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**Aug 08 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

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Dorothy Pierce,

Appellant,

v.

Jared Adam Pierce,

Respondent.

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MOTION TO STRIKE AMENDED RECORD ON APPEAL, MOTION TO STRIKE  
AMENDED FINAL BRIEF OF APPELLANT, AND MOTION TO EXTEND TIME WITHIN  
WHICH THE RESPONDENT MUST FILE HIS FINAL BRIEF

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/s/ Richard Hunt McDuff  
Richard Hunt McDuff, Esq.  
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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 striking the Amended Record on Appeal and the Amended Final Brief of Appellant. As grounds therefor, the Respondent would show unto the following:

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

On August 5, 2022, the undersigned counsel received a delivery from USPS containing three hundred thirty-nine (339) pages of material identified as the “Amended Record on Appeal” along with the Appellant’s Amended Final Brief.<sup>1</sup> Noticeably missing are Certificates required by Rules 210(g) and 211(b).

The Appellant still 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.

In addition, the Record on Appeal contains a number of unauthenticated 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. Handwriting report by Mr. Travis King dated July 29, 2021 (R. pp. 295-300); and,
- B. Physician’s note regarding Tammy G. Youngblood dated September 28, 2021 (R. p. 286);  
and,
- C. “Voluntary Statement” of Tammy Youngblood dated February 8, 2021 (R. pp. 287-288);  
and,

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<sup>1</sup> Once again, the mailing was postmarked as coming from a Greenville, SC zip code (29607, not 29406).

<sup>2</sup> These documents were provided to the Probate Court by the Appellant, *pro se*, at the time of the October 1, 2021, hearing on her Motion for New Trial. The Appellant neither authenticated them nor sought to introduce them as additional Evidence.

- D. Text messages (R. pp. 289-292); and,
- E. “Comprehensive Report” related to Jared Adam Pierce (R. pp. 293-294); and,
- F. Articles and publications related to forensic document examination. (R. pp. 302-339).

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 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 208(B)(4), SCACR**

Rule 208(b)(4), SCACR, provides, “[t]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.” In clear violation of this Rule, in her Amended Final Brief the Appellant references the following matters which were never made part of the record before the Probate Court during the August 2, 2021, trial on the validity of the Last Will and Testament of Doyle Elton Pierce:

- A. On Page 11 of the Amended Final Brief, wherein the Appellant argues reversible error under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,<sup>3</sup> she references (R. pp. 302-339) unauthenticated articles and publications that were never introduced into evidence.

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<sup>3</sup> 509 U.S. 579 (1993).

B. On Page 20 of the Amended Final Brief, the Appellant references a purported physician's note regarding Tammy Youngblood (R. p. 286), one of the Appellant's witnesses during the August 2, 2021, Probate Court trial. The physician's note is an unauthenticated hearsay document that was never introduced as evidence at the trial.

III. **CONCLUSION**

The Respondent respectfully requests this Court to enter an Order striking the Amended Record on Appeal because it violates Rule 210(c), SCACR, by omitting matters designated by the Respondent and it includes matters neither offered nor introduced as evidence at the time of the August 2, 2021, Probate Court trial. The Respondent further requests that the Amended Final Brief of Appellant be stricken as it violates the clear and unambiguous provisions of Rule 208(b)(4), SCACR. Finally, the Respondent respectfully requests that time for him to submit his Final Brief be extended until the Appellant complies with the applicable Appellate Court Rules.

Respectfully submitted,

/s/ Richard Hunt McDuff

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PROOF OF SERVICE

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I certify that I have served the Motion to Strike Amended Record on Appeal, Motion to Strike Amended Final Brief of Appellant, and Motion to Extend Time on Appellant, Dorothy Pierce, by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2022, addressed to her attorney of record, Robert L/ Gailliard, 6650 Rivers Avenue, North Charleston, South Carolina 29406.

/s/ Richard Hunt McDuff

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