

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Master-In-Equity

The Honorable Dale E. Van Slambrook

Appellate Case No. 2022-001555

Kenneth S. Pinckney,

Appellant,

vs.

Leroy Pinckney, John Dandy Pinckney,
Heirs of John Dandy Pinckney, Everlena
Pinckney Kinlaw, Autumn Pinckney,
Geneva Brown, Joe Louis Pinckney,
Theresa Pinckney, Peggy Pinckney,
Franklin Revenell and Willis Pinckney
and John Doe and Mary Roe, fictitious
names used to Represent any and all other
persons unknown who have or may claim
any right, title, interest or estate in or lien
upon the real property hereinafter described,
including any such as may be infants,
incompetents, or otherwise under any
disability, and heirs of any deceased
Defendants named above,

**RESPONDENTS', LEROY PINCKNEY AND WILLIS PINCKNEY, MOTION TO
DISMISS APPEAL OR IN THE ALTERNATIVE STRIKE APPELLANT'S BRIEF**

Respondents, Leroy Pinckney and Willis Pinckney, hereby move this Court to dismiss this appeal in its entirety or in the alternative strike the Brief of Appellant. Appellant's Brief fails to comply with several applicable appellate court rules and presents several arguments not reviewable

by the Appellate Court. When an appellant fails to comply with the statutory and appellate authority, dismissal of the appeal can be an appropriate remedy. In *Henning v Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the respondents moved to dismiss an appeal claiming that the appellant's initial brief failed to comply with the applicable appellate court rules. The court found:

Appellant's brief fails to comply with the [then applicable appellate court rules] in the following particulars: the components of the brief are incorrectly organized and labeled, the issues are not distinctively headed, the table of authorities is not alphabetized or referenced to the body of the brief, the statement of the case contains contested matter and omits required information, and the arguments contain no citations to the record or to the cases listed in the table of authorities.

Counsel is advised that the South Carolina 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.

Henning, 307 S.C. 436, 437, 415 S.E.2d 794. The court ruled that "[a]lthough this Court would be **completely justified in dismissing this appeal** based on appellant's numerous violations of the Rules, we decline to do so and deny the motion to dismiss." *Id.* at 437, 415 S.E.2d at 794 (emphasis added).

Appellant's Brief, filed on December 6, 2023, violates the South Carolina Appellate Court Rules and presents Arguments that cannot be decided by the Appellate Court in the following ways:

1. Appellant's Brief does not conform with Rule 208(b)(8), SCACR, which sets forth that all briefs must comply with Rule 267, SCACR. Specifically, Rule 267(c) requires that all papers or documents filed with the appellate court shall be typewritten or machine duplicated. Appellant's Brief is hand written and is mostly not legible. Appellant's Brief is not clear or clean and is difficult to read and understand.

2. Appellant's Brief does not conform to the requirements of Rule 208(b)(1)(A), SCACR, because the Table of Contents in the brief fails to include a table of contents, with page references, in addition to a table of cases, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

3. Appellant's Brief does not conform to the requirements of Rule 208(b)(1)(C), SCACR because the Statement of the Case fails to provide a concise history of the proceedings. In addition the Statement of the Case is almost exclusively a statement of facts, many of which are not relevant and were never presented at the trial. Most of the statement of facts set forth in Appellant's Brief are contested by Respondent.

4. Appellant's Brief does not conform to the requirements of Rule 208(b)(4), SCACR, because it contains no citations to the Record on Appeal anywhere within the Brief.

5. Appellant's Brief does not conform to the requirements of Rule 208(b)(1)(D), SCACR because Appellant's Brief fails to concisely set forth the applicable standard of review with citations to relevant case law establishing the standard.

6. Appellant's Argument Number 1 sets forth that the Master-In-Equity erred in executing a sham kangaroo court of two cases. Appellant's argument sets forth that another case (2022-CP-08-00478) was used in the ruling for the case being appealed. The other case (2022-CP-08-00478) referred to by Appellant is never referenced in the Master-In-Equity's Order for the case being appealed. Therefore this matter is not to be considered by the Appellate Court.

7. Appellant's Argument Number 2 sets forth that the Master-In-Equity erred in violation of Rule 53 regarding executing the Consent Order of Reference for this case. The Master-In-Equity did not execute the Consent Order of Reference. The Honorable Jennifer B. McCoy executed the Consent Order of Reference which was signed by Plaintiff's attorney, Jeff S.

Weathers, and Defendants’, Leroy Pinckney and Willis Pinckney, attorney, J. Chris Lanning. The Consent Order of Reference was filed on March 24, 2022. Rule 74 of the SCRCF sets forth that a notice of appeal must be filed and served within thirty (30) days after receipt of written notice of the order. Appellant received written notice of the Consent Order of Reference on March 24, 2022 through his attorney when the Order was filed. The Appellant failed to file a notice of appeal within 30 days of March 24, 2022. Appellant’s right to appeal the Consent Order of Reference has expired. Therefore this matter is not to be considered by the Appellate Court.

