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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Case No. 2020-CP-08-00267
Appellate Case No.: 2020-000629

Lisa Ray,.....Appellant,

v.

Parkway Village Apartments,..... Respondent.

**RESPONDENT'S RESPONSE TO APPELLANT'S
MOTION TO AMEND**

Rule 210 (c) of the South Carolina Appellate Court Rules prohibits the supplement of the record on appeal with matters that were not presented to the lower tribunal. Appellant's motion to amend should be denied for this reason. Further, this motion is one of many frivolous motions, in order cause delay in the ejection of Ms. Lisa Ray, that have been filed with the Court of Appeals. The relevant facts and law are contained herein.

This case concerns the eviction of the Petitioner from her apartment. Petitioner's lease with respondent was month to month and Petitioner was required to pay \$147.00 per month. The housing authority subsidizes the remainder of her rent. On January 14, 2020, Respondent filed an eviction before the Magistrate's office in Goose Creek for non-payment of rent. (R. at 4). A rule to show cause hearing was requested by Petitioner and heard by Judge Deaton on January 23,

2020. (R. at 10) The writ of ejectment was granted on January 27, 2020. (R. at 3).

Thereafter a Bond to stay hearing was heard before the Magistrate's Court, on January 30, 2020. (R. at 12). Judge Deaton ordered \$147.00 to be paid within five (5) days of the hearing and on the first of each month thereafter, to allow the stay to remain in effect. (R. at 12).

On March 9, 2020, Judge Roger Young heard the appeal from the Magistrate's court and found no errors at law or fact were committed by the Magistrate (R. at 7). Judge Young issued a form 4 affirming the ejectment and furthering ordering the Petitioner to vacate the premises no later than March 31, 2020, as she failed to pay the bond required. (R. at 7).

Now, Appellant is attempting to supplement the record to allow testimony from Ms. Trudy Huber, the Parkway Village Apartments Resident Coordinator. This testimony should not be allowed because it cannot be found in the record presented to the lower court. "The statement of facts should not include any information not found in the record on appeal." Jean Hoefler Toal et al., Appellate Practice in South Carolina 431 (3d. ed. 2016), citing Rule 210(c), SCACR. An appellate court's review is limited only to those facts that appear in the record and "the appellate court will not consider facts which do not appear in the Record on Appeal." Rule 210(h), SCACR.

Rule 209, SCACR, addresses each party's duties in designating matters to be included in the Record on Appeal. At the time of filing an initial brief, each party shall designate the materials it desires to have included in the Record on Appeal. "[T]he designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [See Rule 210(c)]." Rule 209(b), SCACR. Rule 210(c), SCACR, instructs parties to an appeal that the "Record on Appeal shall include all matter designated to be included by any party under Rule 209" but that the "Record shall not ...

include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR.

“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal ...” Rule 260(a), SCACR; see Henning v. Kaye, 207 S.C. 436, 515 S.E.2d 794 (1992) (stating an appellate court is justified in dismissing an appeal for failure to follow the appellate rules of procedure).

Based on Appellant’s failure to comply with the appellate court rules by their attempt to include testimony not found in the initial Record on Appeal, the motion to amend the record must be denied.

July 6, 2022

Respectfully Submitted,

/s Paul B. Ferrara, III

Paul B. Ferrara, III
SC Bar No.: 70511
Ferrara Law Firm, PLLC
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511 / F: (843) 569-5411
paul@ferraralawfirm.net
ATTORNEY FOR RESPONDENT

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PROOF OF SERVICE

I certify that I have served a copy of the Respondent's response to appellants motion to amend by depositing a copy of it in the United States Mail, postage prepaid, on July 8, 2022, addressed to:

Lisa Michelle Ray
775 Sangaree Parkway, Apt 5C
Summerville, SC 29486-1842

/s Paul B. Ferrara, III
Paul B. Ferrara, III
SC Bar No. 70511
8887 Old University Blvd. Suite 200
North Charleston, SC 29406
(843) 569-5511/ (843) 569-5411 fax
paul@ferraralawfirm.net
Attorney for Appellant