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Oct 28 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Capers G. Barr, III, Special Referee

Appellate Case No. 2021-000185

Case No. 2019-CP-10-03042

Judith A. Brown, as Personal Representative for the Estate of Mildred C. Knight, and
Norman R. “ Bobby” Knight III, Appellants

v.

Chloe Knight Tonney, Respondent.

APPELLANTS’ RETURN TO RESPONDENT’S MOTION TO COMPEL

COMES NOW Appellants, in Return to the Respondent’s Motion to Compel, arguing
and explaining as follows:

ARGUMENT

1. Rule 210(c), SCACR says, “The Record shall not, however, include matter which was not presented to the lower court or tribunal.”
2. The items that are the subject of Respondent’s motion were not presented to the trial court as a part of argument on the Motion to Amend Appellants’ complaint.
3. Appellants informed Respondent that her Designation items 2,3,4,6,7,9,10,13,and 14 were not a part of the record, and identified several of these items on the Appellants’ Designation as well. Appellants informed Respondent that they could not certify the Record on Appeal if it contained these items. (See Exhibit A).

4. A review of the transcripts contained in the Record on Appeal will validate the discussion and the topics that were the subject of the trial court's inquiries (R.p. 25-112).
5. Respondent cannot cite to the record of the Motion to Amend to establish where his excluded matter is found.
6. Appellants certified that "the Record on Appeal contains all material in accordance with Rule 210 et seq., SCACR"... (R.p.213).
7. Respondent's allegation #8 of her Motion to Compel is wrong: Appellants contacted Respondent by phone no later than October 6, 2021 concerning the problems with the Designation of Matter on both sides; Respondent's senior counsel took the call, listened to the explanation but was too involved with another matter, and asked Appellants to send him something in writing; after several email exchanges with an associate attorney assigned to the issue, Respondent concluded our discussion by insisting that they were "entitled to have it included in the Record on Appeal," therefore directly contravening the clear mandate of Rule 210(c), SCACR. (See Exhibit B).
8. Because the due date for filing the Record on Appeal was October 18, 2021, Appellants prepared the Record and submitted it according to Rule 210(c), SCACR.

WHEREFORE, having fully returned to the Respondent's motion, Appellants ask that Respondent be ordered to comply with Rule 210(c), SCACR, and ordered to pay Appellant's reasonable attorney fees and costs.

October 28, 2021

S/J. Seth Whipper

J. Seth Whipper (S.C. Bar No. 6061)
Attorney for the Appellants
P.O. Box 70070
North Charleston, SC 29415
843-740-7777

Other Counsel of Record:
Charles S. Altman, Attorney for Respondent, Chloe Knight Tonney
575 King Street, Suite A
Charleston, SC 29403
Phone: 843-853-9907

EXHIBIT A

From: J. Seth Whipper <jsw@whipperlaw.com>
Sent: Wednesday, October 06, 2021 3:29 PM
To: 'Charlie Altman'
Cc: 'Elizabeth McKelvy'
Subject: FW: Certifying Record On Appeal - Brown et al. v. Tonney - Case No.: 2021-000183
Attachments: Refining Record On Appeal.pdf

Second try. Should be good this time. Thanks.

J. Seth Whipper, Esq.
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Attorneys and Counselors at Law
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843/ 740-7777
843/ 740-9108 Fax
jsw@whipperlaw.com

From: J. Seth Whipper <jsw@whipperlaw.com>
Sent: Wednesday, October 06, 2021 3:05 PM
To: 'Charlie Altman' <caltman@caltmanlaw.com>
Cc: 'Elizabeth McKelvy' <emckelvy@caltmanlaw.com>
Subject: Certifying Record On Appeal - Brown et al. v. Tonney - Case No.: 2021-000183

Charles, please note the starred items. I have included my list, also. The starred items will not hurt our arguments, if not included in the ROA. Further, I can find the attachments for your September 4, 2020, memorandum, but I don't see a written memorandum. I have a memorandum served on all and not shown as filed. Thank you. Best...

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Judith A. Brown, as Personal Representative
for the Estate of Mildred C. Knight,
and Norman R. "Bobby" Knight, III,

Appellants,

v.

Chloe Knight Tonney,

Respondent.

