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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Supreme Court Case No. 2022-001252
Case No. 2016-CP-26-01706

Molly Morpew.....Appellant,

v.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile,
Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm.....Respondents.

**RESPONDENTS' JOINT RETURN TO APPELLANT'S
PETITION FOR WRIT OF CERTIORARI**

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Statement of Issue for Review

- I. Did the Court of Appeals Properly Dismiss Appellant’s Appeal for Failing to Comply with the South Carolina Appellate Court Rules and Orders Issued by the South Carolina Court of Appeals?

Statement of Case

The instant case is a fraud, intentional infliction of emotional distress, and tortious interference with existing contractual relations case, involving allegations from Appellant that Respondents fraudulently interfered with her attempted purchase of property located in Summerville, South Carolina, and the underlying, consolidated 2013 litigation.

On November 14 and 15, 2018, the Honorable Maite Murphy entered orders granting summary judgment in favor of all Respondents and dismissing the case in full. On December 12, 2018, Appellant filed a notice of appeal, identifying seven orders subject to appeal. Throughout the appeal, Appellant refused to follow the Court’s orders, and on May 24, 2022, the Court of Appeals dismissed Appellant’s appeal for failure to comply with its rules and directives. On June 7, 2022, Appellant filed “Appellant’s Motion for Rehearing or Reinstatement,” which was denied by the Court of Appeals. This Writ of Certiorari follows.

Statement of Facts

In 2012, Stephen Dudek and Doreen Cross entered into a real estate sales contract with the seller, a non-party to this lawsuit. Subsequently, Appellant entered into a back-up sales contract regarding the same property with the same seller. Dudek and Cross' contract was ultimately fulfilled and Appellant initiated litigation to enforce her contract over the primary contract. Appellant lost that litigation by decision of the Honorable James E. Chellis, Master-in-Equity, Dorchester County. Appellant appealed that decision in appellate case number 2014-002633 and the Court of Appeals ultimately affirmed the decision of the Master-in-Equity (“underlying matter”).

The instant case arises out of Appellant's allegations that both before and during trial of the underlying case, all of the Respondents perpetrated fraud on both her and the court by making fraudulent misrepresentations and failing to disclose material facts. On November 14 and 15, 2018, the Honorable Maite Murphy entered orders granting summary judgment in favor of all Respondents and dismissing the case in full.

On December 12, 2018, Appellant filed a notice of appeal, identifying seven orders subject to appeal. After many delays, on March 23, 2021, Appellant served Respondents with a Record on Appeal. However, this version of the Record on Appeal omitted a number of materials designated by Respondents. After Appellant filed a series of motions with the apparent aim to avoid including all matters designated by Respondents in the Record on Appeal, this issue was ultimately resolved by Respondents providing Appellant with copies of the disputed documents for inclusion in the record. The Court subsequently ordered Appellant to serve a Record on Appeal that complies with prior Orders of the Court and the South Carolina Appellate Court Rules by

Orders issued on the following dates: August 16, 2021; November 5, 2021; and November 30, 2021.

Appellant served a second version of the Record on Appeal on January 3, 2022. However, this second version of the Record on Appeal was not redacted as required by S.C. Code Ann. §30-2-330 and Order 2014-04-15-02, *Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (Sup. Ct. April 15, 2014). Accordingly, by letter dated January 14, 2022, the Court advised Appellant that “she must serve an amended record on appeal that has been fully redacted within ten (10) days of the date of this letter.” Despite this clear directive, Appellant did not serve Respondents with a redacted record on appeal. Instead, by letter dated January 22, 2022, Appellant advised the Court that it is her position that service of a redacted record was not warranted, and it is the clerk’s responsibility to redact filings. (Ex. A).¹ This letter further indicates that Appellant enclosed a copy of the fully redacted Record on Appeal for filing. In subsequent correspondence dated February 8, 2022, Appellant again took the position that she is not required to serve Respondents with the redacted Record on Appeal. Appellant ultimately never served Respondents with a copy of the fully redacted Record on Appeal.

