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Dec 21 2022

SC Court of Appeals

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Administrative Law Judge

Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr, Appellant,

v.

South Carolina Department of Employment
and Workforce & JDC Management, LLC, Respondents.

**Motion to Dismiss or Alternatively to Strike
Appellant's Fourth Amended Record on Appeal**

Respondents JDC Management, LLC and the South Carolina Department of Employment and Workforce move this Court to dismiss this appeal because Appellant has failed, after many attempts, to file a record on appeal that complies with the Court's rules. On December 2, 2022, Appellant filed a fourth amended record on appeal, but it suffers from the same flaws as the previous records on appeal, primarily that it omits many documents designated by Respondents. After so many attempts at filing a proper record on appeal, despite the Court and Respondents bringing the deficiencies and rules to Appellant's attention, Respondents believe Appellant is either unable or unwilling to file a proper record on appeal. The Court should dismiss this appeal.

Appellant filed records on appeal on the following dates: her first record on appeal on March 8, 2022, an amended record on appeal on July 22, 2022, a second amended record on appeal

on August 8, 2022, a third amended record on appeal on November 21, 2022, and a fourth amended record on appeal on December 2, 2022. Thus, Appellant made five attempts to file a record on appeal in compliance with the Court's rules, but each record contained multiple defects, including failing to include all documents designated by Respondents. This includes Appellant's most recent record on appeal, filed December 2, 2022, which omits many documents designated by Respondents.¹ See Rule 210(c), SCACR (explaining the record on appeal "shall include all matter designated to be included by any party under Rule 209"). Also, even though Appellant included the record from the Administrative Law Court's (ALC) proceedings, she omitted every other page so that the record from the ALC is not complete. (Fourth Amended Record on Appeal, pp.63-112).

Because Appellant has already tried and failed to file a proper record on appeal five times, the Court should dismiss Appellant's appeal pursuant to Rule 260(a), SCACR. See Rule 260(a) ("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."). Importantly, Appellant's failure to file a proper record on appeal is not the result of her unfamiliarity with the Court's rules. Both the Court and Respondents have drawn Appellant's attention to the rules governing the record on appeal multiple times through deficiency letters and motions to strike. Thus, Appellant is either unwilling or unable to file a record on appeal that complies with the Court's rules, and the Court should dismiss this appeal. See *Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992) ("Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide

¹ Specifically, the fourth amended record omits the following items from Respondents' Designation of Matter: Items two, three, five, six, seven, nine, eleven, twelve, thirteen, and fifteen through eighteen.

the parties and this Court with an orderly mechanism through which to guide appeals in this State."); *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) ("There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties.").

If the Court declines to dismiss this appeal, the Court should strike Appellant's fourth amended record on appeal because, as stated above, it omits many documents Respondents designated for inclusion and includes only every other page of the record before the ALC. These are serious defects in the record, and they prevent the Court from fully reviewing the issues the parties presented in their initial briefs. Accordingly, if the Court declines to dismiss the appeal, the Court should strike Appellant's fourth amended record on appeal and order Appellant to file another amended record.

Based on the foregoing, Respondents move this Court to dismiss this appeal. Appellant has filed five records on appeal, and all five have failed to comply with the Court's rules. Appellant is unwilling or unable to file a proper record on appeal despite the Court and Respondents pointing her to the applicable rules multiple times. Thus, the Court should dismiss this appeal. If the Court declines to dismiss the appeal, Respondents request the Court strike the fourth amended record on appeal due to its multiple fatal defects and order Appellant to file a record on appeal in compliance with the Court's rules. Also, Respondents request the Court hold all timelines in abeyance pending the Court's ruling on this motion.

Respectfully Submitted,

s/ Steven Jordan, Jr.

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Respondent(s)

PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Dismiss or Alternatively Strike Appellant's Forth Amended Record on Appon the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on December 21, 2022, addressed to the parties at their addresses of record:

Kierarra Carr
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December 21, 2022



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