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**Dec 18 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair  
T. Scott Beck  
Melody L. James

WCC No. 1923480

Appellate Case No.: 2023-001264

Takara L. Stewart,.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and  
XL Insurance America, Inc., Carrier.....Respondents.

**RESPONDENTS' MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE  
STRIKE IMPROPER PORTIONS OF APPELLANT'S INITIAL BRIEF AND  
DESIGNATION OF MATTER FOR NON-COMPLIANCE**

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Attorneys for Respondents

Pursuant to Rules 240, 208, 209, 210, 267, and 269 of the South Carolina Appellate Court Rules, the undersigned, as attorneys for Respondents South Carolina CVS Pharmacy, LLC and XL Insurance America, Inc. (hereinafter “Respondents”), hereby move this Court for an order striking Appellant’s Initial Brief for deficiencies and dismissing the appeal or, in the alternative, striking improper portions of Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal. In support of this Motion and in accordance with Rule 240(c), SCACR, Respondents have incorporated a memorandum of authority hereto.

## **ARGUMENT**

Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal (“Designation of Matter”) contain numerous failures and deficiencies, which are violations of South Carolina’s Appellate Court Rules and have hindered Respondents’ ability to defend this appeal and comply with the Rules. Thus, this Court should dismiss the appeal, or in the alternative, strike non-compliant and improper portions of Appellant’s Initial Brief and Designation of Matter.

**I. Appellant’s Initial Brief and Designation of Matter Violate the Form and Substance Provisions of the Appellate Court Rules.**

**A. Appellant’s Initial Brief Contains Form and Procedural Deficiencies.**

Appellant’s Initial Brief contains form and procedural errors. Rule 208, SCACR states that “the brief of appellant shall contain. . . a statement of the case,” which “*shall* contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal” and “*shall not* contain contested matters.” Specifically, Rule 208(b)(1)(C) provides that the Statement of the Case *shall* contain the following information:

“the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or

decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant."

The use of the word "shall" indicates that Appellant's inclusion of this information was mandatory. *See Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999) ("Since the education clause uses the term 'shall', it is mandatory."). Appellant's failure to include the mandatory information is a violation of Rule 208 and fails to properly apprise this Court of the issues before it.<sup>1</sup>

Additionally, Rule 208(b)(4), SCACR provides that a

"[B]rief *shall* contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used."

Further, Rule 208 states that all briefs *shall* comply with the form requirements of Rule 267, SCACR. Under Rule 267(d), SCACR, the brief's typewritten pages must have a blank margin of one inch on all sides.

Here, Appellant fails to adhere to the aforementioned rules. First, Appellant's Statement of the Case consists primarily of her arguments on contested matters. She claims to "state the facts of this claim," but then proceeds to argue why "bias speculation, unsupported defense narration .

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<sup>1</sup> Appellant's brief includes a "Re: Statements of the Case." However, this section primarily includes contested matters and Appellant's factual assertions in support of her arguments. Thus, it is not properly considered a Statement of the Case.

. . . and socioeconomic mockery” resulted in a denial of her compensation. (App. Brief p. 2, ¶ 1)<sup>2</sup>. Additionally, she provides a first-hand account of the incident in question and its effect on her by providing her testimony as if she was testifying in court. (App. Brief p. 2 ¶ 2 – p. 12). Her statements, such as “I can still feel . . . . I can still hear . . . I have been working . . . I have managed . . . I have acquired . . . I suffered,” can only be considered new evidence and not properly included in the Record on Appeal as they do not come from prior transcripts, pleadings, orders, exhibits, or other materials reviewed by the lower court. Id., Rule 208(b)(4), SCACR.

