

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Capers Barr, III, Special Referee

Case No. 2021-000185

RECEIVED

Nov 01 2021

SC Court of Appeals

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.

**RESPONDENT'S RESPONSE TO APPELLANTS' RETURN TO RESPONDENTS'
MOTION TO COMPEL**

COMES NOW, Respondent Chloe Knight Tonney ("Tonney"), by and through the undersigned counsel, arguing and explaining as follows:

1. Respondent agrees with Appellant that S.C. App. R. 210 states "The Record on Appeal shall include all matter designated to be included by any party. The Record shall, not however, include matter which was not presented to the lower court or tribunal."
2. Respondent consents to the exclusion of the six (6) documents listed in Exhibit A as 3, 4, 7, 8, and 14, but cannot consent to the exclusion to the following four documents as they were presented to the lower court and are relevant to the Respondent's case: Order Granting Plaintiffs' Motion to Restore (filed 4/17/2008), Plaintiffs' Motion to Leave to File First

Amended Complaint (filed 3/4/2008), Answer of Defendant to Complaint (filed 9/9/2005), and Answer of Defendant to Complaint (filed 7/29/2019).

3. Attached as Exhibit B, is Defendant's Memorandum in Opposition to Plaintiff's Motion to Amend the Complaint (First Page only). Highlighted on the first page of the pleading is the sentence "In 2008 a Motion was filed requesting the 2005 case be reopened, which was granted by Judge Dennis (Case. No 2008-CP-10-02537)." this sentence references the granting of the Order Granting Plaintiffs' Motion to Restore (filed 4/17/2008). The Order Granting Plaintiffs' Motion to Restore (filed 4/17/2008) was presented to the lower court through factual conveyance and reference. Further, the Transcript attached to Defendant's Second Memorandum in Opposition to Plaintiffs' Motion to Amend the Complaint as Exhibit B is the transcript of Record in which the Order was granted. The first four pages of the transcript as attached to this Responses as Exhibit C.
4. In reference to the excluded document Plaintiffs' Motion to Leave File First Amended Complaint (Filed 3/4/2008), this document was introduced as Exhibit A in Defendant's Second Memorandum in Opposition. Attached to this Document as Exhibit D. Additionally, this exhibit was referenced on page 4 of 8 reading as follows, "Further, Mildred recognized that these claims may long ago in 2008 when she brought the Motion to Amend to add the loss of consortium claim. *See Exhibit A and Exhibit B....*"
5. To address the two Answers of Defendant to Complaints filed in 2005 and 2019. The argument for both of these pleadings rests together. Appellant has included the Complaints from 2005 and 2019 in the Record on Appeal without including the Answers. The inclusion of the Complaints is no more or less appropriate than the inclusion of the answers. Further, the excluded Answers are both pleadings that progressed the case to its current status of

appeal. The exclusion of the Answers while the Complaints remain will prevent the depiction of the issue on appeal in its complete form. To understand the issues as presented the Answers need to accompany the Complaints.

6. Appellate claims that allegation 8 of the previously filed Motion to Compel is wrong, the following is allegation 8, "Respondent provided Appellant with notice of the discrepancies with the Record on Appeal and the Appellant failed to respond." Attached as Exhibit E is a letter sent by Respondent to Appellant sent via email in an attempt to remedy the discrepancies with the Record on Appeal. Additionally, Exhibit F is a copy of the email sent to Appellant. Appellant failed to respond in any manner, email, phone or otherwise. The first response Appellant provided Respondent occurred on October 22, 2021 when Respondent's law clerk called Appellant to ensure receipt.
7. Appellate addresses a conversation prior to the service of the Record on Appeal which is not applicable to the Motion to Compel or this Response.
8. Respondent agrees in part that Appellate prepared the Record on Appeal and submitted it according to S.C. App. R 210(c). The Record on Appeal arrived on October 18, 2021 in compliance with Rule 210, however, the Record was not prepared in accordance as Rule 210(c) provides "...the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant." Attached as Exhibit G is the Index from the prepared Record which provides for two transcripts appearing above pleadings.

WHEREFORE, having to respond to Appellants' Return to Respondents' Motion to compel and file the original Motion to Compel, Respondent asks that Appellant be ordered to comply by S.C. App. R. 210 through the supplementing of the Record on Appeal in order to reflect the Respondents' four (4) above identified documents intended to be included and award such further relief as it may deem just and proper, including but not limited to Respondent's reasonable attorney fees and cost to prepare and file this Response and the previous Motion to Compel.

