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Dec 08 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, LLC, Appellant,

v.

Charleston Animal Society, Ellen Harley, and
Charleston Carriage Horse Advocates, LLC. Respondents.

**RESPONDENTS' JOINT MOTION TO STRIKE THE INITIAL BRIEF OF
APPELLANT AND REQUEST TO STAY BRIEFING**

Elizabeth J. Palmer (SC Bar #73680)
Saxton & Stump, LLC
151 Meeting St., Suite 350
Charleston, SC 29401
(843) 277-8034
ep@saxtonstump.com

Jenkins Mann (SC Bar #74894)
Shaun Blake (SC Bar #76349)
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Ste. 1200
Columbia, SC 29201
jmann@rogerlewis.com
sblake@rogerlewis.com

Attorneys for Respondent
Charleston Animal Society

Attorneys for Respondents Charleston
Carriage Horse Advocates and Ellen Harley

Respondents jointly move this Court to strike Appellant's Initial Brief and require that it submit a revised initial brief that complies with the South Carolina Appellate Court Rules and corrects the errors set forth below. Respondents further move the Court to limit any revisions to the brief to such corrections.

While the Court considers this Motion, Respondents respectfully request that the time limits for further briefing be stayed or tolled.

BACKGROUND

Appellant Charleston Carriage Works owns and operates one of the carriage horse companies in downtown Charleston. On April 19, 2017, in the midst of years of public debate concerning Charleston's carriage horse operations, one of Appellant's horses, Big John, fell during a tour. Respondent Charleston Animal Society (CAS) posted a video on its YouTube channel comprised of footage of the incident sent to it by bystanders and added in the following subtitles:

Why were eyewitnesses intimidated to stop taking video when a horse collapsed?

Was Big John exhausted or did he just "trip"?

By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.

Big John could not get up on his own. A team of people had to try and pull him up.

After several minutes of trying, finally some good news for Big John!

Charleston Animal Society and several local and national animal welfare groups want an independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane.

Is this too much to ask for Big John and other working horses?

The video was reposted by Respondent Charleston Carriage Horse Advocates, a local advocacy group founded by Respondent Ellen Harley, on its social media sites.

Appellant filed suit, alleging that the video of Big John, and specifically, the subtitles, are defamatory. Appellant also asserted causes of action for civil conspiracy, “Violation of Plaintiff’s Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness”, and tortious interference with business relations.

The lower court granted Respondents’ Motions for Summary Judgment as to all Appellant’s claims. Appellant has appealed that order as to the defamation, civil conspiracy, and tortious interference with business relations claims (but not as to the civil rights claim). Appellant also has appealed the lower court’s denial of its Motions to Amend the Complaint (to add additional claims and parties), to Amend the Scheduling Order, and for Sanctions (for alleged discovery violations).

ARGUMENT

I. Appellant’s Initial Brief fails to comply with Rule 208(b)(1)(C), SCACR, in that the Statement of the Case contains numerous contested and irrelevant matters.

Pursuant to Rule 208(b)(1)(C), SCACR, the Statement of the Case is required to contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal, and may not contain contested matters. Appellant’s Statement of the Case fails to comply with these requirements in that the entirety of pages 1 and 2 (up to the very last sentence) consists of contested matters and is anything but a concise history of the proceedings necessary to an understanding of the appeal. Appellant seemingly admits as much by stating: “Many of the important material facts are included in the Statement of the Case.” (Brief, p. 5).

These portions of the Statement of the Case must be stricken. To the extent that the Court allows these sections to remain, Appellant must be required to provide citations to designated documents for all statements therein. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he 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.”).

II. Appellant’s Initial Brief fails to comply with Rules 208(b)(1)(D) and 208(b)(4), SCACR, in that it contains numerous purportedly factual statements without citations to designated documents and irrelevant facts.

Rule 208(b)(1)(D), SCACR, provides that “[a] party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party’s contentions. Rule 208(b)(4), SCACR, further provides that “[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.” A vast majority of the purportedly factual statements made in Appellant’s brief contain no citation at all. It is particularly telling that Respondent, on page 7, states: “The facts, as demonstrated by the record, are:” and then sets out a barrage of “facts” without any citations to said record.

