In The

Supreme Court of Virginia

RECORD NO. 160311

SHERYL DENISE RICKETTS,

Appellant,

v.

CHARLIE EDWARD STRANGE and DONEGAL MUTUAL INSURANCE,

Appellees.

BRIEF OF APPELLANT

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NATURE OF CASE

This is an appeal filed by Sheryl Ricketts (herein referred to as the "appellant") seeking review of the dismissal by summary judgment of her complaint and denial of her motion to amend pleading filed in the Circuit Court of the City of Danville, Virginia.

MATERIAL PROCEEDINGS BELOW

The appellant, by counsel, filed a Complaint seeking damages arising out of a personal injury that incurred in Danville, Virginia. (App. pgs. 3-4). (all referenced as the Joint Appendix will be "App"). The defendant, Charlie Edward Strange (herein referred to as the "appellee,") filed an answer in the case and the complaint was also answered by the appellant's underinsured motor vehicle carrier, Donegal Mutual Insurance Company, (herein referred to as "Donegal Mutual"). (App. pgs. 5-6; 7-8). Subsequently, the appellee, joined by Donegal Mutual, filed a motion for summary judgement. (App. pgs. 13-21; 22-128; 139-140). The appellant filed an answer to the motion for summary judgment. (App. pgs. 129-132; 133-138). The matter was heard before the trial court on February 13, 2015. (App. pgs. 370-452). Subsequent to the hearing, the trial court granted the motion for summary judgment. (App. 359-463). The appellant filed motions to amend the style of the case and substitute a party. (App.

pgs. 343-345). A hearing on these motions was held on October 13, 2015. (App. pgs. 453-486). The trial court denied the appellant's request and dismissed the appellant's complaint. (App. pgs. 359-363; 471-476). The appellant filed a notice of appeal in this matter, on December 11, 2015, and is seeking review by this Court of the trial court's action herein. (App. 364-366).

ASSIGNMENTS OF ERROR

1. The trial court erred in granting the motion for summary judgment because the cause of action and claim was listed under Schedule B of appellant's bankruptcy petition, exempted under Schedule C and properly recorded in her Virginia Homestead Deed, under Code Section 34-4, and the exemption was allowed by the Chapter 7 Trustee and the cause of action and claim were excluded as an asset of the estate. (See App. pgs. 362-363).

2. The trial court erred in denying the appellant's motion to substitute the Chapter 7 Trustee, George A. McLean, as the plaintiff to this action. (See App. pgs. 362-363).

3. The trial court erred in denying the request to correct the misnomer in name of the plaintiff and allow the change of the name of the plaintiff to the Chapter 7 Trustee, George A. McLean. (See App. pgs. 362-363).

STATEMENT OF FACTS

The appellant filed a complaint for personal injuries she received as a result from a motor vehicle accident in the City of Danville, Virginia, on February 3, 2012. (App. pgs. 3-4). In the suit, she alleged that the appellee's vehicle had collided with her vehicle and she was injured as a

result of his negligence. (App. pgs. 3-4). As part of the complaint, she sought repayment of medical costs incurred. (App. pgs. 3-4). She provided in discovery a summary of her medical bills of $37, 653.39. (See App. pgs. 332-442). The appellee filed an answer to the suit on March 4, 2014. (App. pgs. 5-6). The appellant's underinsured carrier, Donegal Mutual, filed an answer to the complaint on February 12, 2014. (App. pgs. 5-6). Subsequently, the appellee and Donegal Mutual each filed a motion for summary judgment. (App. pgs. 13-138; 139-140).

Each motion for summary judgment alleged that the cause of action happened on February 3, 2012. (App. pg. 13). That subsequent to that date, the appellant filed on September 21, 2012, a Chapter 7 Bankruptcy in the Western District of Virginia. (App. pgs. 14; 22-81). Each motion for summary judgment then alleged that she did not list or exempt her cause of action herein in her bankruptcy petitions. (App. pgs. 14; 139). Further, prior to filing this cause of action, she received her final discharge on the Chapter 7 Bankruptcy on December 18, 2012. (App. pgs. 78-81). Thus, as argued in each motion for summary judgment, the cause of action was not hers to assert, but was property of the Chapter 7 Trustee. (App. pgs. 14-19; 139). Therefore, the appellee and Donegal Mutual argued that the complaint before the trial court was void and should be dismissed. (App.

pgs. 14-14-19; 139). Further, they argued that the appellant was barred from bringing the action now because of the applicable statute of limitations had expired. (App. pgs. 14-19; 139).

