

RECEIVED

Feb 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No.: 2023-001342

Michael Carwane.....Appellant,

vs

South Carolina Department of Juvenile Justice,
.....Respondent,

**RESPONDENT’S RESPONSE TO APPELLANT’S
MOTION FOR SUPPLEMENTAL RECORD ON APPEAL**

On January 30, 2024, Eugene H. Matthews, Attorney for the Respondent, received a package of documents from Appellant entitled “Motion for Supplemental Record on Appeal.”¹ Appellant’s motion is apparently aimed at adding more documents to the Record on Appeal. For the following reasons, the Appellant’s motion should be denied, and the Record on Appeal should include only items that conform with those meeting the requirements of Rule 209, SCACR, and Rule 210, SCACR. In support of this response, Respondent shows the following:

1. On or about November 7, 2023, Respondent designated the following matters to be included in the Record on Appeal:
 - a. Appellant’s Motion to Compel dated March 8, 2023;
 - b. ALC’s Notice of Assignment dated March 31, 2023;
 - c. SCDJJ’s Response to Motion to Compel dated April 14, 2023;

¹ Appellant’s Certificate of Service states the Appellant served his motion on January 8, 2024. There is no explanation for the 22-day time period between Appellant’s mailing the motion and receipt by Respondent.

- d. ALC's Order of Dismissal dated June 19, 2023;
- e. Appellant's Appeal of Order of Dismissal dated June 29, 2023;
- f. ALC's Order Denying Motion for Reconsideration dated July 19, 2023;
- g. Appellant's Appeal to Order Denying Motion for Reconsideration dated August 16, 2023;
- h. ALC's Memo/Order dated August 17, 2023;
- i. Appellant's Notice of Appeal dated August 21, 2023.

2. Counsel for Respondent certified that, pursuant to Rule 209(c), SCACR, only matters that are relevant to this appeal were included in Respondent's Designation of Matters.

3. Upon review of the Record on Appeal submitted by Appellant, and the motion he recently filed with this Court, it appears that the Record on Appeal that Appellant sent to the Court does not include any of the materials designated by Respondent, other than (1) the Administrative Law Court's Order of Dismissal dated June 19, 2023, and (2) the Administrative Law Court's Order Denying Motion for Reconsideration dated July 19, 2023. Instead, it included many documents concerning Appellant's attempts to conduct discovery before the Workers' Compensation Commission, as well as documents related to his Grievance Appeal pending before the State Employee Grievance Committee. For this reason, Appellant has filed an insufficient Designation of Matter and Record on Appeal pursuant to Rule 209(b), SCACR.

4. Plaintiff has also filed an insufficient Record on Appeal pursuant to Rule 210(c), SCACR, which in part requires Appellant to serve upon the Court a Record on Appeal that includes "all matter designated to be included by any party under Rule 209." Appellant also failed to truthfully certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material." Rule 210(g), SCACR.

5. "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 v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

6. Respondent requests, at a minimum, that the Court direct the Appellant to refile a Record on Appeal that includes only those materials earlier submitted to and considered by the Administrative Law Court – whose decision is at issue in the appeal – and the motions, responses, and orders relevant to the proceeding before the Administrative Law Court.

7. Respondent also requests, at a minimum, that the Court direct the Appellant to “serve and file an amended Designation that sets forth with specificity the exhibits and other matter he wishes to include in the Record on Appeal,”² and remind the Appellant “that the Record on Appeal shall not contain any matter not presented to the [Administrative Law Court].” *Henning*, 307 S.C. at 438, 415 S.E.2d at 794–95.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews, S.C. Bar No. 10193
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@richardsonplowden.com

COUNSEL FOR RESPONDENT

February 2, 2024
Columbia, South Carolina

² Appellant also attempts to use his Designation of Matter and his Record on Appeal to include language that is argumentative or attempts to interpret and comment on the materials in the Record on Appeal. These submissions are inappropriate under Rule 209, SCACR, and Rule 210, SCACR, should be rejected by the Court.

RECEIVED

Feb 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No.: 2023-001342

Michael CarwaneAppellant,


vs

South Carolina Department of Juvenile Justice,
.....Respondent,

PROOF OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., counsel for the Appellants do hereby swear that I have served a copy of the Respondent's Response to Appellant's Motion for Supplemental Record on Appeal by causing a copy of the same to be personally deposited in the United States mail, first class postage prepaid, addressed as indicated below on February 2, 2024:

Michael Carwane
302 The Heights, Third Ave
Saluda, SC 29138


Mary Jane Wilson
Legal Assistant

February 2, 2034

Michael Carwane
302 The Heights Third Ave.
Saluda, SC 29138

Re: Michael Carwane vs SCDJJ
Appellate Case No. 2023-001342

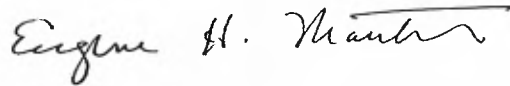
Dear Mr. Carwane:

Please find attached a copy of the Respondent's Response to Appellant's Motion for Supplemental Record on Appeal, together with the Proof of Service.

With kind regards, I remain

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Eugene H. Matthews

EHM/mjw

cc: SC Court of Appeals

February 2, 2024

Honorable Jenny Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
Feb 02 2024
SC Court of Appeals

Re: Michael Carwane vs SCDJJ
Case #: 2023-001342
Our File #: 9685-001


Dear Ms. Kitchings:

Enclosed herewith for filing is the Respondent's Response to Appellant's Motion for Supplemental Record on Appeal, together with the Proof of Service.

With kind regards, I remain

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.


Mary Jane Wilson
Legal Assistant

/mjw
Enclosures as Stated

cc: Michael Carwane
302 The Heights Third Ave.
Saluda, SC 29138