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Nov 28 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA COURT OF APPEALS
AND FROM THE YORK COUNTY COURT OF COMMON PLEAS
Teasa K. Weaver, Master In Equity

Appeals Court Case # 2022-001650
Supreme Court Case #2023-001620

LB PARK, LLC,. . . . . Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, ... Defendants,

Of Whom Ryan Powell is the. . . . . Petitioner.

REPLY TO RESPONDENT'S RETURN FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS

Comes now Petitioner, Ryan Powell ("Ryan"), who pursuant to Rule 242(g) SCACR makes this Reply to Respondent's Return to Petitioner's Petition for Writ of Certiorari to the Court of Appeals ("Return").

Administrative Matter Pertaining To The Appendix Filed

After Ryan prepared, filed, and served his Appendix for his Petition for Writ of Certiorari to the Court of Appeals ("Petition") he discovered footnote #2 found within Rule 242(e) SCACR that he had previously overlooked. That footnote reads -

> "By order dated August 25, 2021, the requirement that petitioner file two copies of the Appendix has been suspended, and the necessary documents will be obtained from the

electronic records of the case before the Court of Appeals. This order is available at: https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2622.".

Accordingly, the Appendix that Ryan inappropriately file can be ignored. However, since all the appropriate and necessary documents have already been compiled into the Appendix that Ryan filed, this Court could use it if they so desire.

Respondent's Return Violates Rule 242 SCACR

Rule 242 SCACR requires the Petition, Return, and Reply to address the questions presented without unnecessary detail[1], the facts presented and argued must be only those that are material to the consideration of the questions presented[2], there must be argument for each question presented[3] that includes citation to authority[4], and any documents included in the appendix must be relevant to the dismissal of the appeal[5]. Respondent's Return fails to fulfill **any** of these five (5) requirements as shown hereinafter.

Respondent attached to its Return three hundred and twenty-eight (328) pages of exhibits that are entirely irrelevant to the questions asked in Ryan's Petition and not one single page of those exhibits were considered by the Court of Appeals when they dismissed Ryan's Appeal for having made a supposed procedural error. Worse still, one half (1/2) of those three hundred and twenty-

[1] Rule 242 (d)(2) SCACR - "The questions presented for review, expressed in the terms and circumstances of the case **but without unnecessary detail.**";

[2] Rule 242 (d)(3) SCACR - "A concise statement of the case, containing the **facts material to the consideration of the questions presented**.".

[3]. Rule 242 (f) SCACR - "**The return shall include an argument on each question**"

[4] Rule 242 (d)(4) SCACR - "The argument on each question shall include **citation of authority** and specific reference to pertinent portions of the Record on Appeal"

[5]. Rule 242 (e)(2) SCACR - "If the matter was dismissed by the Court of Appeals for procedural or other reasons, the Appendix shall include **any documents relevant to the dismissal** including any motion to dismiss and any return or reply that may have been filed.

eight (328) pages of exhibits cannot even be found in the record made for the case that was before the Court of Appeals ("Ryan's Appeal").

Since Respondent could not argue any of the questions presented in Ryan's Petition, its attorney Sarah P. Spruill ("Spruill"), decided instead to argue the **merits** of the appeal that was neither heard nor decided by the Court of Appeals. Spruill's Return not only violates multiple requirements in Rule 242 SCACR but also violates Ryan's due process rights to have an opportunity to be heard on the **merits** of the appeal that is not even an issue before this Court at this time.

Therefore and accordingly, **all** the exhibits attached to Respondent's Return are entirely irrelevant, inappropriate, and must be ignored by this Court.

Respondent Failed To Answer A Single Question That Ryan Presented

In violation of Rule 242(f) SCACR (footnote #3), Spruill did not even attempt to answer any of the six (6) questions that Ryan presented for review in his Petition. Notwithstanding, Spruill did make unsupported, conclusory statements in her Return which state that every question Ryan asked and thoroughly argued in his Petition has no basis. But Rule 242(f) SCACR **requires** that every Return "shall include an argument on each question" presented in the Petition (footnote #3). Also Rule 242(d)(4) SCACR **requires** that every argument "shall include citation of authority" (footnote #4). It is easy to write a conclusion stating that something has no basis in fact or law but without proof, i.e., evidence and authority, any such unsupported conclusory statement is meaningless, fraudulent, and frivolous.

