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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin Culbertson, Circuit Court Judge

Appellate Case No. 2020-001291

Julie Irving,

Plaintiff/Respondent,

v.

Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb,

Defendants,

of whom Jeanne Poafpybitty, Personal Representative
of the Estate of Donald M. Rothgeb is

Defendant/Appellant.

MOTION FOR SUPPLEMENT TO RECORD ON APPEAL,
SO THAT THE CURRENTLY DIFICIENT RECORD
INCLUDES ALL MATTERS DESIGNATED TO BE INCLUDED
IN THE RECORD ON APPEAL

Clifford H. Tall, P.A.
Clifford H. Tall, Esq.
SC Bar No.: 5463
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
ctallpa@sc.rr.com
Counsel for Respondent, Julie Burks (formerly
known as Julie Irving)

TO: REESE R. BOYD, III, ESQ. AND BRET H. DAVIS, ESQ. AND THOMAS RODE, ESQ.

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the Court, Clifford H. Tall of Clifford H. Tall, P.A, attorney for Respondent, Julie Irving, will move before the Court, pursuant to Rule 212(b) South Carolina Appellate Court Rules, for an Order permitting supplement to the Record on Appeal, filed in this matter by Appellant on September 21, 2021. As grounds for this Motion, Respondent asserts the following:

1. On or about September 21, 2021, Appellant served and filed a Record on Appeal which did not include all documents listed by the undersigned Respondent, as described in her June 19, 2021 Designation of Matter to be Included in the Record on Appeal.

2. Rule 210 South Carolina Appellate Court Rules obligates Appellant to assemble, serve and file the Record on Appeal. In connection with her filing, Appellant raised, with the Court, no objection to any matter designated by the undersigned Respondent. Further, Appellant has informed the Court of no difficulties, she may have encountered, in identifying or assembling, for the record, any matter designed by the undersigned Respondent. Among the documents which are absent from Appellant's record assembly and filing are associated with items 23, 50 and 53 of Respondent's Designation of Matter to be included in the Record on Appeal.

3. Attached, hereto, as Exhibit "A" is a copy of the undersigned Respondent's Designation of Matter to be included in the Record on Appeal.

4. This Motion, is offered so that, all documents, which have been designated, may be included in the Record on Appeal, for judicial review in this matter. Respondent seeks to now supplement the Record on Appeal, to include all designated matters.

WHEREFORE, Respondent hereby moves for an Order to Supplement the Record on Appeal, as set forth, above.

Regarding Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned hereby certifies that he has communicated the concerns, addressed in this Motion, in an attempt to resolve the issues. Further consultations with Appellant's counsel regarding this Motion, appear to serve no useful purpose.

Respectfully Submitted

s / Clifford H. Tall
Clifford H. Tall
SC Bar #5463
Clifford H. Tall, P.A.
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Respondent-Plaintiff, Julie
Burks (formerly known as Julie Irving)

Dated: December 23, 2021

Exhibit "A"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin Culbertson, Circuit Court Judge

Appellate Case No. 2020-001291

Julie Irving,

Plaintiff/Respondent,

v.

Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb,

Defendants,

of whom Jeanne Poafpybitty, Personal Representative
of the Estate of Donald M. Rothgeb is

Defendant/Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Clifford H. Tall, P.A.
Clifford H. Tall, Esq.
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(843) 497-9777
ctallpa@sc.rr.com
Counsel for Respondent, Julie Irving

1. Defendant's September 23, 2015 letter to Probate Court with Interim Accounting dated September 23, 2015.

2. Defendant's September 25, 2015 Motion for Accounting Extension.

3. Plaintiff's Complaint to Secure Fair and Prompt Closure of Estate Administration, dated April 25, 2016.

4. Plaintiff's Motion for Temporary Restraining Order to Prevent Preferential Estate Distributions, dated April 25, 2016.

5. Affidavit of Julie Irving, dated April 4, 2016.

6. Clifford H. Tall, Esq.'s May 16, 2016 letter to Probate Court with Steven Taylor Rothgeb's Acceptance of Service and Answer Expressing Agreement with Plaintiff's Allegations and Prayers for Relief.

7. Affidavit of Russell R. Burgess, Jr., dated May 18, 2016.

8. Affidavit of Matthew Rothgeb, dated May 19, 2016.

9. Clifford H. Tall, Esq.'s May 23, 2016 letter to Probate Court with Donald Matthew Rothgeb's Acceptance of Service and Answer Expressing Agreement with Plaintiff's Allegations and Prayers for Relief.

10. May 27, 2016 hearing transcript.

11. June 3, 2016 letter from Reese R. Boyd, III, Esq. to Probate Court with accounting filings.

12. Court Order dated June 13, 2016.

13. June 27, 2016 letter to Probate Court with Demand for Hearing signed by Clifford H. Tall, Esq. for Julie Irving.

14. July 5, 2016 letter to Probate Court signed by Clifford H. Tall, Esq. with Demands for Hearing signed by Steven Taylor Rothgeb and Donald Matthew Rothgeb.

