

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**  
**Nov 18 2022**  
**SC Court of Appeals**

The Honorable Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2020-CP-07-0231

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APPELLATE CASE NO. 2022-000277

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Georgia Harrison, Barbara Harrison,  
Joyce Ellen Harrison, William S. Harrison III,  
Stanley Roberts, and  
Diana Mendheim, Individually and As Attorney In Fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,  
Kieta Nicole White, and Cheryl Kirkland,

Appellants.

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**RESPONDENTS' REPLY TO APPELLANTS' RETURN IN OPPOSITION TO  
RESPONDENTS' MOTION TO STRIKE APPELLANTS' AMENDED INITIAL BRIEFS  
AND MEMO IN SUPPORT OF RESPONDENTS' SUPPLEMENTED MOTION TO  
STRIKE APPELLANTS' RECENTLY FILED FURTHER AMENDED INITIAL BRIEF**

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**INTRODUCTION**

Currently pending before this Court is the Respondents' Motion To Strike Appellants' Amended Initial Briefs filed on November 7, 2022 and the Respondents' Supplemented Motion

To Strike Appellants' Amended Initial Briefs, filed on November 17, 2022 after the Appellants filed another Amended Initial Brief on November 14, 2022. The Respondents did not file a Memo in Support of Motion with the original filing on November 7, 2022 because the Motion was based purely upon the South Carolina Appellate Court Rules and the Motion was self-explanatory. However, on November 14, 2022, the Appellants filed another Amended Initial Brief and then on November 16, 2022, filed a Return In Opposition To Respondents' Motion To Dismiss [sic] Appellants' Amended Initial Brief, citing case law. Thus, the Respondents now file this Reply and Memo in Support to address the case law cited by the Appellants in their Return.

### **BRIEF FACTUAL BACKGROUND**

On June 27, 2022, the Clerk of the Court of Appeals issued a notice letter to Charles Houston, Appellants' counsel, advising him and the Appellants that their initial brief was due to be filed on July 27, 2022. On August 24, 2022, Mr. Houston filed a Motion to Extend the Appellants' time for filing of their initial brief and designation of matter, and on August 25, 2022, this Court issued an Order granting the Appellants an extension until September 16, 2022 to file their initial brief and designation of matter. On September 13, 2022, Mr. Houston filed a second Motion for an extension to file the Appellants' initial brief and designation of matter, to which the Respondents objected. On September 20, 2022, this Court issued an Order granting the second extension to file the Appellants' initial brief and designation of matter until October 17, 2022, and advised that "No further extensions will be granted absent extraordinary circumstances."

On October 17, 2022, Mr. Houston filed the Appellants' initial brief. A true and correct copy of that initial brief as filed is attached to the Respondents' original Motion To Strike as

Exhibit A. Respondents received a copy of the Appellants' initial brief as filed on October 17, 2022 and began to work on their draft responsive brief immediately due to the time exigencies of this case.

On November 1, 2022, Clerk Allen sent Mr. Houston and the Appellants a “deficiency letter” regarding the October 17, 2022 Appellants' Initial Brief. See Exhibit C of the Supplemented Motion To Strike. On November 2, 2022, sixteen (16) days after filing the Appellants' initial brief and designation of matter, and without having made a motion or having received permission from this Court, the Appellants submitted an “Amended Initial Brief” electronically to the Clerk of Court at 11:07 a.m., which was received and filed by the Clerk. A true and correct copy of that Amended Initial Brief was attached to the original Motion To Strike as Exhibit B. Two hours later that same day, at 1:08 p.m., Mr. Houston submitted a second “corrected” Amended Initial Brief for the Appellants, which was electronically sent to the Clerk, and was received and stamped “filed” by the Clerk. A true and correct copy of that second “corrected” Amended Initial Brief was attached to the original Motion to Strike as Exhibit C. Both of the November 2, 2022 amended initial briefs contained substantively changed and supplemented arguments not included in the original October 17, 2022, timely-filed initial brief. The Respondents filed their original Motion To Strike the amended initial briefs on November 7, 2022.

On November 14, 2022, the Appellants filed another Amended Initial Brief, this one supposedly incorporating the changes required by Clerk Allen's deficiency letter of November 1, 2022 as is attached to the Supplemented Motion To Strike as Exhibit C. However, as is set forth in detail in the Supplemented Motion To Strike, that deficiency letter was aimed at the only Initial Brief before the Court on November 1, 2022—that being the original Appellants' Initial Brief as filed on October 17, 2022, and the “corrected” version should have been the October 17, 2022

Initial Brief with the appropriate deficiency corrections. It should not have been a version of the substantively changed and supplemented “Amended Briefs” filed on November 2, 2022.