The appellant responded by pointing out in its response that the appellant listed her cause of action under "Schedule B-Personal Property," under question 18 which stated the following:

> Potential funds due to Debtor unknown at this time, Including State & Federal tax refunds, 9/12 interest in joint 2012 tax refund of approximately $9700=$7274, debtor ½ interest=$3638, possible garnishment funds, insurance proceeds, proceeds related to claims or causes of action that may be asserted by the debtor, any claim earned but unpaid wages, and/or inheritance.

(App. pgs. 129-131; 134; 484-487).

Further, the appellant argued that these assets were claimed exempt under "Schedule C"-Property Claimed Exempt," and specifically claimed exempt under her recorded homestead deed, pursuant to Virginia Code Section 34-4. (App. pgs. 129-131; 133-136).

The hearing on this motion was held before the trial court on February 13, 2015. (App. pgs. 370-449). The parties agreed that all documents arising out of the appellant's Chapter 7 Bankruptcy would be admitted into the record. (App. pgs. 371-373). The parties also agreed that

a summary of the appellant's medical bills arising out of the automobile collision would be admitted into the record. (App. pg. 373).

In its order granting the Motion for Summary Judgment the trial court found:

> The Court finds that the plaintiff, in her prior Chapter 7 Bankruptcy, failed to disclose with the requisite reasonable particularity under the circumstances then existing her claim for personal injuries as a result of the accident issue. As a result, at the time the plaintiff filed this action on January 16, 2014, her personal injury claim arising from the accident at issue remained part of the plaintiff's bankruptcy estate, assertable only by the trustee in bankruptcy. Because the plaintiff lacked, and continues to lack, standing to prosecute this action, her pending lawsuit herein against the defendant and any claims against Donegal Mutual are a legal nullity. As a legal nullity, the plaintiff's lawsuit herein has no tolling effect on the statute of limitations applicable to the plaintiff's personal injury claim. Because the plaintiff did not have standing to sue when she filed her lawsuit on January 16, 2014, and did not acquire standing prior to the expiration of the statute of limitations on February 3, 2014. Her claim herein is barred.

(App. pg. 360).

The appellant objected on the record to the Court's finding on the order. (App. pgs. 362-636). In addition, the objections were attached to the Final Order as Exhibit A. (App. pgs. 363).

That subsequent to the trial court's final ruling granting the motion for summary judgment, the appellant filed a motion to amend pleadings. (App. pgs. 343-345). In the motion, the appellant requested to be allowed to

amend the named plaintiff to the proper of party interest, the Chapter 7 Trustee, due to a misnomer, pursuant to Code Section 8.01-6, or in the alternative be allowed to substitute a party, George A McLean, the Chapter 7 Trustee, pursuant to Rule of the Virginia Supreme Court. A hearing on this motion was conducted on October 13, 2015. (App. pgs. 343-34). The trial court at the hearing denied the request of the appellant to amend the name of the plaintiff or substitute as plaintiff, George A. McLean, the Chapter 7 Trustee. (App. pgs. 471-476). In denying the request the trial court found "regarding the plaintiff's motion to amend pleading, the Court finds the plaintiff's reliance on section 8.01-6 of the Code of Virginia (1950) (as amended) and Rule 3:17 of the Supreme Court of Virginia to be misplaced and the motion is denied." See (App pg. 360).

ARGUMENT

I. STANDARD OF REVIEW

In reviewing a decision to grant or deny summary judgment, the Court should review the application of the law to the undisputed facts de novo. *Deutsche Bank Nat'l Trust Co. v. Arrington*, 290 Va. 109, 114, 772 S.E.2d 571, 573 (2015). This Court also must apply "the same standard a trial court must adopt in reviewing a motion for summary judgment, accepting as true those inferences from the facts that are most favorable to the

nonmoving party, unless the inferences are forced, strained, or contrary to reason." *Fultz v. Delhaize America, Inc.*, 278 Va. 84, 86, 674 S.E.2d 272, 274 (2009).

As to the Courts review of the motion under Code Section 8.01-6 and Rule 3:17, these are purely legal questions of interpretations of statutes and rules, which are reviewed de novo. *Copeland v. Todd*, 282 Va. 183, 193, 715 S.E.2d 11, 16 (2011); *Addison v. Jurgelsky*, 281 Va. 205, 208, 704 S.E.2d 402, 404 (2011).