On March 9, 2022, Respondents filed a motion to dismiss with the Court of Appeals based on Appellants refusal to follow the rules and requirements of the Court of Appeals and its directives. On May 24, 2022, the Court of Appeals dismissed Appellant’s appeal for failure to comply with its rules and directives. On June 7, 2022, Appellant filed “Appellant’s Motion for Rehearing or Reinstatement.” Respondents, unclear as to whether this motion would be treated as

¹ A copy of this correspondence as received by Respondents is attached. The version of this letter is on file with the Court dated January 22, 2022 and contains minor differences.

a motion to rehear, or a motion to reinstate, filed a joint return to Appellant's motion for reinstatement on August 8, 2022. However, on August 11, 2022, the Court of Appeal issued the following Order:

Appellant has filed a motion to reinstate this appeal, which we construe as a petition to rehear the dismissal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has either been overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

On September 9, 2022, Appellant filed a Petition for Writ of Certiorari with the Supreme Court of South Carolina. This petition argues that this Court should grant the petition because: 1) this case is worthy of this Court's review, and 2) the dismissal requirements conflict with this Court's rules, precedents, and the purpose of the Due Process Clause.

Standard of Review

“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, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” SC Appellate Court Rule 260.

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.”
SC Appellate Court Rule 242.

Law/Analysis

I. Appellant Failed to Comply with Appellate Court Rules, Correspondences, and Orders and, Therefore, the Court of Appeals Properly Dismissed her Appeal

Rule 260, SCACR states, “[w]henver 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, which shall have the same force and effect as an order of the appellate court.” Rule 260, SCACR. In addition, Rule 210, SCACR requires the appellant to serve all parties with a copy of the Record on Appeal which shall include all matters designated by any party.

Appellant has repeatedly failed to comply with the requirements of the South Carolina Appellate Court Rules and the directives of the Court of Appeals. This appeal has been pending since 2018 and Respondents have never received a copy of the redacted Record on Appeal so that they may have proceeded with final briefing. In her correspondence, when the appeal was pending in the Court of Appeals, Appellant made it clear that she would not serve Respondents with a redacted version of the Record on Appeal though she purportedly filed a redacted version with the Court. Under the South Carolina Appellate Court Rules, Respondents have a right to receive a verbatim copy of each and every filing Appellant makes with the Court. South Carolina Appellate Court Rules, Rules 210 and 262. The central purpose of this requirement is to ensure that all parties are privy to the same information provided to the Court. Given the tortured history of this case, it is of paramount importance that Respondents receive copies of all filings made by Appellant. Without a copy of the fully redacted Record on Appeal, Respondents are unable to assess the

sufficiency of Appellant's redactions and are unable to ensure that no additional changes have been made.

Appellant has made it clear time and time again that she considers the Clerk's letters and the Orders of the Court as mere suggestions and not as directives. In her Petition for Writ of Certiorari, Appellant explicitly admits that, in response to the Court's January 14, 2022, correspondence advising her of the requirement to serve a redacted and amended Record on Appeal to Respondents, she found "the redacted information is irrelevant to the final briefs and process of the appeal, so reserving the Record after redaction is moot." Appellant then decided, on her own accord and in direct violation of the South Carolina Appellant Court Rules and the orders of the Court of Appeals, that serving the Record on Appeal, was "not mandated or required in any rule or precedent."

Furthermore, Appellant accuses the Court of Appeals of allowing the Clerk of Court to commit the unauthorized practice of law, a serious accusation that is not founded in fact. In fact, what the Appellant misconstrues as judicial criminal intent is simply the mechanism created by Rule 360 of the South Carolina Rules of Appellate Court:

"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, which shall have the same force and effect as an order of the appellate court.** A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded)."

Appellate Court Rule 26 (*emphasis added*).

While Appellant may not like or appreciate the rules of South Carolina's Courts, that does not exclude her from mandated compliance. If Appellant seeks to avail the legal authority of the

Court, then she must also avail herself to its rules, procedures, and orders. Appellant has refused to do so, and the Court of Appeals rightly applied the South Carolina Appellant Court Rules and dismissed this appeal for Appellant's failure to comply.

Appellant's Petition for Writ of Certiorari to this Court is based on an argument that SCACR Rules 210 and 260 violate her rights, and Directives of the Court of Appeals are mere suggestions. She raises no novel issues and alleges no comprehensible issues of law for this Court to consider. Simply put, Appellant refused to comply with the South Carolina Appellate Court Rules and violated the Court of Appeals' Orders. Respondents' Motion to Dismiss was properly granted, and Appellant's Motion for Reinstatement or Rehearing was properly denied.

Accordingly, this Petition for Writ of Certiorari should be denied.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that this Court deny this petition.