Further, in multiple instances over the 10 pages of her Statement of the Case, Appellant purports to cite the Full Commission transcript for the statements she makes. Unfortunately, those transcript cites do not support the information stated in her brief. For example, on page 10 of her brief, Appellant states that “In review of S.C. Code section 42-15-60, Dr. Snipe’s [sic] findings are not any more admissible than my attending physician Dr. Ashley Hicks (Beckum) (F.C. Hearing Tr. Pg. 10:4-25).” Page 10, lines 4 through 15 of the transcript includes Respondents’ argument on appeal regarding temporary total disability benefits, the time period within which Dr. Hicks took Appellant out of work, and Respondents’ position regarding the change in Dr. Hicks’ testimony during her deposition. Page 10, lines 16 through 19 of the transcript references Dr. Hopkins’ credentials as a Doctor of Education instead of as a Doctor of Medicine. Page 10, lines 20 through 25 references the reasonable degree of medical certainty standard noted in South Carolina Code § 42-15-60 and how Dr. Hicks did not provide her opinion to this standard. (F.C. Hearing Tr. pp. 10:4-25). Dr. Snipes is never mentioned in the hearing transcript reference cited, the proposition argued by Appellant leading up to the cite is not included in the transcript, and the

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<sup>2</sup> Appellant’s Initial Brief did not contain page numbers. Respondents are identifying page numbers throughout this motion by starting the page numbering on the cover page of the Appellant’s brief.

proposition is a contested matter not proper for inclusion in the Statement of the Case. Again, this is just one of many examples throughout Appellant's Initial Brief.

Because the faulty Appellant's citations included in the Statement of the Case relate to contested matters which are not proper under the Appellate Court Rules, this Court has grounds to strike the same from the brief. This Court has additional grounds to strike the faulty Appellant's citations from the Appellant's Initial Brief because they include "facts" not contained in the record (transcripts, pleadings, orders, exhibits, etc.). Appellant's improper record citations have greatly hindered Respondents' and this Court's ability to understand and intelligibly and responsibly respond to the issues Appellant raises.

In addition to the improper record citations, Appellant's brief does not have a blank margin of an inch on all sides. Accordingly, the brief does not comply with Rule 267(d), SCACR, as outlined above.

**B. Appellant's Initial Brief and Designation of Matter Contain Numerous Substantive Deficiencies.**

Moving beyond Appellant's numerous form failures, Appellant's Initial Brief and Designation of Matter contain numerous substantive deficiencies that she cannot overcome. These deficiencies are enumerated below.

**i. Deficiencies in Appellant's "Statement of the Case"**

First, the vast majority of Appellant's "Statement of the Case," is not at all factual. Rather, it is a recitation of her allegations, along with new testimony, again with no citation to actual evidentiary support thereof. Moreover, Appellant's "Statement of the Case" contains assertions that, even if couched as facts, are wholly irrelevant to the appeal at hand. Specifically, the following excerpts are improper for the following reasons:

- p. 2, 1.5-8 contains contested matters, as well as improper statements and arguments regarding bias speculation, unsupported defense narration, socioeconomic mockery, and “solidarity per justifiable remedy in claimant processing”;
- p. 2 1.9-10, 12, 16-24 contains “facts” not contained in the record below as well as contested matters;
- p. 3, 1.1–14 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 3, 1.15-24 contains “facts” not contained in the record below and contested matters;
- p. 3, 1.25–26 to p. 4, 1.1-6 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 4, 1.8-25 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 5, 1.1-13 is irrelevant and contains “facts” not contained in the record below;
- p. 5, 1.13-15 contains “facts” not contained in the record below as well as contested matters;
- p. 5, 1.15–16 is irrelevant and contains “facts” not contained in the record below;
- p. 5, 1.17–20 contains “facts” not contained in the record below as well as contested matters;
- p. 5, 1.20–21 is irrelevant and contains “facts” not contained in the record below;
- p. 5, 1.21-26 to p. 6, 1.1- 17 contains “facts” not contained in the record below as well as contested matters;
- p. 6, 1.19-23 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 6, 1.24 to p. 7, 1.1-6 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 7, 1.6–16 contains improper references to settlement offers, inaccurate statements of admissions of liability, and improper assertions of defense tactics without evidentiary support in the record, contains “facts” not contained in the record below, and contested matters;

