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Aug 07 2023

SC Court of Appeals

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No.: 22-ALJ-22-0227-AP

Appellate Case No. 2022-001718

Robert E. Shirley, Jr., Appellant,

v.

South Carolina Department of Employment
and Workforce and The Boeing Company, Respondents.

Respondent's Motion to Dismiss

Respondent South Carolina Department of Employment and Workforce (the Department) move this Court to dismiss Robert E. Shirley, Jr.'s appeal for failure to file a sufficient initial brief. The Department also requests the Court hold all deadlines in abeyance pending the Court's decision on this motion. In support thereof the Department respectfully shows:

I. Factual Background

Appellant filed an appeal in the Administrative Law Court (ALC) from a final agency decision issued by the Department's Appellate Panel (the Panel). The ALC order found substantial evidence supported the Panel's decision that Appellant voluntarily quit his available employment without good cause. Appellant then filed a notice of appeal to this Court on November 29, 2022. On January 20, 2023, this Court issued a deficiency notice to the Appellant indicating that neither

his initial brief, nor a motion for extension, had been received and that Appellant had ten days to serve and file their initial brief and designation of matter. On January 31, 2023, Appellant untimely served by mail on the Department a packet of documents purporting to be Appellant's Brief, Proof of Service of Appellant's Brief, Appellant's Designation of Matter, and Appellant's Proof of Service of Designation of Matter. On February 14, 2023, the Department filed and served a Motion to Dismiss Appellant's Appeal for failure to timely file and serve the initial brief and designation of matter, and for failure to file a sufficient brief. On March 24, 2023, the Court denied Department's motion but provided Appellant thirty (30) days to file and serve an amended initial brief that complies with Rule 208. On April 19, 2023, Appellant filed and served a Motion for Extension of Time to file his Final Brief. In the Court's June 14, 2023 Order, it noted that Appellant had not yet filed an amended initial brief in compliance with the March 24, 2023 Order and provided Appellant an additional fifteen days to file an amended initial brief. On June 26, 2023, Appellant filed and served another Motion for Extension of Time to file his amended initial brief. On June 26, 2023, the Court granted Appellant's motion and provided Appellant until July 14, 2023, to file and serve his amended initial brief and designation of matter. On July 17, 2023 the Court granted Appellant another extension to file his amended initial brief and designation of matter, to July 31, 2023. On July 31, 2023, Appellant filed and served his amended initial brief.

II. The Appellant has Filed and Served a Brief that Fails to Comply with this Court's Rules and, as a Result, this Court should dismiss his appeal.

This Court should dismiss Appellant's appeal because the document purporting to be his amended initial brief, does not comply with Rule 208(b), SCACR. Rule 208(b) sets forth that "[t]he brief of appellant shall contain under appropriate headings and in the order here indicated[,]..." 1) table of contents and cases, 2) statement of issues on Appeal, 3) statement of the case, 4) standard of review, 5) argument, and 6) conclusion. Rule 208(b)(1)(A)-(F), SCACR. For the argument

section, the Rule states “[t]he brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth...followed by **discussion and citations of authority.**” Rule 208(b)(1)(E), SCACR. (emphasis added). Where an appellant fails to set forth a legal argument on an appealed issue, that issue should be considered abandoned. *See First. Sav Bank v. McLean*, 314 S.C. 361, 363, 444 S.E. 2d 513,514 (1993) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for their assertions); *Ellie, Inc. v. Miccichi*, 358, S.C. 78,99, 594 S.E.2d 485, 496 (Ct.App.2004)(“Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal.”). *See also* Rule 260(a), SCACR (stating the clerk shall issue an order of dismissal when an appellant has failed to comply with the requirements of Rules). Further, parties are also required to include references to the Record on Appeal to support any salient facts. Rule 208(b)(4), SCACR. (“The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [SEE Rule 120(c)] to support the salient facts alleged.”).

The purported amended initial brief submitted by Appellant contains no table of authorities and indeed goes on to state “I can’t produce any authority.” *Appellant Amended Initial Brief*, p. 2/6. Additionally, Appellant’s submission contains no citation or discussion of case law or even citations to his proposed designated matters. Further, Appellant’s conclusion does not request any cognizable relief, rather it appears to request this Court dismiss the case and require the Department to produce paperwork. As to the dismissal, while the Department would not contest Appellant’s appeal being dismissed, this Court has previously and specifically addressed such a request from the Appellant and ordered the Appellant to withdraw the appeal if he did not wish to proceed. As to the request to have the Department produce additional evidence, while it is unclear to the

Department what relief he is seeking from it, inasmuch as he may be attempting to request the Department produce the Record on Appeal, it is the Appellant's burden to present a sufficient record to allow review. *See, e.g., Healms Reality, inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339-40, 611 S.E.2d 485, 487-88 (2005). As such, Appellant's submission has failed to enable this Court to make any meaningful appellate review of the ALC order. In other words, Appellant's amended initial brief is insufficient.

Although the Department recognizes Appellant is *pro se*, a *pro se* litigant is held to the same standards as represented parties. *State v. Burton*, 356 S.C. 259, 265 n.5, 389 S.E.2d 6, 9 n.5 (2003) ("A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."). Appellant's initial briefing deadline was December 29, 2022. Even though Appellant has been provided ample time from his initial briefing deadline to file and serve a sufficient initial brief, Appellant submitted a brief that is patently insufficient pursuant to this Court's rules and without citations of legal authority in the matter under appeal to this Court. He has thus failed to advance his position and provided no basis for reversal. Appellant is either unwilling or unable to comply with this Court's order and rules, regardless of the amount of time extended to him. "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." *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399, S.E.2d 16, 19 (Ct.App. 1990). Consequently, this Court should dismiss Appellant's appeal.

III. Conclusion

Based on the foregoing, Appellant failed to serve a sufficient initial brief as required by Rule 208(b)(1)(A)-(F). Thus, the Department respectfully requests this Court dismiss Appellant's appeal pursuant to Rule 260(a) for failure to comply with this Court's rules. Alternatively, if the

Court declines to dismiss Appellant's appeal, the Department respectfully requests this Court strike Appellant's Amended Initial Brief and order Appellant to file an Amended Initial Brief and Designation of Matter in accordance with this Court's rules. The Department also requests this Court hold all further time requirements in abeyance pending the Court's decision on this motion.

Respectfully Submitted,

/s/ Valerie McMellan
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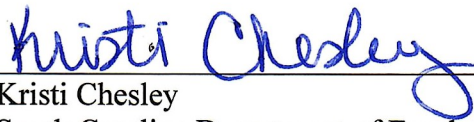
PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss on the parties in this case by mail on August 7, 2023, addressed to the parties at their addresses of record:

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August 7, 2023


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