The Respondents timely filed their Initial Respondents’ Brief consistent with SCACR 208 on November 16, 2022, addressing the Appellants’ Initial Brief that was filed October 17, 2022.

### **ARGUMENT AND CITATION OF AUTHORITY**

The Court is well aware from earlier filings and Orders in this matter, that this case involves the sale of a large tract of land that was previously heirs property on Hilton Head Island, of which the Appellants own less than a 1.2 percent interest (with the Respondents owning the remaining 98.8 percent), and that the continuing delays occasioned by the repeated filings made by Mr. Houston on behalf of the Appellants, is jeopardizing the potential closing of the contract that will greatly benefit all of the co-owners of the land—the Appellants and the Respondents.

The South Carolina Appellate Court Rules do not allow a party to simply file an “amended” initial brief at their leisure, and the Appellants’ attempt to do so three times without Court approval or motion is inappropriate and highly prejudicial to the Respondents because not only have the Respondents’ counsel already spent substantial time researching, drafting and finalizing their initial Respondents’ Brief in reliance upon the Appellants’ initial brief as filed on October 17, 2022, but the proposed “amended” briefs add substantial new arguments, which were not timely presented to this Court, coming well after the October 17, 2022 deadline for filing the Appellants’ initial brief, that will necessitate substantially more research and preparation, a new Responsive Brief and another unnecessary delay of this case.

Specifically addressing the Appellants’ Return as filed November 16, 2022 by paragraphs, the Respondents would show unto the honorable court as follows:

1. Although the South Carolina Appellate Court Rules “do not prohibit” the filing of amended briefs, they do not allow or provide for the filing of “amended briefs” at the filer’s leisure. To imply such a unilateral right without court permission that should only be granted based upon extraordinary circumstances and proper application to the court, flies in the face of the strict requirements of the Rules relating to timeliness and the ability of a party to change its initial brief when the final brief is submitted. See, e.g., Rule 208(4), “Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal...” and Rule 211, “The final brief(s) shall be identical to the brief(s) previously served under Rule 208” except for references to the record and the correction of typographical errors and misspellings. “No other changes may be made.”

The clear and well-recognized intent of the South Carolina Appellate Court Rules is that a Rule 208 initial brief may not be amended or supplemented after filing, and to accept an argument that same may be “amended” or “supplemented” at the filer’s leisure would lead to circumstances where Rule 208’s time requirements could be ignored by the filing of a rough draft with the belief that a filer could simply create as much additional time for filing its actual intended brief as the filer deems convenient. And then, presumably, the initial brief could be “amended” or “supplemented” again if the filer decides to add additional material. This would create a system whereby an appeal would likely drag on for years and years if the Appellant thought its goals could best be achieved by continuing delays.

2. Responding to paragraph 2 of the Return, the Respondents note that there is no Rule 231 today, that Rule 207 is not applicable to this Motion, and that the Respondents absolutely assert a Rule 208 “discrepancy” in that the only acceptable “initial brief” under Rule 208 is the one timely-filed on October 17, 2022 and none of the following “amended” initial briefs were filed within the

strict time frame of Rule 208(1) and Clerk Allen's June 22, 2022 letter and court-granted extensions.

Moreover, the single case cited by the Appellants in their Return is actually the seminal case in South Carolina explaining why these "amended" initial briefs must be stricken. The Supreme Court, in Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992), declined to dismiss the appeal after determining that the Appellant's initial brief failed to comply with the Rules in that the components of the brief were incorrectly organized and labeled, the issues were not distinctly headed, the table of authorities was not alphabetized or referenced to the body of the brief, the statement of the case contained contested matter and the arguments contained no citations to the record. Instead, the Court gave the Appellants 15 days to serve and file an initial brief that did comply with then Rule 207 and noted "*No changes shall be made to appellant's arguments except that appellant may add citations to the cases listed in the current table of authorities and references to the record as provided by Rule 207(b)(4).*" [Emphasis added.]

Rejecting the Appellants' claims that its counsel had "substantially complied" with the Rules and that the instances of non-compliance were "inadvertent technical errors and minor discrepancies," the Court went on to state that it "would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules," and warned appellant's counsel and the bar:

Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Henning v. Kaye, *id.* at 436.

The Supreme Court's holding in Henning is instructive as to how this Motion to Strike should be analyzed. This Court should reject the Appellant's counsel's argument that amended initial briefs are allowed at the Appellant's convenience, because the Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Id.* The Clerk's deficiency letter of November 1, 2022 comports with the discretionary allowances for rudimentary changes established in Henning, in that it allowed certain "corrections" to specific items (the wrong case number, the omission of a "Statement of the Case" and an erroneously worded caption/title), but it did not allow for the wholesale amended and supplemented initial briefs filed on November 2 and November 14, 2022. Thus, under the Henning precedent, all of the amended initial briefs should be stricken.