- p. 8, 1.17–23 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 8, 1.24 is irrelevant;
- p. 8, 1.25-26 to p. 9, 1.1-3 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 9, 1.6-26 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 10, 1.1-5 contains “facts” not contained in the record below as well as contested matters;
- p. 10, 1. 6-10 contains assertions with absolutely no evidentiary support, “facts” not contained in the record below, improper record citations, and contested matters;
- p. 10, 1.10-13 contains improper and untrue references with no evidentiary support, “facts” not contained in the record below, improper record citations, and contested matters;
- p. 10, 1.13–20 contains assertions with absolutely no evidentiary support, “facts” not contained in the record below, improper record citations, and contested matters;
- p. 10, 1.20-25 contains assertions with absolutely no evidentiary support, “facts” not contained in the record below, improper record citations, and contested matters;
- p. 11, 1.1-2 contains improper and untrue references regarding defense manipulation tactics, “facts” not contained in the record below, improper record citations, and contested matters;
- p. 11, 1.3-11 contains incomprehensible arguments, contested matters, and improper and untrue references to mockery by the defense;
- p. 11, 1.12-15 contains “facts” not contained in the record below, and contested matters including improper arguments regarding the questionable credibility of the United States [sic] Workers’ Compensation Commission;
- p. 11, 1.15-26 contains “facts” not contained in the record below, improper record citations, and contested matters;
- p. 12, 1.1-4 is irrelevant;
- p. 12, 1.4–9 contains “facts” not contained in the record below as well as contested matters;

- p. 12, 1.9 is irrelevant;
- p. 12, 1.10–12 contains “facts” not contained in the record below as well as contested matters; and
- p. 12, 1.13-19 contains improper discussions of settlement offers, improper assertions of defense tactics without evidentiary support in the record, “facts” not contained in the record below, and contested matters.

**ii. Deficiencies in Appellant’s “Arguments” and “Conclusion”**

Rule 208(E), SCACR, requires the Appellant’s brief to be divided into as many parts as there are issues to be argued. In each section, there must be a discussion and citations of authority along with reference to the Record on Appeal. Appellant identifies forty (40) issues on appeal (App. Brief pp. 14-18); however, no argument is made, no citations of authority provided, and no Record on Appeal is cited for any of the forty (40) issues.

Additionally, Rule 208(F), SCACR, allows for a short conclusion stating the precise relief requested. Although Appellant states the relief she requests in her Conclusion, she again makes improper assertions of defense tactics without evidentiary support in the record which is a violation of the Appellate Court Rules. (App. Brief p.19).

**iii. Deficiencies in Appellant’s Designation of Matter**

Appellant cites several items to be included in her Designation of Matter which were not properly before the South Carolina Workers’ Compensation Commission and which could not have formed the basis for the appealed rulings of the Commission.

The South Carolina Appellate Court Rules make clear that Appellant must certify that her Designation of Matter contains no “matter which is irrelevant to the appeal,” Rule 209(b),(c), SCACR, and “only propose[s] to include portions of . . . materials which may be properly included in the Record on Appeal.” Further, “[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. *See also State v. White*, 372 S.C.

364, 642 S.E.2d 607 (Ct. App. 2007 (holding witness statement which was not presented to the lower court could not be properly included in the record on appeal); *see also Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (stating “[w]e previously noted, however, pursuant to Rule 209(c), SCACR, the matter would not be given substantive consideration if it was not presented to the trial court”).

The following matters should be struck from Appellant’s Designation of Matter because they were not presented to the Commission:

- Item 2, Request to submit Psychology Referral by Dr. Ashley Hicks-Beckham
- Item 3, Request to submit Psychology Consultation and Debrief;
- Item 5, Admission of Defendants Settlement Offers
- Item 6, Statement of the Case
- Item 7, Issues on Appeal

These improprieties in the Initial Brief and Designation of Matter discussed in sections i, ii, and iii, *supra*, are in violation of the appellate court rules and have greatly hindered Respondents’ and this Court’s ability to understand and intelligibly and responsibly respond to Appellant’s arguments.

**C. Appellant’s Appeal Should be Dismissed, or in the Alternative, Portions of the Initial Brief and Record on Appeal Should be Struck.**

The aforementioned rule violations and form and substance deficiencies of both Appellant’s Initial Brief and Designation of Matter require that the appeal be dismissed, or in the alternative, the improper portions and items be struck and excluded.