II. AS TO ASSIGNMENT OF ERROR I

The motion for summary judgment filed by the appellee and Donegal Mutual is misplaced in this particular case. The appellant did in fact file for Chapter 7 bankruptcy and was awarded a discharge. However, her contingent claim was exempted from the bankruptcy estate and, therefore, not an asset of the estate controlled by the trustee. For the reasons stated herein the Court should find that the trial court was in error in granting the motion and allow the case to precede forward.

Contingent causes of actions such as when a negligence party has committed a negligent act pre-petition against the debtor, becomes property of the estate, unless subject to exemption by the debtor under Section 11 U.S.C. § 522. See *Grady v. A.H. Robins Co.*, 839 F.2d 198 (4th

Cir. 1988). However, a debtor is allowed to exempt property of the estate and consequently hold this property free from claims of the trustee and creditors. See 11 U.S.C. § 522(b)(1); *In re Clark*, 711 F.2d 21, 21 (3d Cir. 1983). In Virginia, a debtor may only claim exemptions that are allowable under Virginia law and general federal laws. See Virginia Code Section 34-3.1; *In re Smith*, 45 B.R.100 (Bankr. E.D. Va 1984). In this particular case, the debtor exercised her rights under Virginia Code Section 34-4, by recording a homestead deed and exempting her contingent claim.

Under Schedule C, "Property Claimed As Exempt," the appellant has specifically claimed "insurance proceeds, proceeds related to claims or causes of actions that may be asserted by the debtor." She listed the claim under Schedule C. See (App. pg. 486). The appellant further complied with the recordation requirements with regard to the filing of a homestead deed. See Virginia Code Section 34-6. (App. pgs. 484-487). Once the homestead exemptions are claimed, under Rule 4003(b) of the Fed. R. Bankr. P., unless an objection is filed to the claimed exemption within thirty days of the conclusion of the 341 meeting of the creditors, the property listed on Schedule C will be deemed exempt. Once the property is exempt, it is no longer part of the bankruptcy estate. See Fed. R. Bankr. P. 4003(b). Even if the claimed exemption is sloppily or completely inappropriately claimed the

claim exemption will be valid if no objections are timely filed. See *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). Also Virginia law is well established that homestead deeds and laws interpreting them are to be liberally construed, with any questions or doubts resolved in favor of the debtor. *In re Bissell*, 255 B.R. 402 (Bankr. E.D. Va. 2000). In this particular case, no objection was filed and, thus, any contingent claim of the appellant was not part of the bankruptcy estate due to the exercise by her of the exemption. The trustee reported that he exercised "diligent inquiry into the financial affairs of the debtor," and his reports show he abandoned any claim to her exempt property, including her exempt contingent claims.

Keep in mind the question here is not whether the full amount of the claim was exempted. Under bankruptcy law, a debtor can amend her homestead deed, or the debtor can take later advantage of Virginia Code Section 34-28.1. The debtor simply would have to amend her exemption. See Fed. R. Bankr. 1009(a). The issue here is whether or not the right to pursue the claim was left with the debtor after the discharge or remained part of the estate. Here the appellee and Donegal Mutual would be right, if the claim had not been properly exempted under the homestead deed, then the claim would have remained property of this bankruptcy estate after discharge. However, she exempted such claims in her homestead deed.

The homestead deed does not have to be specific or detailed as the nature of the claim, a general assertion is sufficient. It is the duty of the trustee or the creditor to challenge the exemption prior to the passing of the objection time limit. This was not done in this case and the trustee has never made any claim to any contingent claim of the debtor. Therefore, it is inappropriate for the appellee and Donegal Mutual now to come in and say that she cannot assert the claim when in fact it is her claim due to the exemption. Because it was exempted, the motion for summary *judgment* is inappropriate.