The following paragraphs describe how Spruill fraudulently avoided actually arguing any of Ryan's six (6) questions presented to this Court in his Petition for review:

1) "*A panel of the Court of Appeals fully considered Powell's motion to reinstate, albeit recharacterized as a petition for rehearing. As such, there is no basis for Powell's first and*

fourth questions presented. His motion was heard and correctly denied.", (Return pg 8, second para). According to Respondent's twisted logic, because three judges on the Court of Appeals signed the order denying Ryan's Motion to Reinstate, that they misconstrued as a motion to reconsider, Ryan's Appeal was correctly dismissed and Ryan's first question (a in the Petition) and fourth question (d in the Petition) have no basis! Respondent did not prove this conclusory statement using any facts or authority showing the Court of Appeals made the correct ruling.

2) "*With respect to Powell's second and third questions presented, the record shows that Powell failed to serve the record on appeal even after the Court of Appeals denied his motion to strike Respondent's initial brief and designation and after the July 25 letter directing him to serve a copy of the record on appeal.*" (Return pg 8, third para). Where are the facts and argument showing that Ryan had any legal obligation to re-serve his Record on Appeal ("ROA") after he had already properly and timely filed and served it three months earlier? Of course missing! Where are the facts and argument showing that a letter issued from the Clerk of Court can create a new legal obligation on a party to take some action that is not based on the Rules or a Court order to requires that party to take that action? Of course missing!

3) "*In fact, South Carolina appellate courts routinely dismiss appeals for non-compliance with the rules and/or attempted appeals from nonappealable orders. As such, there is no merit to Powell's fifth and sixth questions presented, which argue that the Court of Appeals could not dismiss this case absent a motion and that the dismissal of the appeal somehow violated the judges' and clerk's oaths of office*" (Return pg 9, first para). Ryan neither raised nor argued that an appeal can ONLY be dismissed on a motion. Respondent intentionally mischaracterized Ryan's two questions presented and thoroughly argued in his Petition (questions e and f in the Petition). Or in other words, Respondent's attorney has stated an unsupported strawman argument which does not address the actual questions presented that were thoroughly argued in Ryan's Petition. Arguing strawman arguments is just another form of fraud.

Respondent's Attorney Is Committing Fraud Upon This Court

Spruill is committing fraud upon this Court by making knowingly false statements in her Return and also by staying silent when she has a duty to speak (i.e., evidence the facts and argue the law in her Return). Fraud includes being silent where an inquiry (i.e., arguing the questions

presented) left unanswered could be misleading - "Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading", *United States v. Tweel*, 550 F.2d 297, 299 (5th Cir. 1977) and *United States v. Prudden*, 424 F.2d 1021, 1032 (5th Cir. 1970), cert. denied, 400 U.S. 831 (1970).

The above section that describes Spruill's refusal to answer any of the six (6) questions Ryan presented for review are all instances of fraud by silence. The following paragraphs show additional examples of Spruill's fraud by knowingly making false statements or intentionally leaving out material facts:

1) "*LB Park further notes that the appendix submitted by the Petitioner is incomplete. To the extent this return references additional documents, they have been attached to assist the Court.*", (Return pg 2, INTRODUCTION, 2nd para). Spruill lied, there is no document missing from the Appendix that was before the Court of Appeals when they dismissed Ryan's Appeal. Spruill specializes in handling appeals so she knows this Court suspended the necessity for creating an Appendix. Therefore, her attaching three hundred and twenty-eight (328) pages of irrelevant and improper exhibits was not a mistake but was done intentionally.

2) "*The dismissal of this action does not present any novel question, does not raise a substantial constitutional issue, and is not in conflict with any prior decision of this Court or the Court of Appeals. The orders in question are not published. Given the foregoing, this case does not warrant discretionary review by this Court pursuant to Rule 242, SCACR.*" (Return pg 2, para 1). Spruill failed to show that there were no novel issues raised in Ryan's Petition, that there are no substantial constitutional issues involved in this case, that there are no conflicts with the two orders dismissing Ryan's appeal with any other case decided by this Court or the United States Supreme Court, and that published opinions are the only type of judgment from which a writ of certiorari can be sought or granted. The Spruill's above statements are knowingly false, unsupported, and conclusory.

