

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2022-001165

Michael D. Royal, Appellant,

v.

Free Kindergarten Association of Charleston, Respondent,

The Attorney General of the State of South Carolina and
The Charleston County School District, Intervenors/Respondents.

**APPELLANT’S RETURN TO INTERVENOR/RESPONDENT THE CHARLESTON
COUNTY SCHOOL DISTRICT’S MOTION TO EXCLUDE AND STRIKE AND TO
COMPEL AND MEMORANDUM IN SUPPORT**

Appellant Michael D. Royal (“Appellant” or “Royal”), by and through his undersigned counsel, submits this Return to Intervenor/Respondent The Charleston County School District’s (“CCSD”) Motion to Exclude and Strike and to Compel and respectfully requests that this Court deny CCSD’s motion.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

For the convenience of the Court, Royal incorporates herein by reference, and respectfully refers the Court to, the Statement of the Case and Statement of the Facts sections of his Initial Brief filed December 2, 2022 in this case (“Royal Br.”). CCSD filed the instant motion on December

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28, 2022, less than a week before its initial brief was due. Subsequently, the Court granted CCSD's motion for an extension of time to file its initial brief and designation of matter. On January 4, 2023, Intervenor/Respondent The Attorney General of the State of South Carolina filed a letter with the Court solely to advise that it declined to join in CCSD's motion.

ARGUMENT AND CITATION OF AUTHORITY

CCSD's motion appears to be an ill-conceived ploy to gain additional time to prepare its initial brief, force Appellant to expend additional resources on this appeal, and to eliminate Royal's arguments directed toward CCSD. The two grounds it proffers in support, alleging non-compliance with formatting requirements, could be termed technical in nature if they had any basis or support under this Court's rules.¹

Ironically, CCSD's motion suffers from technical rule deficiencies of a similar, if not more serious, nature. CCSD failed to affix a proper caption to its motion, as required by Rule 267, SCACR, as the lower court case number is incorrect,² and CCSD errantly refers to itself as Respondent, rather than Intervenor/Respondent, as required by the Court's correspondence to the parties dated August 25, 2022 (Notice of Appeal Initial Letter).

I. THE TABLE OF CONTENTS, TABLE OF AUTHORITIES, AND SIGNATURE BLOCK ARE NOT INCLUDED IN THE INITIAL BRIEF'S PAGE COUNT.

Contrary to CCSD's first argument, Royal's Initial Brief does not exceed fifty (50) pages in length and therefore does not violate Rule 208, SCACR, or this Court's November 22, 2022 Order. CCSD alleges that Royal's brief is fifty-seven (57) pages long, such that the brief's Table

¹ Royal believes CCSD's motion is frivolous or taken solely for purposes of delay, and thus sanctionable under Rule 269, SCACR, but, as a courtesy to the attorneys and parties in this action, has decided not to pursue such a motion at this time and leaves the matter to the Court's discretion.

² While Rule 267(a), SCACR, does not contemplate inclusion of the lower court case number in a caption, CCSD's caption includes "Trial Court Case No. 2018CP002308" – a non-existent case.

of Contents and Table of Authorities sections, and the separate page containing counsel's signature, are included in the brief's page count for purposes of determining compliance with Rule 208(b)(5), SCACR.

For relief, CCSD requests that Royal's brief be excluded and stricken from the record,³ and/or that the final seven (7) pages of the brief (not including the conclusion and signature) be excluded and stricken. *See* CCSD Motion pp. 3, 4-5. Not coincidentally, the last seven (7) pages of the brief include Royal's argument as to the lower court's errant granting of CCSD's intervention and errant exclusion of the transcript of the deposition of CCSD's Rule 30(b)(6), SCRCPP, witness. *See* Royal Br. pp. 47-50. Tellingly, the brief's conclusion and signature following those arguments are included in CCSD's calculation of the brief's page count, but CCSD does not include these portions in the "final" seven (7) pages it requests to be stricken.

On the afternoon of December 2, 2022, prior to filing Royal's initial brief, undersigned counsel conferred with the Clerk's Office of the Court of Appeals via telephone on the specific issue of calculating the brief's length. The Clerk's Office confirmed that the Table of Contents, Table of Authorities, and counsel's signature are not included in the brief's page total in determining the length of the brief under Rule 208(b)(5), SCACR. Moreover, the Court's Brief of Appellant form (Form 13, App. C, Part II, SCACR), shows the Table of Contents and Table of Authorities pages as being numbered with romanettes, and thus not included in the page total of the brief itself.