The appellant and Donegal Mutual claim that the two-year statute of limitations has expired because the appellant did not schedule the contingent claim in her Chapter 7 bankruptcy proceeding or claim the proceeds thereof as exempt. They argue that because the appellant lacked standing to pursue the contingent claim, since it belonged exclusively to the bankruptcy trustee, the statute of limitations continued to run. The appellant and Dongal Mutual argue that this case is controlled by *Kocher v. Campbell*, 282 Va. 113, 712 S.E.2d 477, *cert. denied*, 132 S. Ct. 847 (2011). In appellant's Schedule B Personal Property, filed in the bankruptcy proceeding, a copy of which was attached to appellant's Response to Motion for Summary Judgment, she claimed as an asset

"[p]otential funds due to Debtor unknown at this time . . . . [including] insurance proceeds, proceeds related to claims or causes of action that may be asserted by the debtor." This property was then exempt pursuant to Code Section 34-4, under her homestead deed. It was also listed in Schedule C—Property Claimed as Exempt. Further, none of the debt incurred as a result of February 3, 2013 accident, namely her medical providers, were scheduled, as creditors in the Chapter 7 Bankruptcy.

It is undisputed that during the pendency of the bankruptcy and until the appellant received her discharge on December 18, 2012, the contingent claim was the property of the bankruptcy estate and could only be asserted by the bankruptcy trustee, unless and until it was abandoned to the debtor by the trustee or until she obtained her discharge. During the course of the bankruptcy, the trustee abandoned all exempt property belonging to the debtor. Including all property under the homestead deed. The contingent claim was never asserted or administered by the trustee, so it passed to the appellant upon her receiving a discharge as an unadministered asset. It could be argued that the claim of exemption and scheduling of the personal injury claim should have been stated more explicitly. That said, the statement of the claim for "insurance proceeds" is sufficient to put the appellee or the trustee on notice of the nature of the claim. After all,

appellee and her carrier were aware of the motor vehicle accident that gave rise to the claim. Donegal Mutual had notice of the claim, or it would not have responded to this action. *See* *Dabney v. Augusta Mut. Ins. Co.*, 282 Va. 78, 87-88, 710 S.E.2d 726, 731-32 (2011) ("It is well settled that performance of the notice provision of an insurance policy is a condition precedent to coverage, which requires 'substantial compliance' by the insured. In *Dabney*, the Augusta policy provided that the insured . . . must give Augusta 'written notice' of an accident 'as soon as is practical.'" (citation omitted)).

Strict and literal compliance with exemption law is not a ground to deny the debtor a claim of exemption. In *In re Alley*, 354 B.R. 783 (Bankr. W.D. Va. 2006), the debtors claimed the homestead exemption, but the filing of the claim of exemption under a local court rule came too late. The bankruptcy trustee argued that because the filing of the claimed exemption was beyond the time allowed by a court rule, the debtors had failed to "set apart" the property claimed as exempt as required by Virginia law. The bankruptcy court, however, declined to apply the local rule so strictly that it would deprive the debtors of the benefit of the exemption to which the debtors clearly were entitled.

> In the case at bar, enforcement of the local rule to defeat the claim of the homestead exemption, otherwise properly claimed, would be inconsistent with the statutory provisions for claiming exemptions under Title 34 of the Virginia Code. It would also abridge the substantive rights of the Debtors.

Id. at 787.

Even if a claim of exemption were invalid, the exemption will still be sustained if a party in interest fails to object.

> Plaintiff's claim against Defendant, however, appears to have been exempted by the bankruptcy court. There is no indication on the bankruptcy-court docket that a party in interest objected to Plaintiff's asserted exemption[,] and the time to do so has expired, *see* Fed. R. Bankr. P. 4003(b)(1, 2). Despite indications that the asserted exemption was invalid, therefore, it appears that Plaintiff's claim against Defendant was exempted from Plaintiff's bankruptcy estate.

Bone v. Taco Bell of Am., LLC, 956 F. Supp. 2d 872, 879 (W.D. Tenn. 2013) (citation omitted).

In the case of *In re Wilmoth*, 412 B.R. 791 (E.D. Va. 2009), the debtor listed the medical expenses incurred in the automobile accident in the bankruptcy schedules, but did not list the "cause of action" as exempt property. The court found that the property had not been exempted and properly abandoned. Here, in contrast the medical bills incurred in the accident were not listed under her personal bankruptcy. It makes some sense that they were not listed in that the claim because it had not come to full maturity. However, the appellant did list possible "causes of action" as

being specifically exempt. That is in sharp contrast to any case cited by the appellee and Donegal Mutual The bankruptcy was filed at a time when the specifics of the cause of action were unknown. The appellant was not trying to discharge the medical bills in her personal bankruptcy due to the fact that the claim had not fully matured. In addition, by not listing the medical providers she was not attempting to cause them any prejudice by the filing of the Chapter 7 bankruptcy. The medical providers would still have their full claim against her intact, which would have included their statutory lien. There would have been no prejudice caused to the medical providers by the bankruptcy. This is in sharp contrast to *In re Wilmoth*.