[Signature Page to Follow]

s/Samuel M. Wheeler

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October 24, 2022

EXHIBIT A

January 22, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
JAN 26 2022
SC Court of Appeals

Re: Appellate Case No. 2018-002185
Molly M. Morphew v. Stephen Dudek, Doreen Cross, et al.

Dear Ms. Kitchings:

I'm in receipt of this Court's (responsive) letter dated January 14, 2022 (attached) and received on January 20, 2022, advising me to serve an amended record "fully redacted" within 10 days of their letter, but have not yet received Mr. Wheeler's "correspondence dated January 11, 2022" as referenced in your letter.

Based on this Court's letter addressing only Mr. Wheeler in the return address, I'm assuming Mr. Wheeler has made an allegation that the Record is not redacted or fully redacted and this Court has treated his letter as a motion to amend the Record.

Until I receive the alleged data for redaction in specificity (meaning, the specific pages containing personal information requiring redaction), producing and serving another Record appears neither supported nor warranted. Notwithstanding the substantial and undue burden of cost, time and effort to print and mail *another* four (4), 1862-page records with no basis and at a minimum without allowing a pro se party due process to respond to the opposing litigant's issue before advising said party they must perform an action requiring excessive costs and effort.

Regardless, it appears service of another Record is not a requirement for redaction. In fact, pursuant Rule 41.2, even redacting data in a document already filed in the court neither requires an amended document nor the service of, *and* it's the *court clerk* that redacts or removes the data from the filing. Plus, it's any individual that can request the redaction, but only in writing to the clerk *and* when he or she *identifies the document and page number or numbers* that contains data to be redacted. Rule 41.2(e), Rule 41.2(e)(1).

If Mr. Wheeler has found data in the Record served that requires redacting, then I will be more than willing to remove that data before filing the record and in accordance with Rule 41.2(a), but Mr. Wheeler will need to provide those specific page numbers and items.

It's been 19 days since the Record was served and the Record and all final briefs are due in one (1) day, or January 24, 2022. In accordance with this Court's letter, the only issue raised is to redact or remove personal data somewhere in the Record already served. Since redaction only removes certain personal information and does not in any way alter or change any other aspect of the Record, including the index, numbering, order of or the number of pages of the


Record, and according to Rule 41.2, neither prevents the filing of nor requires serving an amended record, such would be inappropriate and moot. Further, it appears redacting data from a document does not extend or automatically extend due dates, and in this case, the filing of the Record and all final briefs, nor is there a reason or legal standing to do so.

I'm not being difficult or trying to cause any delay in this case, instead I'm trying to move this case along while preventing undue and unwarranted burden while preserving court processes and my due process. I'm only asking as a pro se party for the appropriate means and full disclosure to address any issue and its relevancy to the service or filing of the Record to prevent non-compliance or having to address, serve or file another "edition" of this massive Record now or in the future.

Regardless of Mr. Wheeler's failure to provide the specific page numbers of the Record in which he asks for redaction, I have taken the time to review the Record previously served and have done so in accordance with the redaction rules and guidelines pursuant Rule 41.2(a). The pages that contain additional redaction have been sent, along with a copy of this letter, to Mr. Wheeler.

Also, please find enclosed, an original of the fully redacted Record and an original of my final Briefs¹ to be recorded and filed. Due to the cost and time to produce and mail, I have not included copies to be recorded and returned to me in this instance.

Thank you and very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morphey', with a long horizontal flourish extending to the right.

Molly Morphey, pro se

Cc: Samuel M. Wheeler, Esq.
Amy L. Neuschafer, Esq.
Amy B. Hill, Esq.
David A. Collins, pro se

¹ Supreme Court Order, August 25, 2021



 COPY

The South Carolina Court of Appeals

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January 14, 2022

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23 South Brevard Street, Suite 204
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Re: Molly Morpew v. Stephen Dudek (2)
Appellate Case No. 2018-002185

Dear Counsel:

We are in receipt of your correspondence dated January 11, 2022. Please be advised that if you wish to have counsel for the respondent relieved, a motion to relieve counsel must be served and filed. Furthermore, by copy of this letter, the appellant is advised that she must serve an amended record on appeal that has been fully redacted within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

cc: Molly Morpew
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Amy Lynn Neuschafer, Esquire
Amy L.B. Hill, Esquire
Jordan Michael Crapps, Esquire
Laura Ruth Baer, Esquire
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