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Jan 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

C/A No. 2021CP0202344
Appellate Case No. 2023-001222

Da’Nita White.....Respondent,

v.

Roshana Robins.....Appellant.

RESPONDENT’S MOTION TO STRIKE APPELLANT’S RECORD ON APPEAL

Respondent, by and through her undersigned counsel, hereby moves for an Order striking the Record on Appeal, filed and served by the Appellant on or about January 12, 2024. This motion is based upon the papers and pleadings on file and Rules 209 and 210, SCACR.

Background

The Appellant filed this appeal from the grant of summary judgment to Respondent by the Circuit Court. On or about September 20, 2023, the Appellant filed and served her Designation of Matter to be Included in the Record on Appeal (hereinafter, “Appellant’s DOM”). A copy of that filing is attached hereto as Exhibit A. On or about October 20, 2023, the Respondent filed her Designation of Matter to be Included in the Record on Appeal (hereinafter, “Respondent’s DOM”). A copy of that filing is attached hereto as Exhibit B.

Subsequently, on or about January 12, 2024, the Appellant filed and served the Record on Appeal (hereinafter, “ROA”). The index to the ROA is attached hereto as Exhibit C. Notably missing from the ROA, however, are various documents designated by both parties. Moreover, the Appellant included

various documents which were designated by neither of the Parties. After the undersigned corresponded with counsel for the Appellant, the Parties agreed that an amended ROA would be filed and served no later than close of business on Wednesday, January 24, 2024. However, no amended ROA was filed. This motion then followed.

Argument

Matters Designated, but Not Included in the Record on Appeal

As shown in the Appellant's DOM (Exhibit A), the Appellant designated that portions of the transcript from the hearing on the Respondent's motion for summary judgment should be included in the ROA; however, no portion of the transcript was submitted and included in the ROA.

Additionally, as noted in the Respondent's DOM (Exhibit B), the Respondent designated two emails, numbered 7 and 9 on the Respondent's DOM, respectively, which were not included by Appellant in assembling the ROA.

As the Court is aware, the "Record on Appeal shall include all matter designated to be included by any party under Rule 209..." Rule 210(c), SCACR. Moreover, Rule 210(g) states that the Appellant "or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material." Since there are matters designated by both Parties which were not included in the ROA, the ROA is in violation of the Appellate Court Rules and should be stricken.

Matters Included in the Record on Appeal, but which were not Designated by Either Party

In addition, the Appellant included matters in the ROA which were not designated by either Party; namely:

- a. No. 4. "Plaintiff's Motion to Compel and Exhibits...P. 57-75";
- b. No. 6. "Notice of ADR...P. 80-81";
- c. No. 8. "Plaintiff's Brief in Support of Motion for Summary Judgment...P. 85-134";
- d. No. 9. "Plaintiff's Certificate of Service for Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment...P. 135-136";

- e. No. 10. “Consent Order Substituting Counsel for Plaintiff...P. 137-139”;
- f. No. 11. “Defendant’s Motion for Continuance...P. 140-141”;
- g. No. 15. “Defendant’s Brief in Support of Motion to Reconsider, Alter, and Amend Order Granting Plaintiff’s Motion for Summary Judgment” (page numbers unknown);
and
- h. No. 18. “Plaintiff’s Memorandum in Opposition to Defendant’s Motion...P. 224-231”.

None of the items listed above were designated by either Party and only serve to convolute an already large record. This is also in violation of Rules 210(c) and (g), SCACR. If the Appellant wishes to include these matters, the Appellant should file a Motion to Amend its Designation of Matter to be Included in the Record on Appeal.

The ROA Does Not Contain Page Numbers

Finally, the ROA submitted by the Appellant does not contain page numbers on each page, which renders the drafting of the citations for the Final Briefs for this matter impossible. See Rule 210(c) (“Each page of the Record on Appeal shall be numbered consecutively beginning with the index.”).

Conclusion

Therefore, and based on the foregoing, the undersigned submits that the ROA filed and served by the Appellant is in violation of Rule 210, SCACR, and further requests that this Court

1. Strike from the record the Record on Appeal filed and served on or about January 12, 2024;
2. Order the Appellant to properly prepare, serve, and file the Record on Appeal based solely upon the Designations of Matter to be Included in the Record on Appeal previously filed by the Parties herein; and
3. Stay the time period for the filing of Final Briefs until such time as this Court has issued its Order on Respondent’s Motion to Strike.

Respectfully submitted,

McCANTS & McCANTS

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S.C. Bar No. 103228
Attorney for Respondent

Dated: January 24, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2023-001222
Civil Action No. 2021-CP-0202344

Da’Nita White,.....Respondent - Appellant,

v.

Roshana Robins,.....Appellant – Respondent.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal;

1. Order of June 22, 2023
2. Order of May 25, 2023
3. Complains;
4. Answer;
5. Transcript of Proceedings pp. 4-5; 9; 11-13; 15-18; and 20-22;
6. Defendant Supplemental Documents
7. Plaintiff’s Exhibits A; B; and C;

I certify that this designation contains no matter which is irrelevant to this appeal.

September 20, 2023

/s/ Shalonda Wilburn, Esq.
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Da’Nita White.....Respondent,

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Roshana Robins.....Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Order Compelling Appellant to Provide Discovery Responses, dated August 22, 2022;
2. Respondent’s Motion for Summary Judgment, dated November 4, 2022;
3. Affidavit of Da’Nita White to Motion for Summary Judgment, dated March 23, 2023;
4. Respondent’s Exhibit A to Motion for Summary Judgment;
5. Respondent’s Exhibit B to Motion for Summary Judgment;
6. Form 4 Order granting Respondent’s Motion for Summary Judgment, dated April 12, 2023;
7. Email from Counsel for Appellant, dated April 24, 2023;
8. Appellant’s Motion to Reconsider, dated April 27, 2023;
9. Email from Counsel for Appellant, dated May 30, 2023;
10. Circuit Court Order, dated June 1, 2023;
11. Appellant’s Notice of Appeal and Proof of Service, dated July 21, 2023;

I certify that this designation contains no matter which is irrelevant to this appeal.

McCANTS & McCANTS

s/ Clarke W. McCants, IV
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Attorney for Respondent

Dated: October 20, 2023

Other Counsel of Record:
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Da’Nita White.....Respondent,

v.

Roshanda Robins.....Appellant.

PROOF OF SERVICE

I certify I have served the Respondent’s Motion to Strike on counsel for the Appellant, Shalonda Wilburn, Esquire on January 24, 2024, by electronic mail via the email address on record with AIS, at scwilburn@wilburnlawfirm.com.

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Dated: January 24, 2024