/s/ Charles S. Altman
Charles S. Altman (SC Bar No. 351)
caltman@caltmanlaw.com
575 King Street, Suite A Charleston,
South Carolina 29403 Tel.:
843-853-9907
Fax: 843-572-7702
Attorney for Respondent

November 1, 2021

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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.

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)

17. Defendant's Second Memorandum in Opposition to Plaintiffs' Motion to Amend the Complaint with Exhibits A-D (69 pages)
18. Order Denying Motion to Amend (10/16/2020)
19. Plaintiffs' Motion to Alter/Amend Order (SCRCP 59(e)) (10/26/2020)
20. Plaintiffs' Memorandum in Support of Amending Complaint (11/23/2020)
21. Defendant's Motion in Opposition to Plaintiffs' Motion to Alter or Amend Order (11/23/2020)
22. Transcript of Hearing on Motion to Alter or Amend Order before Capers Barr (11/24/2020)
23. Order Denying Motion to Alter or Amend Order (1/14/2021)

I certify that this Designation of Matter contains no matter which is irrelevant to this Appeal.

July ____, 2021

Charles S. Altman (SC Bar No. 351)
The Law Offices of Charles S. Altman, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
(843) 853-9907
Attorneys for Respondent

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Judith A. Brown, as Personal)
Representative for the Estate of)
Mildred C. Knight, and Norman R.)
"Bobby" Knight, III,)
Plaintiffs,)
)
vs.)
)
Chloe Knight Tonney,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-10-3042

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO
AMEND THE COMPLAINT

TO: J. SETH WHIPPER, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

This matter is before the Court on the Motion of Plaintiff(s) to be allowed to Amend the Compliant. The Defendant, Chloe Knight Tonney, ("Tonney") opposes the Motion on the grounds set forth herein.

The history of the matter before the Court is long and tortured. For purposes of this Motion we shall only refer to the pending case and the Motion to Amend. In 2005 Mildred C. Knight ("Mildred"), individually and as duly appointed legal guardian¹ for Norman R. Knight, Jr. ("Norman"), sued her daughter, Tonney claiming property titled in Tonney's maiden name was held by her for her father, Norman (Case No. 2005-CP-10-02764). This case was dismissed. In 2008 a Motion was filed requesting the 2005 case be reopened, which was granted by Judge Dennis (Case No. 2008-CP-10-02537). The 2008 case was likewise dismissed but restored by Order in 2019. The 2008 case was then consolidated with the captioned matter.. At the hearing on the Motion to Restore the 2008 case, Judge

¹ By Order dated August 25, 2005, Mildred was removed a Norman's legal guardian for cause.

EXHIBIT C

IN THE COURT OF COMMON PLEAS
FROM THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CIVIL ACTION No. 2007-CP-10-4141
COUNTY OF CHARLESTON)	an APPEAL FROM PROBATE COURT
Irv Condon, Probate Judge &)	
Chloe Tonney Petitioner vs)	FROM THE PROBATE COURT CHAS SC
Norman Robert Knight Jr. alleged)	CIVIL ACTION No. 2004-CP-0099
incapacitated person, et al)	
Respondent(s);)	
Sean Trundy, ET AL)	FROM THE FAMILY COURT CHAS SC
Defendants,)	CIVIL ACTION No. 2006-DR-10-3999
)	&
Vs.)	IN THE COURT OF COMMON PLEAS
Mildred C. Knight (wife) &)	Case No. 2005-CP-10-2674
Bobby Knight III (son) of alleged)	&
incapacitated person,)	IN THE COURT OF COMMON PLEAS
Appellant(s).)	Case No. 2007-CP-10-5683

&

Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	
incapacitated person,)	Case No. 2008-CP-10-__ (Pending) __
Plaintiff(s).)	
Vs.)	
Wachovia Bank, N.A. and)	
Wachovia Investments, Inc.)	
Defendant(s).)	

