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May 05 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No.: 22-ALJ-22-0098-AP

Appellate Case No. 2022-000982

Miya Freeman, Appellant,

v.

South Carolina Department of Employment
and Workforce and Amazon.com Services, Inc., Respondents.

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

Respondent South Carolina Department of Employment and Workforce (the Department) moves this Court to dismiss Miya Freeman's appeal because Appellant has failed to comply with this Court's March 23, 2023, Order. On January 20, 2023, the Department filed a motion to strike Appellant's final brief, designation of matter, and record on appeal. On March 23, 2023, this Court issued an Order granting the Department's Motion and requiring Appellant to serve and file an amended record on appeal in compliance with this Court's rules, "which contains all of Respondent's designated matters[.]" The Appellant was required to file the amended record within

thirty days of the Order. As such, the deadline to file the amended record was April 24, 2023.¹ Despite the Court's Order to file a proper amended record on appeal, Appellant has failed to do so or to request an extension of time to comply with this Court's Order. Without a proper Amended Record on Appeal, the Department is unable to file a final brief. As such, the Court should dismiss this appeal. The Department requests the Court hold all timelines in abeyance pending the Court's ruling on this motion.

On April 7, 2023, Appellant filed a document with the Court labeled "Amended Record on Appeal," however, it is in fact not a record on appeal. Rather, it appears to be an attempt to amend the record with a new Designation of Matter, without any additional documents². As of the time of filing this motion, the Department has not received an Amended Record on Appeal in compliance with this Court's Order, there does not appear to be an Amended Record on Appeal in c-track that complies with this Court's Order, and the Department has not received any request for extension to file the Amended Record on Appeal, nor does there appear to be a request for extension filed with the Court. The April 24, 2023, deadline to file the Amended Record on Appeal has passed.

Because Appellant has already initially failed to file a proper record on appeal, and also failed to comply with this Court's March 23, 2023 Order, 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

¹ Thirty days from March 23, 2023, falls on April 22, 2023, a Saturday. As such, the deadline to file was the following Monday.

² The Appellant, in her Amended Record on Appeal, states both that she is appealing the Court's Order and proposing what should be included in the Record on Appeal. There is no explanation of the basis for the "appeal" and it is unclear to the Department what Appellant was attempting to effectuate.

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. The Court and Department have drawn Appellant's attention to the rules governing the record on appeal multiple times through deficiency letters, a motion to strike, and the Court's March 23, 2023 Order. 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 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.").

In the alternative, if the Court declines to dismiss this appeal, the Court should strike Appellant's amended record on appeal because it omits the documents the Department designated for inclusion, and in fact does not include any document except for a new designation of matter. This is a serious defect in the record and prevents 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 the Appellant's Amended Record on Appeal and order Appellant to file another amended record in compliance with this Court's rules, and which contains all of Respondent's designated matters.

Based on the foregoing, the Department moves this Court to dismiss this appeal. Appellant initially filed a record on appeal which did not comply with this Court's rules. After the defects were brought to the Appellant's attention and the Court issued an Order to file a proper Amended

Record on Appeal, Appellant has failed to comply with the Court's Order. Appellant is unwilling or unable to file a proper record on appeal despite the Court and the Department pointing her to the applicable rules multiple times. Thus, the Court should dismiss this appeal. In the alternative, if the Court declines to dismiss the appeal, the Department requests the Court strike the amended record on appeal due to its fatal defects and order Appellant to file a record on appeal in compliance with the Court's rules. Also, the Department requests the Court hold all timelines in abeyance pending the Court's ruling on this motion.

Respectfully Submitted,

s/ Valerie McMellan

Valerie McMellan (SC Bar # 101080)

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Respondent(s)

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss or Alternatively to Strike Appellant's Amended Record on Appeal the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on May 5, 2023, addressed to the parties at their addresses of record:

Miya S. Freeman
405 Grand National Lane
Elgin, SC 29045

Amazon.com. Service Inc.
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Clearwater, FL 33766

May 5, 2023



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