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Apr 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2023-001360

Taylor Chasey Robertson ..... Appellant,

v.

South Carolina Department of Public Safety, South Carolina Highway Patrol,  
and Trooper Patrick J Goshorn ..... Respondents.

RESPONDENTS' MOTION TO STRIKE ITEMS CONTAINED IN APPELLANT'S  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

April 23, 2024

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Highway Patrol, and Trooper Patrick J. Goshorn*

Defendants move the Court, pursuant to Rules 209, 210, and 240 of the South Carolina Appellate Court Rules, for an order striking certain documents in the Designation of Matter to be included in the Record on Appeal that Appellant filed on March 22, 2024. This motion is based upon the following grounds:

1. This appeal arises out of a Complaint filed by Appellant relating to a traffic stop which South Carolina Highway Patrol Trooper Patrick J. Goshorn performed on May 9, 2020.
2. On May 9, 2022 Appellant filed this South Carolina Tort Claims Action against Defendants South Carolina Department of Public Safety (SCDPS), South Carolina Highway Patrol (SCHP), and Trooper Patrick J. Goshorn.
3. On September 6, 2022, 120 days after filing her lawsuit, Appellant attempted to serve SCDPS by having a process server hand-deliver a copy of the Summons and Complaint to Candance Horton.
4. On October 6, 2022, SCDPS and SCHP filed a motion to dismiss because Appellant failed to properly serve her Summons and Complaint within 120 days of filing this action. On October 6, 2022, Trooper Goshorn also filed a motion to dismiss Appellant's claims against him based upon the immunity afforded to him under the South Carolina Tort Claims Act.
5. On February 23, 2023, the trial court heard Defendants' motions to dismiss. At the hearing, Appellant orally moved the court for leave to amend her complaint to include a federal cause of action against Trooper Goshorn pursuant to 42 U.S.C. §1983.
6. The trial court granted Defendants' motions to dismiss by order dated June 27, 2023.
7. On June 30, 2023, Appellant filed a motion for reconsideration including arguments that were not previously presented to the trial court at the hearing on Defendants'

- motions to dismiss and to which she attached numerous documents not presented on motion to dismiss.
8. On August 14, 2023, the trial court heard Appellant's motion for reconsideration but declined to consider the new materials. The Trial Court denied Appellant's motion for reconsideration and Appellant's oral motion to amend her Complaint.
  9. On August 25, 2023, Appellant filed Notice of Appeal. Appellant did not appeal the trial court's decision to not consider the untimely presented documents and arguments.
  10. Appellant has designated certain documents which were not presented to the trial court prior to or during the hearing on the motion to dismiss and documents which are not referenced in Appellant's Initial Brief on Appeal. These documents include from Appellant's Designation:
    8. Defendants' Motion to Allow Delayed Filing filed on October 17, 2022
    15. Defendants' discovery requests to Plaintiff
    16. Email from Defendants regarding discovery responses of March 3, 2023
    19. Email from Process Server regarding experience at SCDPS address
    20. Affidavit of Personal Service of SCDPS via Paula Davis on June 30, 2023
  11. Defendants South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn are entitled to an order striking these documents from Appellant's Designation of Matter that are not referenced in Appellant's Initial Brief on Appeal and are not relevant to the limited issues on appeal.

April 23, 2024

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MEMORANDUM IN SUPPORT OF RESPONDENTS’ MOTION TO STRIKE ITEMS  
CONTAINED IN APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE  
RECORD ON APPEAL

**BACKGROUND**

On October 6, 2022, Defendants South Carolina Department of Public Safety and South Carolina Highway Patrol filed a Motion to Dismiss Appellant’s Complaint because Appellant failed to timely and properly serve them. On October 6, 2022, Defendant Trooper Patrick J. Goshorn also filed a Motion to Dismiss pursuant to Sections 15-78-60 and 15-78-70 of the South Carolina Tort Claims Act. The motions were heard on February 23, 2023. The Trial Court granted Defendants’ motions by order filed on June 27, 2023. Appellant filed a Motion for Reconsideration on June 30, 2023. The Motion for Reconsideration was heard on August 14, 2023. By order filed on August 16, 2023, the Trial Court denied Appellant’s Motion for Reconsideration. Appellant filed Notice of Appeal on August 25, 2023.