3. The fact that the first amended initial brief of the Appellants "was filed prior to the filing of any Return Brief the Respondent" is immaterial to the legal argument as to whether the Rules allow for the unilateral filing of such an amended initial brief and disregards the substantial legal time and effort that goes in to the research and drafting of a Responsive brief well before the final version is filed.

4. The fact that Mr. Houston emailed Respondents' counsel prior to his filing of the amended initial brief advising that "I plan to file an amended Initial brief," in no way supports the legal argument of any actual right to unilaterally file such an amended initial brief, and is not the type of assertion that any careful lawyer would rely upon in planning and preparing to file a responsive brief that must be filed within thirty days of the Appellants' initial brief under Rule 208. Again, the Rules "are not mere technicalities." Henning, *id.*

5. The Appellants' contention that "[t]he filing of amended briefs is a commonly expected and frequently used practice before the appellate courts of this state" is simply wrong

and intentionally misleading. While there are certainly more than a few times that the Clerk has issued deficiency letters to parties in other appeals calling upon them to “amend” their filings to correct things like an erroneous number on the heading, it is patently false to assert that parties before this Court or the Supreme Court routinely and frequently unilaterally file “amended” initial briefs at their convenience.

### CONCLUSION

For the foregoing reasons, all of the Appellants’ amended initial briefs filed after October 17, 2022 should be stricken as being in violation of the South Carolina Appellate Court Rules and the Appellants should be instructed to file their initial Reply brief, if one is to be filed, within ten (10) days of this Court’s Order consistent with Rule 208.

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*s/Thomas C. Taylor*

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Bluffton, South Carolina  
November 18, 2022

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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The Honorable Marvin H. Dukes, III  
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APPELLATE CASE NO. 2022-000277

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Georgia Harrison, Barbara Harrison,  
Joyce Ellen Harrison, William S. Harrison III,  
Stanley Roberts and  
Diana Mendheim Individually And As Attorney In Fact,

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vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,  
Kieta Nicole White, And Cheryl Kirkland,

Appellants.

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PROOF OF SERVICE

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I hereby certify that this law firm represents the Respondents in the above-captioned matter and that on the date below, in Bluffton, South Carolina, I served a copy of the forgoing on the following person via electronic mail to his AIS E-mail address:

**Documents Served: RESPONDENTS' REPLY TO APPELLANTS' RETURN IN  
OPPOSITION TO RESPONDENTS' MOTION TO STRIKE  
APPELLANTS' AMENDED INITIAL BRIEFS AND MEMO IN  
SUPPORT OF RESPONDENTS' SUPPLEMENTED MOTION TO**


**STRIKE APPELLANTS' RECENTLY FILED FURTHER  
AMENDED INITIAL BRIEFS**

**Parties Served:**

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November 18, 2022

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**RECEIVED**

**Nov 18 2022**

**SC Court of Appeals**

November 18, 2022

**Via E-Mail Attachment to: msingleton@sccourts.org**

Ms. Mary-Caitlyn Singleton  
SC Court of Appeals Specialist  
1220 Senate Street  
Columbia, SC 29201

**Re: Georgia Harrison, et al. vs. Stephanie Lorraine Kirkland, et al.; Appellate Case No.: 2022-000277; Respondents' Reply to Appellants' Return In Opposition To Respondents Motion to Strike Appellants' Amended Initial Briefs and Memo In Support Of Respondents' Supplemented Motion To Strike Appellants' Recently Filed Further Amended Initial Brief**

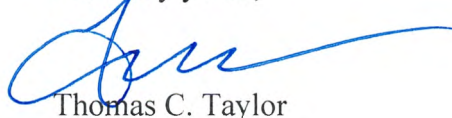
Dear Ms. Singleton,

As your file indicates, Chet Williams and I represent the Respondents in this appeal. On behalf of the Respondents, I attach hereto for electronic filing the following:

- a. Respondents' Reply To Appellants' Return In Opposition To Respondents' Motion To Strike Appellants' Amended Initial Briefs and Memo In Support Of Respondents' Supplemented Motion To Strike Appellants' Recently Filed Further Amended Initial Brief; and,
- b. Proof of Service of a copy of the document upon Appellants' counsel.

Please let me know if you have any questions. Thank you as always for your professionalism in these matters, and I wish you and rest of the staff at the Clerk's office, a Happy Thanksgiving.

Cordially yours,



Thomas C. Taylor

TCT/dpt  
Enclosures

cc: Chester C. Williams, Esq., via email transmittal  
Andre J. White, via email transmittal  
Charles E. Houston, Esq., via email transmittal  
Terry A. Finger, Esq., via email transmittal