pages of their twenty-seven-page brief. Respondents also refer to unidentified insurance documents from "related litigation" in their Brief. (Resp. Br. at 20, 23). Respondents did not designate these documents for inclusion in the Record on Appeal, and any designation of these documents would be improper for this Court's consideration as they were not presented to the lower court and they are irrelevant. These sentences should also be stricken from Respondents' brief.