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Jan 19 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
HON. MARVIN H. DUKES
MASTER IN EQUITY

Appellate Case # 2022-000277

**GEORGIA HARRISON, BARBARA HARRISON, k
JOYCE ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY ROBERTS, AND
DIANA MENDHEIM INDIVIDUALLY AND AS
AGENT AND ATTORNEY IN FACT,**

RESPONDENTS

vs.

**STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE WHITE,
AND CHERYL KIRKLAND,**

APPELLANTS

**APPELLANT'S MOTION TO FILE AMENDED BRIEF AND TO SET
ASIDE ORDER OF DISMISSAL**

APPELLANT'S MOTION TO FILE AMENDED BRIEF AND TO SET ASIDE ORDER OF DISMISSAL

Pursuant to Rule 240, SCRAP the Appellants would respectfully move the Court for an Order setting aside its Order of January 19, 2023 dismissing its November 2, 2022 Amended Initial Brief and by this Motion *non pro tunc* move the Court for an Order reinstating the Amended Initial Brief submitted for filing on November 14, 2022. The grounds for this motion are set forth in Appellants Memorandum.

APPELLANTS MEMORANDUM

Appellant's counsel has after a diligent search of South Carolina case law and the South Carolina Rules of Appellate Procedure been unable to find authority that specifically address or lends on point guidance to the issue of an Appellant's alternate right, or being denied, to file an Amended Brief prior to a Respondent filing its responsive Brief or likewise the requirement that a motion to file an Amended Initial Brief is required.

Rule 7, SCRCF that is cited verbatim below also makes no mention of amended pleadings.

Rule 7 (a) Pleadings. *There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original*

party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

Rule 15 SCRCP does provide guidance. This Rule 15 states the following:

RULE 15 AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. *A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.*

The closest case on points that counsel has found that establishes a standard of appellate review guideline that this court may elect to follow in calculating justice upon the issue of the permissive amendment to briefs comes from the State of Texas. The Texas case of Boyle v. State, 820 S.W.2d 122, 141 (Tex. Crim. App. 1989) expounded and articulated their standard guideline in the following manner.

“Rule 74 of the Texas Rules of Appellate Procedure governs the preparation and filing of briefs in direct appeals to this Court. See Tex.R.App.Pro. 210(b). In Rochelle v. State, 791 S.W.2d 121 (Tex.Cr.App.1990), we discussed the interplay of the various appellate procedural rules and, pertinent to this ground for rehearing, determined the clear import of Rule 74(p) was "that all points of error sought to be reviewed and all replies thereto are to be included in the original brief." Id. at 124. (emphasis added). We then noted further that supplemental briefs "bringing new matters to the appellate court may be filed later, but only 'as justice requires' or 'in the interest of justice' and under reasonable terms imposed by the [appellate] court." Id. Whether to discuss new matters raised in a supplemental brief is left to the sound discretion of the court. Id. While recognizing these principles specifically applied to briefs on original submission, we found them equally applicable to a motion for rehearing. Rochelle, 791 S.W.2d at 124, citing Tallant v. State, 742 S.W.2d 292 (Tex.Cr.App.1987). Thus, whether to consider a new ground raised for the first time on a motion for rehearing is a decision left to the sound discretion of the court.”

The Appellants therefore urges this Court to adopt the spirit of the law as succinctly spelled out in, Rule 15, SCRCP that provides for a liberal and flexible judicial policy for the amendment of pleadings, greatly relied upon within our judicial culture.

CONCLUSION

The Appellants timely filed their Initial Brief and before the Court had issued any curative instructions upon the Brief. Further, the Appellants noticed the Respondent's counsel that an Amended Initial Brief would be filed prior to the filing deadline for Respondents' Brief filed. The filing of the Amended Initial Brief rendered the Court with a better understanding of the issues emanating from the lower court that advances the cause of justice without any prejudice to the Respondents. The interest of justice is better served with this Court deciding the issues upon the merits.

Respectfully submitted,

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January 19, 2023

Hilton Head Island, SC

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PROOF OF SERVICE

I hereby certify that this law firm represents the Appellants in the above captioned matter and that on the date below at Hilton Head Island South Carolina I served a copy of the foregoing **Appellants MOTION TO SET ASIDE ORDER OF DISMISSAL AND REINISTATE AMENDED INITIAL BRIEF** and the **Proof of Service** on the following persons by electronic mail to their AIS email addresses on January 17, 2023 and by U S mail, first class postage prepaid, on January 19, 2023.

Documents served:

- (1) Proof of Service and**
- (2) Petition for Mandamus with Exhibit 1**

Parties Served:

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
P.O. Box 1808
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And

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Attorneys for Respondents on appeal

This 19th day of January 2023.at Hilton Head Island, SC

By: S/ Charles E. Houston, Jr.

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