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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 AMENDED RECORD ON APPEAL

Respondent, by and through her undersigned counsel, hereby moves for an Order striking the amended Record on Appeal, filed and served by the Appellant on or about February 16, 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 original Record on Appeal (hereinafter, “ROA”). Notably missing from the ROA, however, were 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. No amended record was filed or served at that time. Thereafter, and on January 24, 2024, the Respondent filed a Motion to Strike the record assembled by the Appellant.

On February 14, 2024, and while the Respondent's Motion to Strike was pending, this Court sent correspondence to the Parties indicating that this matter would be held in abeyance until the Court made a decision on Respondent's Motion. However, on February 16, 2024, and while the case was held in abeyance, the Appellant filed a Motion to Amend the Record on Appeal, along with Appellant's purported amended Record (hereinafter, "amended ROA"). The Index to the Appellant's amended ROA is attached hereto as Exhibit C.

By order dated March 28, 2024, this Court granted the Respondent's Motion to Strike, and accepted the amended ROA as filed by the Appellant on February 16, 2024. The Court ordered that the Parties shall file their Final Briefs within 20 days of the date of that Order, which would be on or about April 17, 2024. This motion then followed.

Argument

Matters Designated, but Not Included in the Record on Appeal

Yet again, multiple matters are notably missing from the amended ROA that were designated by both Parties.

As shown in the Appellant's DOM (Exhibit A), the Appellant designated that Exhibits A, B, and C to the Plaintiff's Complaint would be included in the ROA. However, none of these Exhibits were submitted and included in the amended ROA. (See Exhibit C). Additionally, the Appellant specified that only pages 4-5, 9, 11-13, 15-18, and 20-22 of the hearing transcript would be designated and included; however, the amended ROA includes the entire transcript from the hearing on the Respondent's motion for summary judgment. (Id.)

Additionally, as noted in the Respondent's DOM (Exhibit B), the Respondent designated Exhibit A and B to the Plaintiff's Motion for Summary Judgment. Neither were included by Appellant in

assembling the amended ROA. (See Exhibit C).

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 amended the ROA, the amended ROA is in violation of the Appellate Court Rules and should be stricken, again.

Conclusion

Therefore, and based on the foregoing, the undersigned submits that the amended ROA filed and served by the Appellant on February 16, 2024, is in violation of Rule 210, SCACR, and further requests that this Court

1. Strike from the record the amended Record on Appeal filed and served on or about February 16, 2024;
2. Order the Appellant to properly prepare, serve, and file an amended Record on Appeal based solely upon the Designations of Matter to be Included in the Record on Appeal previously filed by the Parties herein;
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; and
4. Order any such other and further relief that the Court deems just and fair.

Respectfully submitted,

McCANTS & McCANTS

s/ Clarke W. McCants, IV
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S.C. Bar No. 103228
Attorney for Respondent

Dated: April 1, 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.
Shalonda Wilburn, Esq.
135 Chesterfield St. S.
Aiken, SC 29801
(803)-226-0479

THE STATE OF SOUTH CAROLINA
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Courtney Clyburn Pope, Circuit Court Judge

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

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

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Attorney for Respondent

Dated: October 20, 2023

Other Counsel of Record:
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PROOF OF SERVICE

I certify I have served the Respondent’s Motion to Strike on counsel for the Appellant, Shalonda Wilburn, Esquire on April 1, 2024, by electronic mail via the email address on record with AIS, at scwilburn@wilburnlawfirm.com.

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Dated: April 1, 2024