CERTIFICATE OF SERVICE for:

I, Mildred C. Knight and Bobby Knight III, herein certify that the following were mailed a copy of this MOTION to file First Amended Complaint with Rule 42 Consolidation with first class postage affixed on this day:

Hon. Irv Condon, Probate Judge
100 Broad St Ste 469
Charleston, SC, 29401-2273

Paul Schwartz, "David & Schwartz, P.A." Attorney
757 Saint Andrews Blvd
Charleston, SC 29407-7164

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2008 MAR -4 AM 10:44

FILED

Glen Churchill, Churchill Law Firm Attorney
174 E Bay St
Charleston, SC 29401-2132

Thad Vincent, Vincent Law Firm, individual and as the
Attorney for C. Tonney & L. Jones
834 Savannah Hwy
Charleston, SC 29407-7270

Meredith Coker Finkle & Altman LLC, Attorney
PO Box 265
Charleston, SC 29402-0225

Sean K Trundy, Keith McCarty, Roy & Amanda Maybank
PO Box #'s
Chas SC

David A. GA. Greer III, "Family Services, Inc.",
Registered Agent and Conservatorship -
Iris Albright -employee
4925 LaCross Rd
North Charleston, SC 29406-6510

Charleston City & Elizabeth Spencer
Charleston Legal Department
50 Broad St.
Charleston, SC 29401-2901

Walter Kauffman, Kauffmann Law Firm
1411 Barbara St
Mt Pleasant, SC 29464-4501

Charlie Condon & Condon Law Firm
880 Johnnie Dodds Blvd
Mt Pleasant, SC 29464-3141,,,843-8146

Honorable Seth J. Whipper, Whipper Law Firm
4592 Durant Ave
N Charleston, SC 29405-5211

C MacGibson, Jr.
764 St. Andrews Blvd
Charleston, SC 29407

Mary Hall
3 Broad Street
Charleston, SC 29401

BY: ³ March 2008
Respectfully submitted this 21st day of February 2008.

Mildred C. Knight Mildred C Knight (wife), Plaintiff & Appellant

Bobby Knight III Bobby Knight III (Son) Plaintiff & Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2005-CP-10-2674

MILDRED KNIGHT,
PLAINTIFF,
VS.
CHLOE KNIGHT TONNEY,
DEFENDANT.

TRANSCRIPT OF RECORD

April 14, 2008
Charleston, South Carolina

B E F O R E:

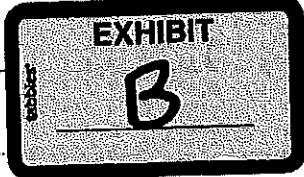
THE HONORABLE R. MARKLEY DENNIS, JR., Judge

A P P E A R A N C E S:

MILDRED KNIGHT
Pro se Plaintiff

MEREDITH L. COKER, Esquire
CHARLES S. ALTMAN, Esquire
Attorneys for the Defendant

Tina F. Behles; ACR, CVR
Circuit Court Reporter



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EXHIBIT D

IN THE COURT OF COMMON PLEAS
FROM THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CIVIL ACTION No. 2007-CP-10-4141
COUNTY OF CHARLESTON)	an APPEAL FROM PROBATE COURT
Irv Condon, Probate Judge &)	
Chloe Tonney Petitioner vs)	FROM THE PROBATE COURT CHAS SC
Norman Robert Knight Jr. alleged)	CIVIL ACTION No. 2004-CP-0099
incapacitated person, et al)	
Respondent(s);)	
Sean Trundy, ET AL)	FROM THE FAMILY COURT CHAS SC
Defendants,)	CIVIL ACTION No. 2006-DR-10-3999
Vs.)	&
Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	Case No. 2005-CP-10-2674
incapacitated person,)	&
Appellant(s).)	IN THE COURT OF COMMON PLEAS
)	Case No. 2007-CP-10-5683

&

Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	
incapacitated person,)	Case No. 2008-CP-10- (Pending)
Plaintiff(s).)	
Vs.)	
Wachovia Bank, N.A. and)	
Wachovia Investments, Inc.)	
Defendant(s).)	

2008-3092

2008 MAR -14 AM 10:44
JILLIE J. ARMSTRONG
CLERK OF COURT

FILED

MOTION FOR LEAVE to file the FIRST AMENDED COMPLAINT(s)¹

Notice to all the Attorneys, Respondents and Defendants above:

The Plaintiffs and Appellants, captioned above, NOW in addition to their previous Causes of Actions, and timely move for leave of the Court to structure their First Amended Complaint (Petition and Extraordinary Writ Complaint) to include the following paragraph . . . as the damages and causation accrues daily in these cases,

¹ CIVIL ACTION No. 2007-CP-10-4141; Case No. 2005-CP-10-2674; Case No. 2007-CP-10-5683

Cause No. _(draft)_ LOSS OF CONSORTIUM

The Plaintiffs, husband and wife, notoriously known as Mr. and Mrs. Norman R Knight, Jr. incorporate by reference all the above, w paragraphs and pleadings as though fully set forth herein.

