THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Georgetown County
Court of Common Pleas

Benjamin H. Culbertson, Presiding Circuit Court Judge

Case No. 2011 – CP – 22 -1296

Willie Singleton, ...Appellant.

v.

State of South Carolina. .....Respondent,

RETURN TO ORDER

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s/ Willie L. Singleton

Willie Singleton, Pro Se
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Georgetown, SC 29440
843 359-6363

GENERAL NOTE

I am a pro se Defendant and as a pro se Defendant I may not fully present arguments that are "sufficiently specific to bring into focus the precise nature of the alleged error so that it [could] be reasonably understood by the court." **McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996).** I would like for the court to take that into consideration when reading this return also understand that the Supreme Court has already ruled that "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." **State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003); see also State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001)** (explaining that even though exact words are not used to argue an issue, if it is clear from the argument presented in the record that the motion was made on a particular ground, the argument will be considered raised).

ARGUMENT

The Appellant filed the initial brief and served the appellant's brief on the respondent on September 24, 2012. Three months later the Defendant still had not submitted the Brief of Respondent to the Court.

> Under SCACR. Rule 208, (a)(2) Brief of Respondent. *Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.*

In late 2012 the court took the unusual step of writing a letter giving the Defendant a thirty {30} day extension to file the Brief of Respondent, without a request from the Defendant to file the Brief of Respondent out of time. You gave them a thirty {30} day extension and the Defendants did not comply with that Court Order. The Defendant did not mail the Brief of Respondent within that thirty {30} days. The Brief of Respondent was mailed on Feb 6, 2013.

Over one hundred thirty five {135} days after the Appellant filed the initial brief and served the appellant brief on the Respondent, the Respondent filed a notice of motion and motion to strike. The respondent wanted several matters listed in Appellant's designation of matter and reference in Appellant's initial brief stricken. The items were:

(8) Contract for Purchase & Sale of Real Property

(9) Deed to Real Property

(10) tax Deed to Frank Sweeny of Andrews

(11) Letter from Code Enforcement Officer

(12) Tax Map of Property

(13) Order to Cease and desist engaging in building code enforcement issued to Mrs. Janet Grant from South Carolina LLR, Building Code Council.

(14) Complaint to the Commission on Judicial Conduct.

(15) Complaint to the Commission on Lawyer Conduct.

The Respondent went on to say:

> *The documents listed in Appellant's Designation of Matter to be appealed were not presented to the Trial Court.*

There are several SCACR. Rules that come into play at this point.

> SCACR. Rule 208, (E)(4) *References to Record. The 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**..... **[emphases added]**

> SCACR. Rule 209, (b) *Content. The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which*

may be properly included in the Record on Appeal [See Rule 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal. [emphases added]**

SCACR. Rule 210, (c) Content. **The Record on Appeal shall include all matter designated to be included by any party under Rule 209 [emphases added]** *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. [emphases added]** *Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and* **other materials or documents, [emphases added]** *and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index.....*

The **matter [emphases added]** of ownership of the property certainly came up at trail. *See* Transcript! Based on the fact that ownership of the property was bought up by the Respondent at trail and placed on the record, under SCACR. Rule 208, (E)(4), SCACR. Rule 209, (b) and SCACR. Rule 210, (c) the following records are proper to add in the Record on Appeal.

(8) Contract for Purchase & Sale of Real Property
(9) Deed to Real Property
(10) tax Deed to Frank Sweeny of Andrews
(11) Letter from Code Enforcement Officer
(12) Tax Map of Property

The Respondent in the motion to strike states "*The documents listed in Appellant's Designation of Matter to be appealed were not presented to the Trial Court.*" Wording is important so let's look at the wording in the court rules.

SCACR. Rule 210, (c) *Content. 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. [emphases added]** *Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions,* **pleadings, [emphases added]** *transcript, charges, exhibits and other materials or documents, and a certificate by appellant.....*

There is a difference between "Trail Court" and "Lower Court" Let's look at the action before the Court. This is an Appeal From Georgetown County Court of Common Pleas, Benjamin H. Culbertson, Presiding Circuit Court Judge, the Lower Court in this case. Under SCACR. Rule 210, (c) one thing that is allowed are "pleadings" and matters:

(8) Contract for Purchase & Sale of Real Property

(9) Deed to Real Property

(10) tax Deed to Frank Sweeny of Andrews

(11) Letter from Code Enforcement Officer

(12) Tax Map of Property

(13) Order to Cease and desist engaging in building code enforcement issued to Mrs. Janet Grant from South Carolina LLR, Building Code Council.

Were all presented to the Lower Court in the written pleading, in open Court placed on the record and preserved for appeal in writing. The Respondent objected to the matters on the record and the Lower Court considered them in their decision. To ask the Appeal Court to not allow the matters in a motion to strike, after the Lower Court allowed the matter, is in essence asking the Appeals Court to substitute its opinion over that of the Lower Court, which was the trier of fact in this case; in a motion hearing. It is a well-established fact that the Appeals Court may not substitute its judgment for that of the Lower Court as to the weight of the evidence on questions of fact, but the Appeals Court may reverse if the decision is affected by an error of law. The Appeals Court may reverse or modify a decision if the findings and conclusions of the Lower Court are affected by error of law, clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. None of this is present at this time, given the fact that two {2} Lower Courts have already considered the matters.

The Culbertson, Court actually heard arguments from both sides on the record.