Respondents anticipate that Appellant will attempt to excuse her numerous violations under the guise of being a pro se litigant. However, “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6, 9 n.5 (2003). As the Supreme Court advised the bar in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the 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. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." The *Henning* court addressed numerous deficiencies in the appellate brief at issue, including that "the components of the brief [were] incorrectly organized and labeled, the issues [were] not distinctively headed, the table of authorities [was] not alphabetized or referenced to the body of the brief, the statement of the case contain[ed] contested matter and omit[ted] required information, and the arguments contain[ed] no citations to the record or to the cases listed in the table of authorities." *Id.* at \*1-2, 415 S.E.2d at 795.

In *Henning*, the Supreme Court noted that an appellate court is justified in dismissing an appeal based upon numerous violations of appellate court rules. *Id.* at \*2, 415 S.E.2d at 795. Furthermore, Rule 269, SCACR, states that "[w]here an appeal . . . is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days' notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

Here, Appellant's errors are far greater than those in *Henning*. Not only are the deficiencies and violations discussed in sections A and B, *supra*, in disregard to the appellate court rules, they also have greatly prejudiced Respondents in defending this appeal. The voluminous and permeating deficiencies, both form and substance, have greatly hindered Respondents' and this Court's ability to understand and intelligibly and responsibly respond to Appellant's arguments.

Moreover, the prejudice is circular, as the improper items in the Designation of Matter have led to an improper brief, and Appellant's improper citations in the brief have prohibited Respondents from discerning which portions of the brief or Designation of Matter, if any, should

survive a motion to strike. As such, the only course which remedies Appellant's violations and promotes fairness to Respondents is dismissing the appeal pursuant to Rule 269, SCACR. However, in the alternative, Respondents respectfully request that the Court strike the enumerated portions of Appellant's brief, all assertions within the brief that are supported by improper record citations, and the enumerated improper items designated to be included in the Record on Appeal.

### **CONCLUSION**

In light of the foregoing, Respondents respectfully move for an Order of this Court striking Appellant's Initial Brief for the above-cited deficiencies and dismissing the appeal. In the alternative, Respondents respectfully move for an Order of this Court striking improper portions of Appellant's Initial Brief and Designation of Matter.

Respectfully submitted,

**GALLIVAN WHITE & BOYD, P.A.**

*Michelle DeLuca Yarbrough*

By: \_\_\_\_\_

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WCC No. 1923480

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Takara L. Stewart.....Appellant,


v.

South Carolina CVS Pharmacy, LLC, Employer, and  
XL Insurance America, Inc., Carrier..... Respondents.

**PROOF OF SERVICE**

I, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondents, hereby certify that on December 18, 2023, I served a copy of RESPONDENTS' MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE STRIKE IMPROPER PORTIONS OF APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER FOR NON-COMPLIANCE by United States mail, postage prepaid, to all parties of record at the address(es) shown below.

Takara Stewart  
108 E. York Street, Suite 236  
Savannah GA 31401



Susan D. Meeks  
Assistant to Michelle DeLuca Yarbrough

Date: December 18, 2023

December 18, 2023

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[Ctappfilings@sccourts.org](mailto:Ctappfilings@sccourts.org)  
The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: *Takara Stewart v. SC CVS Pharmacy, LLC***  
***Appellate Case No. 2023-001264***

Dear Ms. Kitchings:

Please find enclosed the original and six copies of Respondents' Motion to Dismiss Appeal or in the Alternative, Motion to Strike Improper Portions of Appellant's Initial Brief and Designation of Matter for Non-Compliance. Please file these documents and return two filed copies to this office via our self-addressed stamped envelope enclosed. I have also enclosed my firm's check in the amount of \$50.00 as payment of the required filing fee.

By copy of this letter, as evidenced on the attached Proof of Service, I am serving the *Pro Se Appellant* with the same.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Michelle DeLuca Yarbrough

MDY/sdm  
Enclosures

cc: Takara Stewart, *Pro Se Appellant* (via email and regular mail)