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Aug 29 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin

Common Pleas Case Number: 2021-CP-23-0362

Appellate Case No. 2021-001504

JAYNE LAFORGE STOVALL,

Appellant,

v.

PAULETTE B. STOVALL AND
WILLIAM S. STOVALL OF WHOM
PAULETTE B. STOVALL IS THE
RESPONDENT,

Appellee

**Memorandum in Support of
Motion to Dismiss or in the Alternative
to Strike Appellant's Initial Brief**

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COMES NOW Respondent Paulette Stovall as a Co-Trustee of the Walter Stephen Stovall Trust (“Respondent”) and would respectfully show the Court as follows in reply in support of its Motion to Strike.

STATEMENT OF THE CASE¹

On or about November 1, 2019, Appellant filed with the Greenville County Probate Court a Summons and Petition seeking, *inter alia*, removal of Respondent Paulette Stovall as a Co-Trustee of the Walter Stephen Stovall Trust. [App. 8 ¶¶ 41-42].

On July 7, 2021, the Greenville County Probate Court conducted a final merit hearing at which time Appellant was given an opportunity to present witnesses and evidence in support of the averments contained in her summons and petition. Appellant called two witnesses and did not enter a single piece of evidence into the record during the hearing. [App. 11-20]. In its July 28, 2021, Order, the Court found that Appellant failed to present any evidence to satisfy her burden of proof regarding Appellant’s claims 1-7. [App. 24]. The Court did find, however, that Respondent had presented sufficient evidence to satisfy her burden of proof related to her claims for Breach of Fiduciary Duty and Removal of Appellant as Co-Trustee. [App. 24-25].

On or about August 5, 2021, Appellant filed her Notice of Appeal with the Greenville County Court of Common Pleas. [App. 28]. On or about November 2, 2021, Appellee filed her Motion to Dismiss Appellant’s appeal and supporting Memorandum of Law. [App. 34 & 38]. Appellee argued three (3) independent bases in support of her Motion to Dismiss: (1) Appellant failed to file her Statement of Issues on Appeal with the clerk with proof of delivery on all parties within forty-five (45) days after receipt of the written order; (2) Appellant failed to file her Designation of

¹ Because the Record on Appeal has not yet been prepared, the documents relevant to this Motion are included in the concurrently filed Appendix, which is cited as “App. ____”.

Matter to be Included in the Record on Appeal with the clerk with proof of delivery; and (3) Appellant failed to serve a copy of her initial brief on all parties to the appeal and failed to file with the clerk of the circuit court one copy of the brief with proof of service, each of which constituted violations of S.C. Code §§62-1-307(b) (d), and (e); and by extension, R. (208)(b)(1)(B), SCACR and R. 209, SCACR. [Id]. On November 17, 2021, the Greenville County Court of Common Pleas dismissed Appellant's initial appeal citing Appellant's failure to adhere to a single procedural requirement promulgated under South Carolina Code §§62-1-307(b) (d), and (e). [App. 45]. A subsequent Motion to Reconsider was filed by Appellant which was ultimately denied by the circuit court on or about December 7, 2021. [App. 48 & 54].

The instant appeal was filed on or about December 15, 2021. [App. 57]. On December 23, 2021, this Court provided notice to Appellant regarding deficiencies in her notice of appeal, namely, failure to provide proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR [App. 59].

On January 7, 2022, this Court provided notice to Appellant regarding deficiencies in her notice of appeal, namely, that Appellant's proof of service was not in compliance with SCARC, which requires proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. [App. 61].

On January 18, 2022, this Court provided notice to Appellant that her time for ordering the transcript had expired and provided that within ten (10) days Appellant must file a copy of the letter showing that you have timely ordered the transcript. [App 62].

On or about February 8, 2022, Appellant requested an extension to file transcript with this Court which was granted on or about March 10, 2022. [App. 68 & 69]. This Court's March 10, 2022, Order granted Appellant's request for an extension and required Appellant to "make satisfactory arrangements, in writing with the court report for furnishing the transcript." [Id].

On or about March 28, 2022, this Court dismissed Appellant's appeal due to Appellant's failure to make satisfactory arrangements in writing as required by the Court's order dated March 10, 2022, and Rule 207. [App. 69].

On June 9, 2022, following a Motion to Reinstate the Appeal because no transcript existed² related to the lower court's dismissal of the circuit court appeal, this Court issued an Order reinstating the instant appeal. [App. 70].

