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Aug 25 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 21-ALJ-22-0448-AP

Appellate Case No. 2022-001433

Wendell D. Cooper

Appellant

v.

South Carolina Department of Employment and Workforce and
School District of Greenville County,

Respondents

MOTION TO DISMISS,

OR, IN THE ALTERNATIVE,

**MOTION TO STRIKE APPELLANT'S
RECORD ON APPEAL**

I. Motion to Dismiss

Respondent South Carolina Department of Employment and Workforce hereby moves, pursuant to Rule 210, SCACR, and Rule 260(a), SCACR, that this Court dismiss Appellant's appeal for his failure to include matter designated by Respondent in the

untimely-filed Record on Appeal and then misrepresenting to this Court that he had, in fact, done so.

On June 12, 2023, Respondent served Respondent's Initial Brief and Designation of Matter on Appellant. Respondent's Designation of Matter listed:

1. Administrative Law Court Order for Consolidation and Scheduling Order dated January 5, 2022
2. Record on Appeal filed with the Administrative Law Court on April 5, 2022
3. Appellant's Brief to the Administrative Law Court filed June 1, 2022
4. Respondent's Brief to the Administrative Law Court filed July 11, 2022
5. Appellant's Reply Brief to the Administrative Law Court filed July 21, 2022
6. Order of the Administrative Law Court dated September 6, 2022.

On June 22, 2023, Appellant filed a Reply Brief with the Court which was the last initial brief filed or served. Under Rule 210(a), SCACR, Appellant then had thirty (30) days to serve a copy of the Record on Appeal on Respondents, making his deadline July 24, 2023. Further, under Rule 210(b), Appellant was required to file a proof of service for the Record on Appeal with this Court at the same time he served the Record on Appeal on all parties. Under Rule 210(c), the Record on Appeal was to contain all matter designated to be included by any party under Rule 209.

Appellant failed to serve the Record on Appeal by July 24, 2023, and failed to file a proof of service with this Court. On July 26, 2023, this Court notified the parties that no proof of service for the Record on Appeal had been filed with the Court by Appellant and further notified Appellant that his appeal would be dismissed if no proof of service was received within ten (10) days of the date of the letter. On August 6, 2023, Appellant filed

a proof of service with this Court stating he served the Record on Appeal on the parties on August 5, 2023, well after Appellant's July 24, 2023, deadline. On August 6, 2023, Appellant filed a document purporting to be the Record on Appeal with this Court along with a certification stating, "The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials." The certification is signed by Appellant. On August 10, 2023, the Department received a copy of the same document postmarked August 6, 2023. Neither the document filed with the Court, nor the copy that Appellant served on Respondent contained the ALC's January 5, 2022, Order or the complete Record on Appeal at the ALC. Both the Order and the ALC Record are specifically listed in the Department's Designation of Matter as Item # 1 and Item # 2.

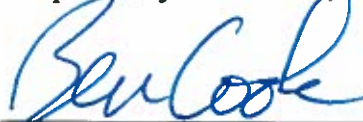
Appellant has repeatedly failed to meet his deadlines in this case and has already had his appeal dismissed and reinstated by this Court. Now, Appellant has filed and served a document purporting to be the Record on Appeal well after his thirty (30) day deadline expired only after additional prompting from this Court. Further, although Appellant has attested in a signed certification that he has included all material proposed to be included by any of the parties, the document filed and served by Appellant purporting to be the Record on Appeal leaves out crucial matter designated by Respondent, including the actual Record on Appeal at the ALC, without which Respondent cannot complete its Final Brief. Appellant has repeatedly demonstrated that he is either unwilling or unable to abide by the Rules of this Court. *See 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."). This Court should not permit Appellant to consume any more time, effort, or costs on this case. Respondent respectfully requests this Court to dismiss Appellant's appeal for failure to comply with Rule 210 by failing to include Respondent's designated matter in the Record and for misrepresenting to this Court that he had done so.

In the alternative, if the Court declines to dismiss the appeal, Respondent respectfully requests that this Court strike Appellant's Record on Appeal and require him to properly file and serve a complete Record on Appeal in compliance with the Court's rules and which includes the matter designated by Respondent.

Respondent further respectfully asks that all deadlines and due dates be held in abeyance pending the outcome of this motion.

Respectfully Submitted,



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August 25, 2023

Attorney for Respondent
SC Dept. of Employment and Workforce

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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

Appellate Case No. 2022-001433

Wendell D. Cooper.

Appellant,

v.

South Carolina Department of Employment and
Workforce and School District of Greenville County,

Respondents.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss, or, in the alternative, Motion to Strike Appellant's Record on Appeal on the parties in this case by mail on August 25, 2023, addressed to the parties at their addresses of record:

Wendell D. Cooper
117 Palm Springs Way
Simpsonville SC 29681

School District of Greenville
County
PO Box 2848
Greenville SC 29602

August 25, 2023



Kristi Chesley
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