3) "*He has been litigating the issues of ownership and whether he must pay property taxes on the Property in various actions dating back to 2013 as more fully discussed in LB Park's*

initial Respondent's Brief filed in the Court of Appeals" (Return pg 3, first para.). The above statement is a lie, unsupported, conclusory and addresses the **merits** of the appeal **not** the one question that Respondent feebly attempted to answer (Return, pg 2), i.e., whether it was error for the Court of Appeals to have dismissed Ryan's Appeal.

4) ""*the timelines for perfecting the appeal will be held in abeyance pending a ruling on the motion [to consolidate]". As of that time, C-Track showed the case as "Held in Abeyance". As the deadline under the March 21 order approached, counsel for Respondent contacted the clerk's office about the status of the appeal and was assured more than once that the matter was held in abeyance and that Respondent did not need to request an additional extension or to file its initial brief and designation..*" (Return, pg 6, second para). The above statements were based on a **letter** from V. Claire Allen, a deputy clerk of Court (Petition, Exhibit O), and NOT from a court order. Spruill is an experienced attorney who specialized in appellate practice and she should never have to ask the court clerks to tell her the status of any appeal or when her brief is due to be filed. The mere suggestion that Spruill had to make such an inquiry is ludicrous and unbelievable. Of course, there is no evidence in the record made in Ryan's Appeal that could support her ludicrous and unbelievable allegations!

5) *"Powell admits he did not serve the record on appeal. Accordingly, there is no basis for Powell's charge that the dismissal of his appeal was somehow a conspiracy hatched so that the Court of Appeals could avoid hearing Powell's appeal"* (Return, pg 8, last para). Spruill intentionally fails to mention the material fact that Ryan timely filed and served his ROA in full compliance with Rule 210 SCACR over three months **before** the Clerk of Court Jenny A. Kitchings ("Kitchings") decided to threaten Ryan to violate Rule 210 or have his appeal unlawfully dismissed. Kitchings fraudulent letter demanded that Ryan violate Rule 210(a) SCACR by re-serving his ROA **75 days** after Respondent finally decided to file its initial brief and designation of matter late and demanded that Ryan violate Rule 210(c) SCACR by re-serving his previously filed ROA that did not include the matter that Respondent designated in its late-filed designation of matter (Petition, question c., pgs 11-15). Most importantly, Ryan showed using actual evidence and valid law that the main fraud being committed by Kitchings and Spruill was their **unrelenting pretense** that the timelines for perfecting Ryan's Appeal were being held in abeyance hoping that Ryan would fall for their

fraud and miss one of his deadlines to perfect his appeal (Petition pg 12, last para; AMTR pg 9, first para; AMTR Exhibit O;). Spruill attached 328 pages of irrelevant exhibits to her Return but failed to attach the material Court order showing that the timelines for perfecting Ryan's Appeal were EVER being held in a abeyance. Had Spruill attached that material Court order she could have disproved many of Ryan's meritorious allegations that she and Kitchings were perpetrating a fraud, and that Court order would have exonerated them both! So why did Spruill fail to attach that one material Court order? Because it does not exists! This meritorious allegation of fraud, which Spruill has failed to challenge, **proves** that Kitchings and Spruill were indeed conspiring to take Ryan's property by manipulating Ryan's Appeal so that it could be dismissed! On top of this one easily proved fraud, there are at least eight (8) other instances of fraud in the appeal record that contains many letters from the clerks of the Court of Appeals evidencing a continuous, unrelenting trail of attempts to fraudulently dismiss Ryan's meritorious appeal of an order that both the clerks and judges on the Court of Appeals KNOW is void *ab initio*!

6) "*however, that filing is a nullity by operation of the applicable tax sale statutes and the Final Order in this matter*" (Return footnote #2, pg 2, first para.). That statement is erroneous, conclusory, unsupported, and since the "*Final Order in this matter*" is void *ab initio* it carries no legal force or effect, even before it is reversed, according to Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 457 S.E.2d 340, 343 (1995).