On June 22, 2022, this Court provided notice to Appellant regarding deficiencies related to her initial brief, namely, that the initial brief needed to be corrected within ten (10) days else the appeal would be dismissed once again. The Court noted the following deficiencies:

- (1) Initial brief not accompanied by a designation of matter to be included on appeal
- (2) Table of contents and table of cases do not have page references
- (3) Improper pagination
- (4) Brief was not substantially in the format shown by Form 13 in Appendix C to part II of the SCACR.

[71].

On or about June 28, 2022, Appellant submitted an amended brief. [App. 73].

² A full transcript exists and is currently in Respondent's possession.

ARGUMENT

I. **The Court cannot consider matters referenced in Appellant's initial brief that are not contained in the record.**

Rule 210 (c) reads, in pertinent part: “the 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. R. 210(c), SCACR and R. 209, SCACR.

The bases of Appellee's Motion to Dismiss before the Greenville County Court of Common Pleas was Appellant's failure to adhere to §§62-1-308(b) (d), and (e)³. [App. 34]. Appellant's failure to adhere to the above-cited statute meant that no Designation of Matter to be Included in the Record on Appeal was ever filed. [Id]. Rule 210(h) reads, in pertinent part: “The Designation [Designation of Matter to be Included in the Record on Appeal] must clearly identify what the party desires to have included on the Record on Appeal.” Rule 210(h), SCACR; (“[T]he appellate court will not consider any fact that does not appear in the Record on Appeal.”); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 488 (2005) (explaining the appellant has the burden of providing a sufficient record).

No hearing was conducted related to Appellee's underlying Motion to Dismiss and therefore it cannot be argued that a record was established via in court proceedings.

³ A scrivener's error is present in this Motion to Dismiss as Appellee inadvertently cited to “§§62-1-307(b) (d), and (e)” rather than §§62-1-308(b) (d), and (e)

Appellant's failure to designate matters to be included on the record on appeal with the lower court precludes her present attempt to establish a record using documents that were neither made part of the record at the merits hearing, nor presented to the lower court to be included on the record.

II. Appellant has failed to provide Appellee with any intelligible statement of issues on appeal.

It is well settled that "a pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, S.E.2d 6, 9 (2003). As noted in this Court's June 22, 2022, deficiency notice to Appellant, Appellant's brief was required to "be substantially in the format shown by Form 13 in Appendix C to part II of the SCACR." Appellant's revised brief contains two (2) of the seven (7) referenced headings found in Form 13. [App. 16]. While Appellant's Table of Contents does contain the headings "memorandum and points of authority" it completely fails to set forth a "statement of issues on appeal," as required by Rule 208(b)(1)(B). [App. 16]

The statement of each issue on appeal shall be concise and direct, and broad general statements of issues may be disregarded by this Court. R. 208(b)(1)(B), SCACR. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal. *Id.* Every ground for the appeal ought to be **distinctly** stated that the reviewing court may at once see the point which it is called upon to decide without having to "grope in the dark" to ascertain the precise point at issue. *Forest Dunes Assocs. v. Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990).

Appellant's initial brief consists of three (3) pages of exposition, and concludes with a request that this Court, sitting in its appellate capacity, remove a co-trustee – who is not a party to this appeal - and order the appointment of an “independent administrator” and “forensic accountant.” [App. 16]. Appellee is now left doing mental gymnastics to tease out the bases of Appellant's appeal, an exercise Rule 208 explicitly seeks to prevent. Appellee's attempt to substantively respond to Appellant's initial brief is further complicated by her repeated reference to matters outside the record on appeal which requires Appellee to speculate as to whether these matters outside the record form the bases, or are in any way related, to the purported issues on appeal.

CONCLUSION

This Court should dismiss the appeal, or in the alternative strike the appeal, due to Appellant's repeated references to matters outside the record on appeal and failure to clearly articulate what she views as the issues on appeal.

Dated this 29th day of August 2022.

****Signature on following page****

PAULETTE B. STOVALL

s/Devon M. Puriefoy

Devon M. Puriefoy

SC Bar No. 102097

Counsel for Respondent Paulette B. Stovall

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CERTIFICATE OF SERVICE

I, Devon M. Puriefoy, certify on this date, August 29, 2022 a copy of Respondent's Motion to Strike and Memorandum in Support of Motion to Strike, was served on the Jayne LaForge Stovall Appellant, via U.S. Postal Service mail, addresses as follows:

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