³ Such requested relief contravenes the South Carolina common law cited by CCSD in its motion. *See Henning v. Kaye*, 415 S.E.2d 794, 794, 307 S.C. 436, 437-38 (1992) (despite the appellant's numerous and more substantive failures to comply with form and content rules as to the initial brief, the South Carolina Supreme Court declined to dismiss the appeal and ordered the appellant to file an initial brief that complied with the rule's requirements).

II. USE OF “PASSIM” IN THE TABLE OF AUTHORITIES DOES NOT VIOLATE RULE 208, SCACR.

CCSD’s second ground alleges that the Table of Authorities in Royal’s brief should be stricken because the word “*passim*” is used in place of page number references for three (3) authorities listed therein.⁴ See Royal Br. p. vi (Table of Authorities Sec.). Specifically, *passim* is used in lieu of listing the numerous pages where *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) and two statutory authorities are cited.⁵

Yet the use of *passim* is not prohibited by the South Carolina Appellate Court Rules. Rather, Rule 268, SCACR, on Citation of South Carolina Authority, directs parties to “A *Uniform System of Citation* published by the Harvard Law Review Association” for “[a]dditional guidance on citation of authority[,]” which supports the use of *passim* for referencing authorities cited on multiple pages. See *The Bluebook: A Uniform System of Citation*, B.R. 10.1.2 (p. 12), R. 3.2(a) (p. 72) (Harvard Law Review Ass’n et al. eds., 20th ed. 3rd prtng. 2017).

Finally, if there is any validity in CCSD’s argument in this regard, its request for this Court’s intervention and imposition of excessively punitive relief over three (3) citations of authority is not only outlandish but unsupported by its proffered case law. In *Henning*, the South Carolina Supreme Court permitted the appellant to correct the many non-compliances of his brief, which included “the table of authorities [] not [being] alphabetized or referenced to the body of

⁴ Assuming, *arguendo*, that the Tables of Contents and Authorities, and signature page, are included in the page limit, CCSD’s requested relief is perplexing, in that it asks the Court to limit Royal’s initial brief to forty-seven (47) pages in length – less than the 50 pages permitted by Rule 208, SCACR. It requests that the Table of Authorities, consisting of three (3) pages (pp. iv-vi), as well as the “final” seven (7) pages of Royal’s initial brief be excluded and stricken.

⁵ *Wilson* is referenced on five (5) pages of the brief, S.C. Code Ann. § 33-31-1202 (2006) on seven (7) pages, and the South Carolina Nonprofit Corporation Act of 1994, S.C. Code Ann. §§ 33-31-101, *et seq.* (2006 & 2021 Supp.), on nine (9) pages.

the brief[.]” *Henning*, 415 S.E.2d at 794, 307 S.C. at 437-38.

CONCLUSION

Royal respectfully requests that this Court deny CCSD’s motion to exclude and strike and to compel. Alternatively, should the Court find merit in any of CCSD’s contentions, Royal requests that he be granted sufficient leave to amend and re-file his initial brief to correct any deficiencies found to exist therein.

Respectfully submitted,

s/Evan P. Williams

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MICHAEL D. ROYAL*

January 6, 2023
Mt. Pleasant, South Carolina

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v.

Free Kindergarten Association of Charleston, Respondent,

The Attorney General of the State of South Carolina and
The Charleston County School District, Intervenors/Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Return to Intervenor/Respondent The Charleston County School District's Motion to Exclude and Strike and to Compel and Memorandum in Support on the above-named Respondent and Intervenors/Respondents via email to their respective counsel of record, on January 6, 2023, containing the above-referenced documents as attachments in .pdf, sent to the addresses shown below.

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Respectfully submitted,

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January 6, 2023

VIA E-MAIL

The Honorable Jenny Abbott Kitchings
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Re: *Michael D. Royal v. Free Kindergarten Association of Charleston, et al.*
Appellate Case No. 2022-001165

Dear Ms. Kitchings:

Please find enclosed for filing, on behalf of Appellant Michael D. Royal (“Appellant”), Appellant’s Return to Intervenor/Respondent The Charleston County School District’s (“CCSD”) Motion to Exclude and Strike and to Compel and Memorandum in Support, as well as the Proof of Service of Appellant’s Return.

By copy of its counsel of record on the filing transmittal e-mail, Respondent and Intervenor/Respondents in this case are served with Appellant’s Return to CCSD’s Motion to Exclude and Strike and to Compel and Memorandum in Support.

Yours Sincerely,



Evan P. Williams

Enclosures

cc (via e-mail only): A. Bright Ariail, Esq.
Warren W. Ariail, Esq.
Mary Frances G. Jowers, Esq.
Kristin M. Simons, Esq.
Patrick F. Stringer, Esq.
Joseph Kevin Qualey, Esq.
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