

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2012-212686

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SC Court of Appeals

Marsha Temples,

Appellant,

v.

Neil O. Plush,

Respondent.

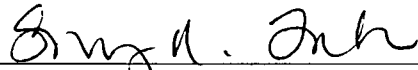
**RESPONDENT'S MOTION TO STRIKE APPELLANT'S DESIGNATION OF
MATTER TO BE INCLUDED IN THE RECORD ON APPEAL
AND CORRESPONDING PORTIONS OF APPELLANT'S INITIAL BRIEF**

The instant appeal comes before this Court following the trial court's dismissal of Appellant's claims on statute of limitations grounds. Specifically, the trial court ruled that Appellant's failure to restore her case until nearly five years following its dismissal under Rule 40(j), SCRPC, required the dismissal of Appellant's claims against Respondent.

On March 1, 2013, Appellant served her Initial Brief, her Designation of Matter to be Included in the Record on Appeal, and her Proof of Service. Of note, Numbers 6 and 7 of Appellant's Designation of Matter to be Included in the Record on Appeal—pertaining generally to discovery subpoenas served on third parties and correspondence

from Respondent's counsel to Appellant's counsel concerning these subpoenas—were not filed of record in the case below.

Rule 210, SCACR, provides that the Record on Appeal “shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 208(4), SCACR, provides that the parties' briefs shall reference matter from the lower court “which may be properly included in the Record on Appeal” under Rule 210. Because Appellant's Designation seeks to include matters in the record which were not before the trial court and which are not authorized to be included in the appellate court record pursuant to the governing appellate court rules, Respondent objects to Numbers 6 and 7 of Appellant's Designation and moves to strike those items from the Record on Appeal. Further, because those documents are not contained in the record, they should not be referenced in the parties' arguments; accordingly, Respondent moves to strike those portions of the Initial Brief of Appellant which references these items.¹


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¹ This includes the third full sentence on numbered page 2 of Appellant's Initial Brief and the final sentence of the second full paragraph on page 7 of Appellant's Initial Brief.

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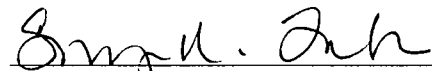
Neil O. Plush,

Respondent

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and Corresponding Portions of Appellant's Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, on April 1, 2013, addressed to her attorney of record, John W. Carrigg, 137 E. Butler Street, Suite 6, Lexington, South Carolina 29072.

April 1, 2013.



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April 1, 2013

**VIA FAX (803-734-1839)
AND U.S. MAIL**

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Marsha L. Temples and Douglas Temples, Jr. v. Neal O. Plush
Appellate Case No. 2012-212686
Claim No: 0198296360101030
Our File No.: 47-676

Dear Ms. Kitchings:

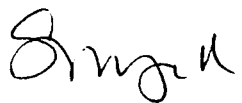
Enclosed for filing in the above-entitled action are the original and one copy of each of the Initial Brief of Respondent, Respondent's Designation of Matter to be Included in the Record on Appeal, Certificate of Counsel Regarding Designation of Matter to be Included in the Record on Appeal and respective Proofs of Service.

Also enclosed for filing please find an original and six copies of each of Respondent's Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and Corresponding Portions of Appellant's Initial Brief and Proof of Service. Our firm check for the \$25.00 motion fee is also enclosed.

Once the originals have been filed, please date stamp the copies and return them to me in the envelope provided.

Thank you for your assistance. If you have any questions or need anything further from me, please do not hesitate to contact me.

Sincerely,


Sonja R. Tate
For the Firm

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APR 04 2013

SRT/gc
Enclosures
cc: John W. Carrigg, Jr. (w/encs.)

SC Court of Appeals