Respondent Failed to Prove The Only Question It Argued In Its Return

Respondent's procedural facts and legal argument in support of the only question it even attempted to argue is barely four (4) pages long (Return pgs 6-9) and cites only one authority (Return pg 7, ARGUMENT, last para). Respondent's position on its counter-statement of Ryan's question c. (Petition pgs 11-15) can be summarized thusly:

1. Ryan admits to failing to serve his April 28th ROA on Respondent [because Rule 210(a) SCACR does not require any appellant to serve their ROA on any party that has failed to file a brief[6] and Respondent had failed to file their brief by their filing deadline];

[6] Rule 210 (a) SCACR - "Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal **on each party who has served a brief**.".

2. Ryan's motion to strike Respondent's initial brief [that it filed late, without leave of Court] was "denied" [the denial of that motion supposedly created some obligation on Ryan to re-serve his ROA. But how can the denial of Ryan's motion create any new obligation on him to do anything? It cannot and if it did create some new obligation on Ryan to re-serve his ROA then the order denying the motion would have to state that new obligation or Rule 210 SCACR would have to state that existing obligation in order to give Ryan notice of the obligation];

3. Kitchings informed Ryan in her July 25th letter that the denial of his motion to strike required him to [re]serve his April 28th ROA and she gave him 10 days to do so [not only is there no Rule or Court order creating that obligation but Ryan would have had to violate Rule 210(a) & (c) SCACR if he had acceded to Kitchings' fraudulent demand];

4. Ryan "intentionally and willfully" failed to serve his April 28th ROA; and

5. Ryan's appeal was then properly dismissed.

However, not one of these above described actions were proper or lawful according to Rule 210 SCACR, according to Court procedure, according to Ryan's due process rights, or according to any court order as thoroughly argued in Ryan's Petition and his AMTR [Petition, question c. pgs 11-15; Petition, question e., pgs 15-19; AMTR, pg 8 two last para to bottom of pg 11; AMTR, Exhibit H; AMTR, Exhibit I; AMTR, Exhibit J; AMTR, Exhibit K; AMTR, Exhibit L; AMTR, Exhibit M; AMTR, Exhibit N].

Respondent's lame argument cites **only** one authority which is Henning v. Kaye, 415 SE 2d 794 (SC Supreme Court 1992). In that case the appellate made numerous errors in its initial brief and the respondent moved to have the appeal dismissed because of those errors. The Supreme Court used its discretion when it denied respondent's motion to dismiss and entered an order giving the appellant an opportunity to correct its numerous deficiencies that were well documented in the Supreme Court's order denying dismissal.

However, in this case Ryan's Appeal was dismissed based on a letter from Kitchings containing fraudulent accusations unsupported by any court order or court Rule and without any motion to dismiss having been made. Accordingly, without a motion to dismiss the dismissal of Ryan's Appeal had to have been ministerial under Rule 206(a) SCACR as fully documented in Ryan's Petition and AMTR (Petition, pg 3 first two para; Petition, pg 16 last para to pg 17; AMTR pg 5, last para to pg 6). Henning v. Kaye supra is clearly distinguishable as a "ministerial" decision and "discretion" are incompatible according to this Supreme Court - "It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion.", Wilson v. Preston, 662 SE 2d 580 (SC Supreme Court 2008).

CONCLUSION

Respondent failed to fulfill its requirement to argue any of Ryan's six (6) questions presented and therefore this Court must conclude that it did not do so because it can not do so. This Court must ignore the three hundred and twenty-eight (328) pages of irrelevant exhibits improperly attached to Respondent's Return. If this Court desires to retrieve the necessary documents from the Court of Appeals electronic records, instead of utilizing the Appendix that Ryan created and filed, then only the following four (4) documents should be retrieved: the two orders dismissing Ryan's Appeal; Ryan's Amended Motion to Reinstate including Exhibits A thru O; and Respondent's Return to Ryan's Motion to Reinstate and Amended Motion to Reinstate including its unreferenced and irrelevant exhibits. This Court must grant Ryan's Petition and hear Ryan's Appeal.

November 28, 2023

/s Ryan Powell
Ryan Powell, Petitioner
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Pittsboro, NC 27312