15. Email from Reese R. Boyd, III, Esq. dated July 14, 2016 to Probate Court with record of legal billings.

16. Plaintiff's October 17, 2016 Motion for Alternative Financial Relief.

17. Defendant's Motion to Quash and for Protective Order dated October 20, 2016.

18. Defendant's Answer and Counterclaim, dated October 25, 2016.
19. Affidavit of Julie Irving dated October 26, 2016.
20. Affidavit of Jeanne Poafybitty dated October 26, 2016.
21. Court Order Addressing Motions and Scheduling Order, dated November 10, 2016.
22. Plaintiff's Answer to Counterclaims of Defendant, dated November 25, 2016.
23. November 30, 2016 Request for Admissions on behalf of Ms. Irving.
24. December 30, 2016 Ms. Poafybitty's response to Plaintiff's Request for Admissions.
25. Email from Bret H. Davis, Esq. to Probate Court, dated January 12, 2017, forwarding copy of January 3, 2017 correspondence to Plaintiff's counsel.
26. Julie Irving's January 27, 2017 Affidavit.
27. Plaintiff's Motion for Sanctions dated February 7, 2017, with Exhibits.
28. Affidavit of Steven Taylor Rothgeb dated February 14, 2017.
29. February 15, 2017 letter from Davis & Boyd to Probate Court with proposed Estate closing documents.
30. February 17, 2017 and February 24, 2017 trial transcripts together with all filed Exhibits (including 1-29 from Plaintiff and all of Defendant's Exhibits).
31. Plaintiff's Demand for Hearing dated March 7, 2017.
32. Defendant's Summation dated March 20, 2017.
33. Plaintiff's Summation dated March 20, 2017.
34. March 29, 2017 Defendant's Memorandum in Response to Plaintiff's Demand for Hearing.
35. Court's May 26, 2017 email describing the Court's decision.
36. June 2, 2017 letter from Reese R. Boyd, III, Esq. to Court regarding Plaintiff's alleged social media positing.
37. Email of Court dated June 28, 2017, proposing telephone conference.

38. June 28, 2017 email between Bret H. Davis, Esq. and Court fixing time for telephone conference.

39. Plaintiff's October 13, 2017 email to Bret H. Davis, Esq. and Reese R. Boyd, III, Esq. with Plaintiff's proposed Court order.

40. October 13, 2017 email from Clifford H. Tall, Esq. to Court.

41. October 31, 2017 email from Reese R. Boyd, III, Esq. to Court regarding Plaintiff's proposed Court order.

42. Court Order dated March 2, 2018.

43. Defendant's Motion for Mistrial or New Trial dated March 29, 2018.

44. Defendant's Motion for Reconsideration dated March 29, 2018.

45. Plaintiff's Motion to Alter or Amend Judgment dated March 29, 2018.

46. Defendant's Memoranda dated May 4, 2018, supporting its Motion for Reconsideration.

47. Defendant's Memorandum dated June 26, 2018 Supporting its Motion for Mistrial or New Trial.

48. June 26, 2018 Plaintiff's Reply to Defendant's Motions for Mistrial/New Trial, For Reconsideration and to Defendant's Memorandum.

49. June 29, 2018 Hearing transcript.

50. Defendant's July 20, 2018 email to Court including billing records.

51. September 6, 2018 email from Court, describing its decision.

52. September 27, 2018 email from Reese R. Boyd, III, Esq. to Clifford H. Tall, Esq. forwarding a proposed order, where a copy was filed with Court.

53. Plaintiff's October 12, 2018 letter to the Probate Court, together with proposed Order and footnote references, which have been acknowledged by the Probate Court, and are subject to Circuit Court Order.

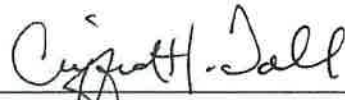
54. Plaintiff's email of October 15, 2018, including legal billing records.

55. Court's Order Regarding Post Trial Motions dated November 7, 2018.

56. November 13, 2018 email to Court from Clifford H. Tall, Esq.
57. November 13, 2018 email to Clifford H. Tall, Esq. from Court.
58. Defendant's Notice of Appeal dated November 13, 2018.
59. Defendant's Statement of Issues on Appeal dated December 21, 2018.
60. Appeal Brief on behalf of Ms. Poafpybitty.
61. Brief on behalf of Ms. Irving.
62. Motion for Supplement for Record on Appeal dated May 29, 2019.
63. Amended Motion for Supplement for Record dated June 14, 2019.
64. Brief in Support of Record Supplement on behalf of Ms. Irving.
65. Brief in Opposition to Record Supplement on behalf of Ms. Poafpybitty.
66. Circuit Court Order granting Supplement to Record.
67. Reply Brief on behalf of Ms. Poafpybitty.
68. January 22, 2020 hearing transcript before the Circuit Court.
69. July 15, 2020 email decision from the Circuit Court.
70. September 16, 2020 Order of the Circuit Court.

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

June 19, 2021



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Attorney for Respondent-Plaintiff,
Julie Irving

CERTIFICATE OF SERVICE

I, Clifford H. Tall, attorney for Plaintiff/Respondent, Julie Irving, do hereby certify that I have served Appellant's counsel in this action with a copy of Designation of Matter to be Included in the Record on Appeal, by emailing and mailing a copy of the foregoing to the following parties and the following addresses:

Reese R. Boyd, III, Esq.
Davis & Boyd, LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577
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Bret H. Davis, Esq.
Davis & Boyd, LLC
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Donald Matthew Rothgeb
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Thomas Rode, Esq.
Thurmond, Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
thomas@tktlawyers.com


Clifford H. Tall

June 19, 2021

CERTIFICATE OF SERVICE

I, Clifford H. Tall, attorney for Respondent-Plaintiff, Julie Burks (formerly known as Julie Irving), do hereby certify that I have served Appellant, and other Defendants in this case in this action with a copy of the Motion for Supplement to Record on Appeal, so that the currently deficient record includes all matters designated to be included in the Record on Appeal, by email, to the following addresses:

Reese R. Boyd, III, Esq.
reese@davisboydlaw.com

Bret H. Davis, Esq.
bdavis@davisboydlaw.com

Thomas Rode, Esq.
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Donald Matthew Rothgeb
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SC Court of Appeals

s / Clifford H. Tall

Clifford H. Tall

Dated: December 23, 2021