I am a pro se Appellant, and the Respondent is an attorney, yet the Appellant Court gives the Respondent wide latitude to the point that the Respondent does not have to comply with the Appellant Court Rules. The motion to strike is not a proper motion before the Court. SCACR, Rule 240 require certain things to be provided in a proper motion.

> SCACR, Rule 240 (C) (2) **A memorandum with citation of authorities in support of the motion. [emphases added]**
>
> SCACR, Rule 240 (g) **Failure to Comply. Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition. [emphases added]**

There was no memorandum with citation of authorities in support of the motion given to the Appellant, what was given was only a notice that at some point the Respondent would be filing a motion. The Respondent is the moving party in this case, and the failed to perform an act required by SCACR, Rule 240 (C) (2) and the notice of motion and motion to strike should have been dismissed under SCACR, Rule 240 (g) Failure to Comply.

The proceeding before the Court involves a question of exceptional importance. The appeal is based on the question of property ownership. The Respondent has charged the Appellant with owning and not maintaining property. The Appellant appeal before the Court is based on the fact that he does not own the property. The Court Order will prevent the Appellant from presenting evidence of ownership and would finally decide the appeal because it remove the cause of action. The Order of the Court is not proper under:

SCACR, Rule 240 (i) Rehearing. **The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. [emphases added]**

SCACR, Rule 221 (c) Rehearing of Motions. **The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. [emphases added]**

The Respondent disrespected the Courts' order and the Appellant made a complaint to the Court asking that the Brief of Respondent and Notice of Motion and Motion to Strike be dismissed by the Court. The Appellant never received a response from the Appeals Court's or a decision concerning that matter.

Because the Appellant never received a response from the Appeals Court and the Court has allowed the Respondent one hundred thirty five {135} days after the Appellant filed the initial brief and served the appellant brief on the Respondent, to respond to the brief without a request for an extension and the motion by the defendant was not filed with any paper work showing that there allegation had foundation; I ask that the Court rule on my complaint concerning the time the brief and the motion was filed. I also ask this Court allow me thirty {30} days after the Appeals Court ruling on my request to have the Respondent reply brief and the motion to strike, stricken from the appeal.

The Court ruled on the motion without any evidence or a memorandum with citation of authorities in support of the motion; in direct conflict to SCACR, Rule 240 (C) (2). The Court ruled in the Respondents favor, but if the Respondent would have sent the Court a copy of the trials transcript of both Lower Courts it would have shown the Appeals Court that the Respondents open the door to allow the matters in as evidence by the Appellant. The Respondents at trial claim that the Appellant owned the property. In paper work filed by the

Appellant, and also pleading with the Lower Court requesting a new trial shows that the Appellant did introduce the evidence to the Lower Court. The Respondent alleged that it was not introduce by the Appellant, and did so without any evidence to support that position.

The Supreme Court has instructed the Lower Court's to construe pro se complaints liberally and to apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel. **See e.g., *Hughes v. Rowe*, 449 U.S. 5, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163 (1980) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (per curiam);** see also ***Elliott v. Bronson*, 872 F.2d 20, 21 (2d Cir.1989) (per curiam).** In order to justify the dismissal of a pro se complaint, it must be " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' ***" Haines v.Kerner,* 404 U.S. at 521, 92 S.Ct. at 594** (quoting ***Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)**).

Because this court has not chosen to apply ***Haines v.Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (per curiam);** when dealing with the action of the Respondent who is a license attorney, I request that all correspondence, letters, the first initial brief, the original designation of matters be preserved and remain part of the record, because this case appears to be headed to the South Carolina Supreme Court.

The Appellant did not receive a response from the Appeals Court on his motion. The Appellant did not receive a request from the Appeals Court to send a reply to the motion. The Appellant did not receive a courtesy letter from the Appeals Court granting an extension of time to file a return to the motion to strike. The pro se Appellant would have responded if given the same opportunity that the Respondent, an attorney was given. The Respondent did not respond to the initial brief for over ninety {90} days and the Appeals Court sent a courtesy letter asking him to respond and even gave an additional thirty {30} days to do so. The Respondent filed a motion that did not comply with SCACR and received a hearing and order and the pro se Appellant never received a courtesy letter. **See e.g., *Hughes v. Rowe*,449 U.S. 5, 9-10, 101 S.Ct. 173, 175-**

76, 66 L.Ed.2d 163 (1980) (per curiam); *Haines v.Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (per curiam);see also ***Elliott v. Bronson*, 872 F.2d 20, 21 (2d Cir.1989) (per curiam).** In order to justify the dismissal of a pro se complaint, it must be " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' ***" Haines v.Kerner,* 404 U.S. at 521, 92 S.Ct. at 594** (quoting ***Conley v. Gibson*, 355 U.S. 41, 45-46,78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)**). This Court should have allowed the Appellant the same type of courtesies that the Respondent got.

Based on the facts stated in this return to the order, the Appellant intend to file a motion for rehearing to the Order.

May 7, 2013

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PROOF OF SERVICE OF A RETURN TO ORDER

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PROOF OF SERVICE

I certify that I have served the Return to Order on City of Georgetown Code Enforcement Officer Janet Grant, et. al. by hand delivering a copy of it on May 7, 2013, addressed to their attorney of record, Robert Maring, 1130 Highmarket Street, Georgetown, SC 29440

May 7, 2013

s/ Willie Singleton

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