It is Virginia's policy that the homestead exemption provisions are to be liberally construed. *Wilkinson v. Merrill*, 87 Va. 513, 516, 12 S.E. 1015, 1015-16 (1891). Courts should look to allow the exemption in cases even where there is not clarity in the claimed exemption, even if for nominal amount. A good case to consider in this particular instance is the case of *In re Watkins*, 267 B.R. 703 (2001). In *Watkins* the debtor had claimed "life insurance proceeds," and placed a nominal value of a dollar. In the case, the trustee argued that the debtors homestead deed was insufficient to exempt any portion of the "cash surrender value" because it only listed policy "proceeds". In addition, the trustee argued that the nominal claim

was not sufficient. The court in deciding that the claim was sufficient, first indicated that the nominal claim was sufficient to preserve the interest in the proceeds. Further, the court found that the exemption was sufficiently stated. The court stated:

> Given the liberal construction traditionally accorded exemption statutes, a debtor's claim of exemption should not be read so narrowly or hypertechnically as to defeat an otherwise proper exemption simply because the description of the property is not perfectly precise. In this connection, it is perhaps true that the more natural reading of "proceeds," as it relates to an insurance policy, would be the benefit payable upon the event insured against. However, the definition, of "proceeds" also includes the "the sum, amount, or value of property sold or converted into money or into other property."… That definition is sufficiently broad to embrace the cash surrender value of a life insurance policy, since the cash surrender value represents the cash that would be received if the policy were "converted into money" by surrendering it prior to maturity.

Id. at 1211.

The court's reasoning in *Watkins* can be applied in the case in hand. The general language used here in the exemption, namely insurance proceeds and causes of actions, would cover the specifics of the claim. In a similar fashion to *Watkins*, the wording is sufficient to include the possible claim that the appellant has in her cause of action.

The case of *In re Poulette*, 493 B.R. 729 (D.Md. 2013), specifically dealt with a personal injury case that the debtor had pending, but did not list in her bankruptcy. There the bankruptcy court allowed the case to be

amended and the personal injury to be added to the debtors schedules. It is an interesting case in that the opinion actually goes on to contrast the difference with the debtor in *Poulette* verses the debtor in *Wilmoth*. The most interesting part is that the court concentrates on the lack of prejudice caused to any party. In *Poulette*, there was no prejudice caused by the debtor's actions. Here, there was something scheduled if not artfully, but there is no prejudice caused to anybody by the language used in the homestead exemption. The Chapter 7 Trustee would not have had an asset for the unsecured creditors. The medical care providers of the appellant are not harmed. There is also no prejudice caused to the appellant and Donegal Mutual in this case.

The goal always is to do substantial justice, and it is evident that appellant fully intended to schedule the claim as exempt under Virginia law. Although inartfully done, the claim should be recognized as having been scheduled and as a qualifying exemption. The appellee and Donegal Mutual can hardly complain, since the claim could have been asserted by the bankruptcy trustee during bankruptcy. That the claim instead is now being asserted by the appellant offends no substantial right of the appellee and Donegal Mutual, who still are able to defend the personal injury action on its merits. The goal is to adjudicate claims on their merits, instead of

precluding them from ever being heard due to technical errors in the manner in which the claim has been asserted. Even if the manner in which the claim was stated is inadequately explicit or detailed, that does not mean that the claim is invalid. Instead, it merely deprives the claim of its presumption of validity. *In re Va. Broadband, LLC*, 521 B.R. 539, 557-58 (Bankr. W.D. Va. 2014) ("[O]nce a claimant properly files a proof of claim with all of the required supporting documentation, it is prima facie evidence of the claim's validity and the amount the debtor owes. Fed. R. Bankr. P. 3001(c), (f). . . . Failure to provide documentation does not invalidate the proof of claim; it merely deprives the claim of prima facie validity." ((citations omitted)).

