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**Jul 27 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM OCONEE COUNTY  
In the Court of Common Pleas

J. Cordell Mattox, Circuit Judge

Case No. 2021-CP-37-00560  
Appellate Case No. 2021-001552

Dorothy Pierce,

Appellant,

v.

Jared Adam Pierce,

Respondent.

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MOTION TO REQUIRE APPELLANT TO SUBMIT CORRECTED RECORD ON APPEAL  
AND MOTION TO STRIKE FINAL BRIEF OF APPELLANT

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/s/ Richard Hunt McDuff  
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Attorney for Respondent

COMES NOW the Respondent, Jared Adam Pierce, by and through his undersigned attorney and pursuant to Rule 240, South Carolina Appellate Court Rules, and hereby moves this court for the entry of an order requiring the Appellant to submit a Corrected Record on Appeal and to Strike the Final Brief of Appellant. As grounds therefor, the Respondent would show unto the following:

**I. THE DEFECTIVE AND INACCURATE RECORD ON APPEAL**

On July 25, 2022, the undersigned counsel received a delivery from USPS containing three hundred eight-one (381) pages of material identified as the “Record on Appeal” along with the Appellant’s Final Brief.<sup>1</sup> On July 26, 2022, the undersigned received an electronic copy of the Appellant’s Proof of Service for the Record on Appeal and the Final Brief of Appellant. The undersigned also received by way of electronic transmission a Certificate of Counsel “that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” The undersigned has contacted legal counsel for the Appellant about correcting the Record on Appeal, but there has been no response to the request.

Contrary to the Certificate of Counsel, the Record on Appeal prepared and submitted by the Appellant omits the following items included in the Respondent’s Designation of Matter to be Included in the Record on Appeal:

- A. The Appellant’s Motion for New Trial dated August 23, 2021; and,
- B. The Appellant’s Notice of Intent to Appeal dated August 23, 2021; and,
- C. The Order of the Court of Common Pleas dated December 29, 2021.

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<sup>1</sup> It is interesting to note that the mailing was postmarked as coming from a Greenville, SC zip code (29607, not 29406) and the cover page of the Record on Appeal and the Final Brief of Appellant bear an incorrect address for the office of the legal counsel for the Appellant. His correct address is 6650 Rivers Avenue, not 6650 Rivera Avenue.

In addition, the Record on Appeal contains a number of hearsay documents neither proffered, introduced, nor admitted into evidence during the August 2, 2021, Probate Court trial.<sup>2</sup> They are as follows:

- A. The Appellant’s “talking points” from the hearing on the Appellant’s Motion for New Trial held before the Probate Court on October 1, 2021 (R. pp. 257-274); and,
- B. An unauthenticated handwriting report by Mr. Travis King dated July 29, 2021 (R. pp. 251-256); and,
- C. An unauthenticated physician’s note regarding Tammy G. Youngblood dated September 28, 2021 (R. p. 240); and,
- D. A “Voluntary Statement” of Tammy Youngblood dated February 8, 2021 (R. pp. 243-244), unauthenticated text messages (R. pp. 245-248); and,
- E. An unauthenticated “Comprehensive Report” related to Jared Adam Pierce (R. p. 249); and,
- F. One page of an unauthenticated articles and publications related to forensic document examination. (R. pp. 276-313).

Rule 210(c), SCACR, states, “[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.” The appellate court is bound by the record established at trial and the Record on Appeal shall not include any matter not presented to the lower court. *Argabright v. Argabright*, 389 S.C. 176, 181 n.3, 727 S.E. 2d 748, 751 n.3 (2012). The Record on Appeal submitted by the Appellant

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<sup>2</sup> These documents were given to the Probate Court by the Appellant, *pro se*, at the time of the October 1, 2021, hearing on her Motion for New Trial.

is violation of this Rule and a corrected Record on Appeal must be required so that the Respondent can submit his Final Brief with necessary record citations.

## **II. APPELLANT’S FINAL BRIEF VIOLATES RULE 211(B)(2), SCACR**

Rule 211(b)(2), SCACR, provides, “[t]he party may correct obvious typographical errors and misspellings which were contained in the initial brief. **No other changes may be made.**” (Emphasis supplied). In clear violation of this Rule, in her Final Brief the Appellant made the following changes and additions to her Initial Brief:<sup>3</sup>

### **A. Initial Brief – Statement of the Case, Pg. 5**

“This case concerns the validity of a will made by the Deceased, Doyle Elton Pierce. Accordingly, on August 18, 2021, a judgement in favor of the Respondent entitled “ORDER ON MOTION TO DETERMINE VALIDITY OF WILL” was signed by the Oconee Probate Court in this case. The Appellant subsequently filed a Motion for a New Trial on August 23, 2021. Thereafter, Appellant filed an Amended Motion for a New Trial in lieu of the already filed Motion for New Trial. On or about October 1, 2021, the Court conducted a hearing for Appellant’s Motion for New Trial. Consequently, the Court denied the said Motion. The Appellant appeals the said order.”

#### **Final Brief – Statement of the Case, Pg. 5 Change: Added new sentence at the end**

The Appellant appealed the probate court order to the Oconee County Circuit Court. The Circuit Court Denied the appeal. The Appellant Appeals the said Order in the Court of Appeals.

### **B. Initial Brief – Facts, Paragraph 4, Pg. 7**

On or about July 7<sup>th</sup>, 2020, the Deceased executed the last will and testament in compliance with SC Code 62-2-502 (2017). Notably, the will was in writing and was signed by at least two disinterested individuals, each of who witnessed either the signing or the testator’s acknowledgement of the signature or of the will. Three months later, the decedent died at Prisma hospital, Oconee County on September 14<sup>th</sup>, 2020, at the age of 74 years, 3 months, & 29 days.

