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**Nov 15 2022**

**SC Court of Appeals**

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

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin

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

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Appellate Case No. 2021-001504

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JAYNE LAFORGE STOVALL,

*Appellant,*

v.

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

*Respondent*

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**RENEWED MOTION TO STRIKE OR IN THE  
ALTERNATIVE DISMISS BY RESPONDENT PAULETTE B. STOVALL**

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COMES NOW Respondent Paulette Stovall as a Co-Trustee of the William Stephen Stovall Trust (“Respondent”) and would respectfully show the Court as follows:

**STATEMENT OF THE CASE<sup>1</sup>**

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 Matter to be Included in the Record on Appeal with the clerk with proof of delivery; and (3)

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<sup>1</sup> 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.\_\_\_\_\_”.

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 existed<sup>2</sup> 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 its first opportunity to Appellant to cure deficiencies related to her initial brief, noting 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]. In response to Appellant's amended brief, Respondent filed a Motion to Dismiss or in the Alternative Strike, arguing that Appellant failed to adhere to Rules 208, 209, and 210. [App. 93].

On September 29, 2022 this Court ordered a denial of Respondent's Motion to Dismiss and a grant of Respondent's Motion to Strike and instructed Appellant, for the second time, to "file and serve a second amended initial brief that **omits references to any matter not presented to the lower court...**" [App. 82] (Emphasis Added).

On or about October 18, 2022 Appellant filed her second amended initial brief. [App. 83].

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<sup>2</sup> A full transcript exists and is currently in Respondent's possession.

The instant Motion followed.

#### ARGUMENT

**I. Appellant has once again failed to adhere to both the Rules of Appellate Procedure, and perhaps more importantly, the unambiguous directives of this Court.**

As noted above, and in response to Appellant's previously filed amended brief, this Court made clear that Appellant was to refrain from including "...references to any matter not presented to the lower Court..." *Id.* The Court's directive is a verbatim recitation of Rules 209 and 210.

The bases of Appellee's original Motion to Dismiss filed with the Greenville County Court of Common Pleas was Appellant's failure to adhere to §§62-1-308(b) (d), and (e)<sup>3</sup>. [App. 34]. There, Appellee argued that 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 lower court proceedings.

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 in the record.

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<sup>3</sup> 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)

While Appellant’s second amended initial brief purports to set forth the issues on appeal, appellant’s brief is nothing more than an attempt to use the appellate process to relitigate the entirety of the case using, for the first time, sixteen (16) “points”<sup>4</sup> – or exhibits– in support of the same. While unclear, it appears Appellant’s second amended initial brief suggests that the lower court failed to give proper weight to the evidence – the evidence being these sixteen (16) referenced “points”. However, “in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the [circuit court].” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). “[Appellate courts] cannot consider issues raised for the first time on appeal” *State v. Morris*, 307 S.C. 480, 485, 415 S.E.2d 819, 822 (Ct. App. 1991). Therefore, “[i]ssues not raised and ruled upon in the [circuit] court will not be considered on appeal.” *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693–94. Moreover, “[a] party may not argue one ground at trial and an alternate ground on appeal.” *Id.* at 142, 587 S.E.2d at 694. *State v. Bonilla*, 429 S.C. 253, 284, 838 S.E.2d 1, 17 (Ct. App. 2019).

Appellant cannot argue now, for the first time, that the lower court failed to give proper weight to the documents she contends support her claims when said documents were never made a part of the record. Appellant never raised, and the lower Court never ruled upon the admissibility of the evidence referenced by Appellant for the first time in this appeal, let alone make a determination as to the weight said evidence was entitled.

Subject to the limitations of the South Carolina Rules of Evidence, Appellant was afforded every opportunity to make a part of the record any and all documents she believed supported her claims in this matter. Appellant opted to not introduce a single piece of evidence at the merits

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<sup>4</sup> Under normal circumstances, Appellee would assign an Appendix number to these documents, however, because these documents are being referenced for the first time on appeal, Appellee does not have these documents in her possession.

hearing. Yet, now for the third (3<sup>rd</sup>) time, Appellant has submitted a second amended initial brief with this Court that is based entirely on matters outside the record.

#### CONCLUSION

Based on the foregoing arguments, Appellee respectfully requests that this Court Dismiss Appellant's second amended initial brief, or in the alternative, strike the brief for once again violatong not only the Rules of Appellate Procedure, but more importantly, this Court's unambiguous directives.

PAULETTE B. STOVALL

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**Nov 15 2022**

**SC Court of Appeals**

**Proof of Service**

I, the undersigned, served a copy of foregoing on the following this 15<sup>th</sup> day of November, 2021, by U.S. Mail, First-Class Postage prepaid and email:

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