The purpose of bankruptcy from the standpoint of the unsecured creditors is to provide an orderly distribution of the debtor's assets to the creditors according to the order of priority of their claims. Here, the unsecured creditors are deprived of nothing, since the claim at issue is exempt under Virginia law by virtue of Code § 34-4 and 34-28.1. The creditors will have no access to the proceeds of the personal injury suit, even if the action is successful. Rather, the appellee and Donegal Mutual receive a windfall. Appellant meanwhile is deprived of a source of recovery

for her injuries. The claim was filed within the statute of limitations and should be allowed to proceed to trial.

III. AS TO ASSIGNMENTS OF ERRORS II-III.

The appellant requested that she be allowed to either name as a misnomer the Chapter 7 Trustee or substitute the Chapter 7 Trustee in as a party. The trial court denied this motion. See (App. pg. 360). This Court has found that "where the substituted party bears some relation of interest to the original party and to the suit, and there is no change in the cause of action, a substitution may be allowed." *Jacobson v. Southern Biscuit Company*, 198 Va. 813, 817, 97 S.E.2d 1, 2 (1957). In Jacobson, this Court stated:

> substitution is not determined merely by whether there has been a complete change of parties, but is determined by whether that change has the effect of introducing an entirely new cause of action. Where such substitution will introduce a new cause of action into the case it cannot be allowed, while it will not introduce a new cause of action it may be permitted…The discretionary power of the court to such end is to be liberally exerted in favor of, rather than against, the disposition of the case upon its merits.

Id. at 817, 97 S.E.2d at 2 (citations omitted). In this particular case, the plaintiff sought to name the Chapter 7 Trustee, George A. McLean, as the plaintiff in the case. Based on the ruling of the trial court, the claim belonged to the trustee and the trustee would have been the proper party.

However, the change in the plaintiff's name or substitution of the plaintiff does in any way alter or change the cause of action. It merely brings the action under the correct name. The plaintiff all along was the appellant. However, due to the bankruptcy, the right to pursue the action had passed to the trustee according to the trail court. Of course we do object to that finding, but the request came after the ruling of the trial court. Therefore, the substitution of the correct party does not alter the cause of action, it merely allows the case to go forward under the proper named plaintiff based on the trial court's ruling in the case.

In the *Jacobson v. Southern Biscuit Co.*, the Court allowed a correction to the name because the plaintiff sued the proper entity, although it was under the wrong name. Id. at 561, 179 S.E.2d at 471. The Court allowed the case to go forward despite the statute of limitations because there had been an amendment to pleadings. However, in *Leeckie v. Seal*, 161 Va. 215, 170 S.E. 844 (1933), this Court held that where the corporation was sued under a trade name and no amendment was sought, then the default judgment rendered was a nullity because of the fact the judgment precluded the plaintiff from amending his pleadings. In this case, the request for amendment had been made before any final ruling and the request for amendment or substitution timely. Therefore, in a similar

fashion to the *Jacobson* case, the correct party should have been named and the case preceded on its merits.

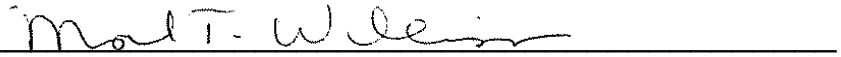
While the appellant objects to the finding of the trial court, that she did not properly preserve the contingent claim in her bankruptcy, the trial court should have allowed the case to proceed on its merits with what it considered to be the correct party. By denying the request, the trial court has precluded the case from being decided on its merits. Unlike the *Kocher* case, where they went back and had the case given back to the plaintiff through the bankruptcy court, this case would have remained in the name of the Chapter 7 Trustee and could have been properly heard on its merits. The trial court should have granted the motion to name the correct plaintiff and substitute the Chapter 7 Trustee as the appropriate plaintiff here.

CONCLUSION

WHEREFORE, your appellant respectfully request; that the Court allow her oral argument in the case; that the Court review the trial court findings herein; and that the Court find that it is appropriate to reverse and remand the case for further hearing based on the error of the trial court as stated herein.

SHERYL RICKETTS

By Counsel



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CERTIFICATE

Pursuant to Rule 5:26(h), I certify that, on this 2nd day of August, 2016, electronic copies of the Brief of Appellant and Appendix were filed, via VACES, and ten paper copies of the Brief of Appellant and three paper copies of the Appendix were hand-filed with the Clerk of this Court. On this same day, an electronic copy of the Brief of Appellant was served, via email, and electronic copies on CD of the Brief of Appellant and Appendix were served, via U.S. Mail, postage prepaid, upon:

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