#### **Final Brief – Facts, Paragraphs 4 & 5, Pgs. 7-8 Change: Split paragraph 4 into two separate paragraphs**

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<sup>3</sup> The changes and alterations noted are in addition to the fact the Appellant’s Initial Brief contained no record citations, whatsoever, but are now includes them in her Final Brief.

On or about July 7<sup>th</sup>, 2020, the Deceased executed the last will and testament in compliance with SC Code 62-2-502 (2017). Notably, the will was in writing and was signed by at least two disinterested individuals, each of who witnessed either the signing or the testator's acknowledgement of the signature or of the will. (*ROA, Page. 34*)

Three months later, the decedent died at Prisma hospital, Oconee County on September 14, 2020, at the age of 74 years, 3 months, & 29 days.

**C. Initial Brief – Argument II, Pg. 13**

The Respondent even called the Judge by his first name (Kenneth) while both exited the court room, proof that the judge has personal connection to the Respondent.

**Final Brief – Argument II, Pg. 13**

**Changes: Added information to the end of the sentence**

The Respondent even called the Judge by his first name (Kenneth) while both exited the courtroom, proof that the judge has a personal connection to the Respondent since they are both residents of the same small town of Walhalla, South Carolina.

**D. Initial Brief – Argument II, Pg. 14**

Additionally, Weeks before the hearing of the appellant's motion for new trial, the appellant asked probate court about Power Point presentation system if court had any to aid her presentation during the motion for a New Trial Hearing but the judge and his clerks denied they had a PowerPoint presentation system, only to discover at the time of the hearing that the probate court actually had a boardroom with all Power Point system in place but they did not think the appellant was good enough to use the court's Power Point system.

**Final Brief – Argument II, Pg. 14**

**Changes: Altered sentence structure and added words**

Additionally, weeks before the hearing of the appellant's motion for a new trial, the appellant asked the probate court about the PowerPoint presentation system and if the court had any to aid her presentation during the hearing, but the judge and his clerks denied the fact that they had a PowerPoint presentation system. To the surprise of the appellant, at the time of the hearing, the probate court had a boardroom with all PowerPoint systems in place, but they did not think the appellant was good enough to use the court's PowerPoint system.

**E. Initial Brief – Argument II, Pg. 14**

The appellant presented 10 grounds in her motion for a new trial but on his ruling, the probate judge ruled on one and completely ignored the other 9 arguments.

**Final Brief – Argument II, Pgs. 14-15**

**Changes: Altered the content and phrasing of opening sentence for the paragraph**

Subsequently, the appellant presented 9 grounds in her motion for a new trial but on his ruling, the probate judge ruled on one and completely ignored the other 8 arguments.

**F. Initial Brief – Argument II, Pg. 17**

It is apparent that such communication sought to influence the Judge’s decision to rule in favor of the Respondent, in violation of the Appellant’s due process rights.

**Final Brief – Argument II, Pg. 17**

**Changes: Altered phrasing for sentence**

Such communication sought to influence the Judge’s decision to rule in favor of the Respondent, in violation of the Appellant’s due process rights.

**G. Initial Brief – Argument III, Pg. 18**

“In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest footed in state law.”

**Final Brief – Argument III, Pg. 18**

**Changes: Altered content of quote**

“To prove a denial of substantiative due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest footed in state law.”

**H. Initial Brief – Argument III, Pgs. 18-19**

The circuit Court judge also had knowledge of disputed facts and should have recused himself from the case.

**Final Brief – Argument III, Pg. 19**

**Changes: Typo and changes to beginning of sentence**

countersuit Court judge also knew disputed facts and should have recused himself from the case.

**I. Initial Brief – Argument IV, Pg. 22**

Furthermore, the appellant presented court with text messages corroborating testimonies of the witnesses before the signing event dating between July 6<sup>th</sup> 2020 to July 7<sup>th</sup>, 2020, and a handwriting Expert Report which authenticated that the signature on the Will is that of Doyle Elton Pierce.

**Final Brief – Argument IV, Pg. 22**

**Changes: Altered beginning of sentence and changed sentence structure**

Furthermore, during the Motion for New Trial Hearing, the appellant presented court with text messages corroborating testimonies of the witnesses before the signing event dating between July 06, 2020, to July 07, 2020, and a handwriting Expert Report which authenticated that the signature on the Will is that of Doyle Elton Pierce.

**J. Initial Brief – Argument IV, Pg. 22**

Considering all the above factors and evidence, it's unfair for the probate Court to taint the reputation of the appellant for having knowledge the will was forged and yet the Will is Valid and Authentic.

**Final Brief – Argument IV, Pg. 22**

**Changes: Altered phrasing**

Considering all the above factors and evidence, it's unfair for the probate Court to taint the reputation of the appellant for knowing the will was forged and yet the Will is Valid and Authentic.

**III. CONCLUSION**

The Respondent respectfully requests this Court to enter an Order requiring the Appellant to submit a Corrected Record on Appeal that includes all matters designated by the Respondent and removes all matters not offered as evidence at the time of the August 2, 2021, Probate Court trial. The Respondent further requests that the Final Brief of Appellant be stricken as it violates the clear and unambiguous provisions of Rule 211(b)(2).

Respectfully submitted,

/s/ Richard Hunt McDuff

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Attorney for Respondent

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PROOF OF SERVICE

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I certify that I have served the Motion to Require Appellant to Submit Corrected Record on Appeal and Motion to Strike Final Brief of Appellant on Appellant, Dorothy Pierce, by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2022, addressed to her attorney of record, Robert L/ Gailliard, 6650 Rivers Avenue, North Charleston, South Carolina 29406.

/s/ Richard Hunt McDuff

Richard Hunt McDuff, Esq.

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