DESIGNATION OF MATTER

COMES NOW Respondent and proposes the following as the Record on Appeal:

1. Complaint (6/24/2005)
2. Answer of Defendant to Complaint (9/9/2005)*
3. Consent Order Striking Case Pursuant to Rule 40(j) (11/15/2006)*
4. Plaintiffs' Motion to Restore (1/18/2008)*
5. Plaintiffs' Motion for Leave to File First Amended Complaint (3/4/2008)
6. Order Granting Plaintiffs' Motion to Restore (4/17/2008)*
7. Order Dismissing Case for Lack of Prosecution (8/4/2009)*
8. Complaint (6/7/2019)
9. Answer of Defendant to Complaint (7/29/2019)*
10. Order Restoring 2008-CP-10-02537 (10/1/2019)*
11. Motion to Amend Complaint (7/16/2020)
12. Proposed Amended Complaint (2019)
13. Order Appointing Special Referee (7/22/2020)*
14. Order Consolidating Actions (7/23/2020)*
15. Defendant's Memorandum in Opposition to Plaintiffs' Motion to Amend the Complaint with Exhibits A-D (24 pages) (8/12/2020)
16. Transcript of Hearing on Motion to Amend the Complaint before Capers Barr (8/26/2020)

EXHIBIT B

From: J. Seth Whipper <jsw@whipperlaw.com>
Sent: Wednesday, October 06, 2021 5:12 PM
To: 'Elizabeth McKelvy'
Cc: 'Charlie Altman'
Subject: RE: Certifying Record On Appeal - Brown et al. v. Tonney - Case No.: 2021-000183

Ms. McKelvy – Further, the attachments to your 9/4/2020 2nd Memo includes some of the same material submitted with your 1st ; perhaps to aid with the page limits, we can eliminate the second reference and cite to the first for location purposes. The Record On Appeal holds material submitted to the trial court for its consideration. That is what I must certify. Thanks.

J. Seth Whipper, Esq.
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From: Elizabeth McKelvy <emckelvy@caltmanlaw.com>
Sent: Wednesday, October 06, 2021 3:49 PM
To: J. Seth Whipper <jsw@whipperlaw.com>
Cc: Charlie Altman <caltman@caltmanlaw.com>
Subject: RE: Certifying Record On Appeal - Brown et al. v. Tonney - Case No.: 2021-000183

Mr. Whipper,

We have reviewed your proposal and can only agree to omit #13 – Order Appointing Special Referee (7/22/2020).

Items which you have starred (3, 4, 6, 7, 10,) are directly referenced in our initial brief and are necessary to the Record on Appeal. Further, #2 – Answer of Defendant to Complaint (9/9/2005), #9 – Answer of Defendant to Complaint (7/29/2019), and #14 – Order Consolidating Actions (7/23/2020) are also necessary to complete the record due to our direct references to the other items.

Thank you.

Regards,
Elizabeth McKelvy
Associate
Law Offices of Charles S. Altman, LLC
<https://www.caltmanlaw.com/>
575 King Street, Suite A
Charleston, South Carolina 29403
Phone: 843 853 9907
Fax: 843 722 5702

CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the internal revenue code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent.

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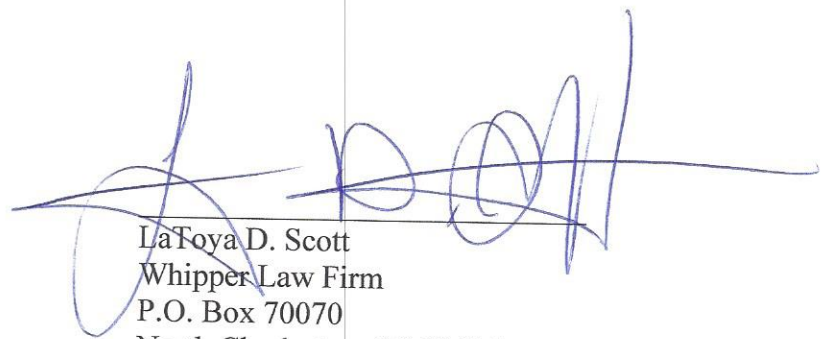
v.

Chloe Knight Tonney.....Respondent

PROOF OF SERVICE

The undersigned hereby certifies that the true copy of the foregoing Appellants' Return To Respondent's Motion To Compel has been served on the South Carolina Court of Appeals by depositing a copy to them in the United States Mail, postage prepaid, on October 28, 2021, addressed to Clerk, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211, and served the same on Charles S. Altman, Esq. Attorney for Respondent, 575 King Street, Suite A, Charleston, SC 29403.

October 28, 2021



LaToya D. Scott
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CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

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Oct 28 2021

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

October 28, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Judith A. Brown, as Personal Representative for the Estate of Mildred C. Knight, and
Norman R. "Bobby" Knight III, Appellants v. Chloe Knight Tonney, Respondent
Appellants' Case No. 2021-000185
Appellants' Return To Respondent's Motion To Compel
Proof of Service**

Dear Ms. Kitchings:

Find enclosed the Appellants' Return to Respondent's Motion To Compel and a copy and the Proof of Service that is enclosed for filing and conforming.

By copy of this letter, I am serving a copy of the same on Charles S. Altman, attorney for Respondent.

Sincerely,
WHIPPER LAW FIRM

S/J. Seth Whipper
J. Seth Whipper, Esquire

Enclosures
JSW/lds

xc: Bobby Knight
Judith A. Brown