Additionally, the statement of facts, starting at the bottom of page 4, contains a substantial amount of entirely irrelevant material. In particular:

- Page 5, last paragraph (starting “The defendant, Ellen Harley...”). Respondent Harley’s residential address, or the fact that she previously resided primarily on Martha’s Vineyard, is totally irrelevant to the issues on appeal.
- Page 6, 1st paragraph (starting “Charleston Animal Society...”). Whether or not Respondent CAS is a “quasi-government agency” (which CAS denies) and its contractual relationships with local government are irrelevant. Those issues were only relevant to Appellant’s cause of action alleging a violating of its civil rights, which is not at issue on appeal. Likewise, the value of CAS’s assets, and the fact that CAS’s CEO, Joe Elmore, flew to the Virgin Islands, where he once lived, to rescue animals, is completely irrelevant.
- Page 6, 2nd paragraph (starting “At the outset...”). The distinction between “animal welfare” and “animal rights” organizations is totally irrelevant to this appeal. Whether or not there is a distinction, and whether or not Respondents are or are not one or the other,

bears on no issue that is before this Court, or that was before the lower court.

These portions of Appellant's Initial Brief should be stricken. Additionally, Appellant must be ordered to provide citations for all salient facts alleged.

CONCLUSION

Respondents respectfully request that the Court strike the irrelevant and improper portions of Appellant's Initial Brief as set forth herein and order Appellant to provide citations for all salient facts alleged. Respondents further request that the Court prohibit Appellant from presenting any new substantive arguments or facts in its corrected brief. While the Court considers this Motion, Respondents ask that the time limits for further briefing be stayed.

Respectfully submitted,

/s/ Elizabeth J. Palmer
Elizabeth J. Palmer (SC Bar #73680)
Saxton & Stump, LLC
151 Meeting St., Suite 350
Charleston, SC 29401
(843) 277-8034
ep@saxtonstump.com

Attorneys for Respondent
Charleston Animal Society

/s/ Jenkins Mann
Jenkins Mann (SC Bar #74894)
Shaun Blake (SC Bar #76349)
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Ste. 1200
Columbia, SC 29201
jmann@rogerlewis.com
sblake@rogerlewis.com

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v.

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PROOF OF SERVICE

I do hereby certify that on December 8, 2022, I have served all counsel in this action with a copy of the *Respondents' Joint Motion to Strike the Initial Brief of Appellant and Request to Stay Briefing* via email to the following email addresses:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
P.O. Box 71121
Charleston, SC 29415-1121
tgoldstein@cobblaw.net

Attorney for Appellant

Jenkins Mann, Esquire
Shaun Blake, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Ste. 1200
Columbia, SC 29201

jmann@rogerlewis.com
sblake@rogerlewis.com

*Attorneys for Respondents Charleston
Carriage Horse Advocates and Ellen Harley*

s/ Taylor Davis

Taylor Davis, Paralegal
Saxton & Stump, LLC
151 Meeting Street, Suite 350
Charleston, SC 29401
(843) 414-5080 (o)

SAXTON & STUMP

LAWYERS AND CONSULTANTS

151 Meeting Street, Suite 350 • Charleston, SC 29401

P: (843) 414-5080 • F: (843) 580-8303

Direct Dial: (843) 278-0114

Email: tnd@saxtonstump.com

December 8, 2022

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

*Re: Charleston Carriage Works v. Charleston Animal Society, et al.
Appellate Case No.: 2022-001114*

Dear Ms. Kitchings:

Please find enclosed a check in the amount of \$50.00, to cover the filing fee for Respondents' Joint Motion to Strike the Initial Brief of Appellant and Request to Stay Briefing and Proof of Service in connection with the above referenced matter. Also enclosed is a copy of the motion, which has been e-filed.

Should you have any questions or concerns, please do not hesitate to contact us. Thank you for your assistance with this matter.

Sincerely,

s/ Taylor Davis

Taylor Davis
Paralegal
SAXTON & STUMP

/tnd

Enclosures

cc (via email only): Thomas Goldstein, Esquire
Jenkins Mann, Esquire
Shaun Blake, Esquire