

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Dec 28 2022

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2022-001165
[Trial Court Case No. 2018CP002308]

Michael D. Royal

Appellant,

v.

Free Kindergarten Association
of Charleston, Respondent,

Respondent,

The Attorney General of the
State of South Carolina and
The Charleston County School
District,

Respondents.

**RESPONDENT, THE CHARLESTON COUNTY SCHOOL
DISTRICT'S, MOTION TO EXCLUDE AND STRIKE AND TO
COMPEL**

Pursuant to Rules 208 and 240, SCACR, and the Order of the South Carolina Court of Appeals, dated November 22, 2022, Respondent, The Charleston County School District, by and through its undersigned counsel, hereby file its Motion to Exclude and Strike and to Compel on the following grounds listed below. Further, Respondent Charleston County School District requests that this appeal be stayed and/or held in abeyance pending the outcome of this motion.

FACTS/PROCEDURAL HISTORY

The Appellant commenced the instant appeal on August 17, 2022, appealing multiple Orders of the Honorable Mikell R. Scarborough issued in the Charleston County Circuit Court Case No. 2018-CP-10-5739. On September 28, 2022, the Appellant filed Appellant's Motion to Exceed Page Limit for Initial Brief and Memorandum in Support ("Appellant's Motion"). The South Carolina Court of Appeals denied Appellant's Motion by its Order, dated November 22, 2022.

On December 2, 2022, the Appellant served and filed the Initial Brief of Appellant in this appeal.

LAW/ANALYSIS

A. The Initial Brief Of Appellant Exceeds Fifty (50) Pages, The Page Limits Allowed By Rule 208, SCACR And, Therefore, Violates Rule 208, SCACR And The Order Of The Court Of Appeals, Dated November 22,2022 Requiring Exclusion And Striking of The Initial Brief Of Appellant.

SCACR 208(b)(5) requires that "[e]xcept in cases in which a sentence of death has been imposed, principal briefs **shall not exceed fifty (50) pages**... On Motion, the appellate court may grant a party permission to exceed those limitations." (Emphasis added).

On September 28, 2022, Appellant filed Appellant's Motion to Exceed Page Limit for Initial Brief and Memorandum in Support pursuant to SCACR 208(b)(5) requesting that the Court enter an Order granting him leave to file an initial brief that exceeds the permitted limit by fifteen (15) pages.

In its Order dated November 22,2022 ("Court of Appeals Order"), the Court of Appeals denied Appellant's Motion to Exceed Page Limit for Initial Brief. By the Court's

cover letter of November 22, 2022 which forwarded the Court of Appeals Order to Appellant's counsel, the Court notified counsel that [t]he appellant's initial brief and designation of matter are due within ten (10) days from the date of th[e] letter. Thereafter, on December 2, 2022, the Appellant filed and served the Initial Brief of Appellant ("Appellant's Initial Brief").

The Appellant's Initial Brief violates both Rule 208(b)(5) and the Court of Appeals Order inasmuch as it exceeds fifty (50) pages. Specifically, the Appellant's Initial Brief is fifty-seven (57) pages long (irrespective of its caption). SCACR 208(b)(1) expressly describes the Brief of Appellant as containing a table of contents, statement of issues on appeal, statement of the case, standard of review, argument and conclusion. Here, Appellant's Initial Brief includes a caption (un-numbered), a Table of Contents and Table of Authorities (numbered i – vi), a Statement of Issues on Appeal, a Statement of the Case, a Statement of the Facts, Standard of Review, Argument, and Conclusion (numbered 1 – 50) and a signature page (un-numbered).

As such, the Initial Brief of Appellant violates Rule 208, SCACR and the Court of Appeals Order and should be excluded and stricken from the Court's official record of action and the SC Appellate Case Management System and/or the final seven (7) pages of Appellant's Initial Brief (irrespective of its conclusion and signature) should be excluded and stricken.

B. The Table Of Authorities Contained In The Initial Brief Of Appellant Fails To Provide References To The Pages Of The Brief Where Certain Legal Authorities Are Cited And, Therefore Violates Rule 208, SCACR Requiring Exclusion And Striking Of The Table Of Authorities Contained In The Initial Brief Of Appellant.

SCACR 208(b)(1)(A) requires that initial briefs shall contain “[a] table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, **with references to the pages of the brief where they are cited.** (Emphasis added).

The Appellant’s Initial Brief violates Rule 208(b)(1)(A) inasmuch as the Table of Authorities contained therein fails to provide references to pages of the Appellant’s Initial Brief where certain case and statutory authorities are cited. These omissions are located on Page vi of Appellant’s Initial Brief. The Appellant omits any page references for these authorities, instead substituting the term “*passim*” as his reference indicating that the subject authorities are frequently cited throughout Appellant’s Initial Brief.

Appellant’s use of the term “*passim*” in substitute of page references fails to comply with Rule 208(b)(1)(A). As such, the Table of Authorities contained in Appellant’s Initial Brief violates Rule 208, SCRCPC and should be excluded and stricken.

CONCLUSION

“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the appellate courts with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 415 S.E.2d 794, 794, 307 S.C. 436, 437 (S.C. 1992). It is incumbent that Appellant “provide material that complies with the Rules and facilities appellate review.” *Id.*

Based on the foregoing, the Respondent The Charleston County School District is entitled to an Order:

- (1): Excluding and striking the Initial Brief of Appellant and/or excluding the final

seven (7) pages of Appellant’s Initial Brief (irrespective of its conclusion and signature); and

(2): Excluding and striking the Table of Authorities contained in the Initial Brief of Appellant ; and

(3): Compelling Appellant, within fifteen (15) days of this Court’s Order on Respondent The Charleston County School District’s Motion to Exclude and Strike and to Exclude, to serve and file an initial brief that does fully comply with Rule 208 and this Court’s Order, dated November 22, 2022.

Insomuch as the outcome of this motion affects the initial brief of all respondents, The Charleston County School District requests that the appeal be stayed and/or placed in abeyance until a decision has been issued. Further for the reasons stated herein, the Appellant, The Charleston County School District, hereby respectfully requests that its Motion to Exclude and Strike and to Compel be granted.

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Charleston, South Carolina
December 28, 2022