8. Appellant’s Argument Number 3 sets forth that the Master-In-Equity erred in his order saying that the appeal goes to the Appellate Court. The Master-In-Equity’s Order does not set forth any statement about an appeal. Therefore this matter is not to be considered by the Appellate Court.

9. Appellant’s Argument Number 4 sets forth that the Master-In-Equity erred in not seeing the fraudulent deeds that are voidable. The Appellant never raised this issue to the trial court. Our Supreme Court has held, “It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” See generally *Holy Loch Distribs. Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000); *Pye v. Estate of Fox*, 369 S.C. 555, 564–65, 633 S.E.2d 505, 510 (2006).

In this case, Appellant raises the claim that the fraudulent deeds are voidable for first time on appeal. The trial court did not have the opportunity to consider and rule on this issue, therefore, this issue is not preserved for appeal and should not be considered by the Appellate Court.

10. Appellant’s Argument Number 5 sets forth that the Master-In-Equity erred in not having transcripts to make the final order. The Appellant fails to present any authority in support

of Appellant's argument and furthermore this is not a matter that is appealable. Therefore, this matter should not be considered by the Appellate Court.

11. Appellant's Argument Number 7 sets forth that the Master-In-Equity erred in the findings of facts in the order that Respondent, Leroy Pinckney, gave him permission to use the property. Appellant is attempting to argue facts that were determined by the Master-In-Equity. The Appellate Court does not resolve factual disputes and only considers legal questions. Therefore, this matter should not be considered by the Appellate Court.

In this case, Appellant's violations of the statutory requirements are more egregious than those in *Henning*. Whereas in *Henning*, the appellant failed to follow formatting guidelines and did not provide any citations in the Record, in this case Appellant provides no citations to the Record, includes arguments that are not preserved for appeal, includes Arguments which cannot be decided by the Appellate Court, includes contested facts in the Statement of the Case, and fails to provide a standard of review. These factors weigh in favor of dismissing the appeal in its entirety. In the alternative, this Court should strike Appellant's Brief in its entirety and direct Appellant to re-file its Brief in conformance with all applicable authority.

CONCLUSION

Appellant's Brief fails to comply with the requirements of the Appellate Court Rules. Appellant's Brief provides no citations to the Record, includes arguments that are not preserved for appeal, includes Arguments which cannot be decided by the Appellate Court, includes contested facts in the Statement of the Case, and fails to provide a standard of review. Considering these violations together, this Court should dismiss this appeal in its entirety. In the alternative, this Court should strike Appellant's Brief and require Appellant to re-file his Brief in compliance with all applicable authority.

Respectfully submitted on January 29, 2024.

s/ J. Chris Lanning
J. Chris Lanning (SC Bar No. 73957)
Brush Law Firm, P.A.
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
clanning@brushlawfirm.com
Attorney for Respondents

RECEIVED

Jan 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Master-In-Equity

The Honorable Dale E. Van Slambrook

Appellate Case No. 2022-001555

Kenneth S. Pinckney,

Appellant,

vs.

Leroy Pinckney, John Dandy Pinckney,
Heirs of John Dandy Pinckney, Everlena
Pinckney Kinlaw, Autumn Pinckney,
Geneva Brown, Joe Louis Pinckney,
Theresa Pinckney, Peggy Pinckney,
Franklin Revenell and Willis Pinckney
and John Doe and Mary Roe, fictitious
names used to Represent any and all other
persons unknown who have or may claim
any right, title, interest or estate in or lien
upon the real property hereinafter described,
including any such as may be infants,
incompetents, or otherwise under any
disability, and heirs of any deceased
Defendants named above,

PROOF OF SERVICE

I certify that I have served Respondents' Motion to Dismiss Appeal or in the Alternative Strike Appellant's Brief on Appellant, Kenneth Pinckney, by e-file and by depositing a copy in the United States Mail, postage prepaid, on January 29, 2024, addressed to him at 270 St. Julian Drive, Cross, SC 29436

s/ J. Chris Lanning
J. Chris Lanning (SC Bar No. 73957)
Brush Law Firm, P.A.
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
clanning@brushlawfirm.com
Attorney for Respondents

Dated: January 29, 2024



BRUSH LAW FIRM

Attorney at Law

12 A Carriage Lane
Charleston, SC 29407
Phone: (843) 766 5576
Fax: (843) 766 9152

RECEIVED

Jan 29 2024

SC Court of Appeals

January 29, 2024

The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Kenneth S. Pinckney v. Leroy Pinckney, et al
Case Number: 2022-001555

Dear Clerk:

Enclosed please find a check in the amount of \$50.00 for the motion filing fee of Respondents' Motion to Dismiss Appeal or in the Alternative Strike Appellant's Brief.

Very truly yours,

s/ J. Chris Lanning
J. Chris Lanning (SC Bar No. 73957)
Brush Law Firm, P.A.
12-A Carriage Lane
Charleston, SC 29407
(843) 766-5576
clanning@brushlawfirm.com
Attorney for Respondents

cc: Kenneth S. Pinckney, Appellant