## ARGUMENT

### **Materials Improperly Designated in Appellant’s Designation of Matter Must be Stricken**

The South Carolina Rules of Appellate Practice are clear that matter that was not presented to the lower court must not be included in the Record on Appeal: “The Record on Appeal shall include all matter designated to be included by any party under Rule 209,” but “**shall not. . . include matter which was not presented to the lower court or tribunal.**” Rule 210(c), SCACR (emphasis added). Further, parties may not include any matter in his Designation of Matter that is not relevant to the appeal. Rule 209(b), SCACR. “[T]he 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.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

In Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 762 S.E.2d 293 (2014), the South Carolina Supreme Court found that the trial court properly refused to consider arguments that the defendants attempted to raise for the first time in a Rule 59(e) motion. Id. at 566, 762 S.E.2d at 694-95. Although the South Carolina Court of Appeals considered the merits of the untimely argument, the South Carolina Supreme Court held that the South Carolina Court of Appeals erred in doing so. Id. at 567, 762 S.E.2d at 695. The South Carolina Supreme Court held that the “circuit court, relying on well-settled precedent, declined to reach this issue because it was improperly raised for the first time in the Rule 59(e) motion. The court of appeals should have refused to entertain that theory as well for the same reasons.” Id. In Smith v. Fedor, 422 S.C. 118, 126-27, 809 S.E.2d 612, 616 (Ct. App. 2017) this court held that arguments raised by the Appellant in his motion for reconsideration that had not been raised before the trial court issued its order were not preserved for review. Similarly, in Green v. Johnson, Op. No. 2024-UP-024, at

\*7 (Ct. App. Jan 17, 2024), this Court held that it could not consider documents that were submitted to the lower court only as an attachment to the party's Rule 59(e) motion.

In her Designation of Matter, Appellant has included documents that were not timely presented to the trial court, and which are irrelevant to her appeal. In addition, Appellant does not refer to the materials in her Initial Brief. For these reasons, these materials should be stricken from Appellant's Designation of Matter to be Included in the Record on Appeal. These materials include:

- 8. Defendants' Motion to Allow Delayed Filing filed on October 17, 2022
- 15. Defendants' discovery requests to Plaintiff
- 16. Email from Defendants regarding discovery responses of March 3, 2023
- 19. Email from Process Server regarding experience at SCDPS address
- 20. Affidavit of Personal Service of SCDPS via Paula Davis on June 30, 2023

These materials should be stricken from the Designation of Matter to be Included in the Record on Appeal and not included in the Record on Appeal because they were not presented to the lower court during the hearing on motions to dismiss and some of are not referenced in Appellant's Initial Brief. See Rule 210(c), SCACR. Moreover, these erroneously included materials should also be stricken because they are not relevant to the issues on appeal: (1) whether the trial court correctly determined that Appellant failed to properly serve SCDPS and SCHP and therefore did not timely commence this action against those Defendants; (2) whether the trial court properly dismissed Appellant's tort claims against Trooper Goshorn; and (3) whether the trial court properly denied Appellant motion to amend her Complaint.

## CONCLUSION

For the reasons explained herein, Respondents request that the Court strike the documents and materials enumerated above from Appellant's Designation of Matter to be Included in the Record on Appeal because these documents are not referenced in Appellant's Initial Brief on Appeal and are not relevant to the limited issues on appeal.

April 23, 2024

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PROOF OF SERVICE

I certify that I have served Respondents' Motion to Strike and Respondents' Memorandum in Support of Motion to Strike on Appellant by email and by depositing a copy of it in the United States mail, postage prepaid, on April 23, 2024, addressed to her attorney of record as follows:

Mr. Nicolas J. Baughman  
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P.O. Box 2501  
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April 23, 2024  
*By Email*

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

Re: Taylor Chasey Robertson v. South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn  
C.A. No.: 2022-CP-42-01677  
Appellate Case No. 2023-001360

Dear Ms. Kitchings:

Enclosed for filing are:

1. Respondents' Motion to Strike;
2. Respondents' Memorandum in Support of Motion to Strike; and
3. Proof of service of same.

A check in the amount of \$50.00 for the required motion filing fee will be sent by United States Mail.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

A handwritten signature in blue ink that reads 'Stephanie H. Burton'.

Stephanie H. Burton

SHB/bre

Enclosures

cc: Mr. Nicolas J. Baughman (w/enclosures)(by email)  
Mr. Russell W. Harter, Jr. (w/enclosures)(by email)

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