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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Honorable Diane S. Goodstein, Circuit Judge

Appellate Case No. 2021-001413

Jacquelyn Gladden and Patricia Reed Respondents

v.

Cyndy Reed Stewart Appellant.

Motion to Strike

Pursuant to Rules 209(b) and 210(c) of the South Carolina Rules of Appellate Court Practice, Respondents, Jacquelyn Gladden and Patricia Reed, by and through their undersigned attorney, move to strike from Appellant's designation of the record certain documents not previously proffered or considered by the lower tribunal and therefore impermissibly presented in appeal. Specifically, Appellant included within her designation the Petition to Remove Personal Representative, Order of Appointment of Personal Representative, and Order Dismissing Jacquelyn Gladden Appeal in Bamberg County Probate Court (items 17, 34, and 35 in Appellant's Designation). These documents were not proffered to or considered by the trial Court and cannot now be raised for consideration. Additionally, such documents were not relevant and are not relevant to the matters at trial and now on appeal. It is Respondents belief that Appellant has attempted to include these documents to obfuscate the matters before the Appellate Court.

Moreover, Appellant refers to an Order Denying Plaintiff's Motion for Attorney's Fees and Motion for Sanctions (item 21). No such order exists. The designation of this as a separate order is incorrect given the Order Granting Motion to Reconsider and the Court's own statements at trial,

that the granting of the Motion to Reconsider revived all pending Motions. (Transcript, Pg. 49-50, lines 24-25,1-14).

For these reasons, Respondents request that these documents be stricken from the record and all discussions, references, and legal arguments presented, supported, or otherwise utilizing these documents also be stricken from consideration in this appeal.

The specific portions of Appellants Brief that Respondents are requesting to strike are:

- Page 5, the entire section with the heading “Proceedings Before the Bamberg County Probate Court (2015-Present)”
- Page 8, the entire section after the heading “Additional Proceedings Before the Bamberg County Probate Court (2020-Present)”
- Page 11, “the Probate Court such as the fidelity of Dr. Stewart as the personal representative (PR) and fiduciary of the Estate, Dr. Stewart’s claims to reimbursement for person (sic) funds she advanced regarding maintenance of the Property...” (Top of the Page)
- Page 11, the bottom paragraph dealing with the rights and responsibilities of personal representatives
- Page 13, Second paragraph dealing with the Estate of Carrie Reed and the issues before the Bamberg Probate Court
- Page 18, second paragraph “Although Respondents entered into a Consent Agreement with Dr. Stewart on 31 October 2018 to strike all claims for attorney’s fees from this action, and the trial courts subsequently refused to overturn that Agreement in a subsequent Order entered 10 January 2020...”

- Page 19, “As noted above, Respondent’s seek attorneys’ fees and costs under this statute in the Bamberg County Probate Court for the same conduct at issue in this matter, and such would be an appropriate role for the Probate Court as Dr. Stewart has served at the Estate’s Personal Representative since 2015.”

The above references were not before the Court, or in the case of the fees and sanctions, create an Order that does not exist. Appellant’s argument that the matters between the probate court and the civil court being “conflated” are due to her own conflation of the issues and inclusion of inappropriate materials on the record. Respondents request to be heard on this matter, should the Appellate Court need further clarification.

May 12, 2022

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Proof Of Service

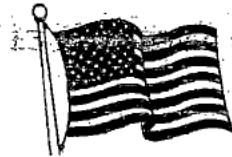
I certify that I have served the foregoing Motion to Strike by emailing an electronic copy of same to the Clerk of Court, South Carolina Court of Appeals via emailing to ctappfilings@sccourts.org with a courtesy copy simultaneously sent to the Counsel for Appellant to their email address, sam@phillipsfirm.net. The \$50.00 filing fee was deposited in the US Mail, on today's date addressed to the Clerk of Court at P.O. Box 11629, Columbia, SC 29211.

May 12, 2022

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