1. . At all times pertinent to the events complained of in the Plaintiffs Rule 42a Consolidation Motion (pending before the Charleston County Court) and the COMPLAINT (pending Court of Common Pleas Rule 82a and b Decisions) , (are the sole and proper Plaintiffs in Case 2005-CP-10-2764) were married and that these Plaintiffs continue to be married to this very day; and
2. That as a result of the wrongful and negligent acts of the Defendants, and each of them, the Plaintiffs were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship; and
3. That all the aforesaid injuries and damages were caused solely and proximately by the wrongful and malicious negligence of the Defendants.

WHEREFORE, the Plaintiffs jointly as husband and wife, demand judgment against the Defendants and Respondents, jointly and severally, in the amount of TEN MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS (\$10,650,000.00) each spouse, plus costs, prejudgment interest, post judgment interest, and any other costs this court deems appropriate.

Affidavits/Pleadings of Mildred C, Knight = undisputed fact, the Plaintiffs, Norman R Knight, Jr and Mildred C. Knight are married 58 years.

Respectfully submitted this 21st day of February 2008.

Mildred C. Knight

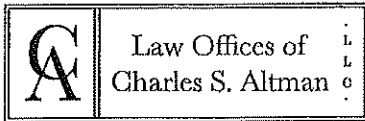
Bobby Knight III

Mildred C. Knight (wife)
3940 Hottinger Avenue
North Charleston, SC 29405
(843) 576-4477 FAX *

Bobby Knight III (Son)

*Also FAX is a one page message and about whom to call. This as our ADA alternative to not having a voice mail box. Please respect this choice ☺

EXHIBIT E



October 18, 2021

J. Seth Whipper
Whipper Law Firm
4592 Durant Avenue
North Charleston, South Carolina 29405
jsw@whipperlaw.com (By Email Only)

RE: Record on Appeal
Judith Brown v. Chloe Tonney - Appellate Case No. 2021 - 000185

Dear Seth,

This letter serves as confirmation of receipt of the Record On Appeal in the above-mentioned case. We agree that some of the documents excluded from our list provided in the Respondent's Designation of Matter are not wholly necessary for the proper adjudication of this matter, however the below listed documents are necessary and need to be included;

Answer of Defendant to Complaint (9/9/2005)
Plaintiffs' Motion to Leave to File First Amended Complaint (3/4/2008)
Order Granting Plaintiffs' Motion to Restore (4/17/2008)
Answer of Defendant to Complaint (7/29/2019)

We need an affirmative response by 5:00 p.m. today, October 18th, 2021, that you will add the necessary documents cited above to the Record on Appeal. In addition, the Court needs to be notified of the revision to the Record and the complete Record will need to be filed.

In the event that you do not comply with our request in regards to these documents we will be forced to file a motion with the Court to ensure the proper documents are included within the Record on Appeal.

Further, the document referenced as "Amended Complaint (2019)," in the index appearing on page 15 needs clarification. The Amended Complaint is dated August 12, 2020. Is this document the proposed amended complaint that corresponds with the Motion to Amend filed on July 16, 2020? If so please confirm as such.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Altman', written over a horizontal line.

Charles S. Altman

EXHIBIT F

Kelli Goldstein

From: Kelli Goldstein
Sent: Monday, October 18, 2021 12:12 PM
To: jsw@whipperlaw.com
Cc: Charlie Altman
Subject: Judith Brown v. Chloe Tonney Appellate Case No. 2021-00185
Attachments: Whipper.ltr.101821 revision of the record on appeal.pdf

Good Afternoon,

Please see the attached in regard to the above-referenced matter.

Thank you.

Regards,

Kelli Goldstein

Law Clerk

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

EXHIBIT G

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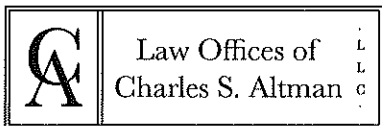
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RECEIVED

Nov 01 2021

SC Court of Appeals

November 1, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. 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

Dear Ms. Kitchings,

Find enclosed the Respondent's Response to the Appellants' Return to Respondent's
Motion to Compel.

By copy of this letter, I am serving a copy of the same on J. Seth Whipper, attorney for
the Appellant.

Sincerely,

The Law Offices of Charles Altman

A handwritten signature in cursive script, appearing to read 'Charles S. Altman', written over a horizontal line.

cc: J. Seth Whipper (email only)

Charles S. Altman, Esq. (Bar No. 351)