

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2023-000460

Joe Clemons.....Appellant

v.

William S. Helmly/President & CEO of Home Telecom Co. Respondent

**RESPONDENT’S MOTION TO STRIKE APPELLANT’S AMENDED FINAL BRIEF
AND TO DISMISS THE APPEAL**

Respondent William S. Helmly/President & CEO of Home Telecom Co. moves, pursuant to Rules 208, 210, 211, and 260 of the South Carolina Appellate Court Rules to strike Appellant’s Amended Final Brief and Dismiss the Appeal.

Appellant filed his Notice of Appeal on March 20, 2023. Appellant’s Initial Brief was filed on August 10, 2023. In response to Appellant’s Initial Brief and pursuant to Rule 208, SCACR, Respondent filed his initial brief on September 11, 2023.

On May 2, 2024, after months of delay due to Appellant’s failure to file a record on appeal that complies with the Court’s rules, Appellant filed his Amended Final Brief.¹ Appellant’s Amended Final Brief is wholly different than his Initial Brief, as it has been entirely rewritten and

¹ On April 2, 2024, the Court ordered Appellant to file a supplemental record on appeal that complies with the rules, and the Court informed Appellant that the failure to do so would result in the dismissal of his appeal. Appellant thereafter filed a Supplemental Record on Appeal on April 22, 2024 that still fails to comply with the rules; as such, Respondent filed a Motion to Dismiss on May 2, 2024 that has not been ruled on. Nothing in this motion is intended to waive or contradict that motion or the arguments contained therein.

contains new arguments. In fact, not a single section of Appellant's Amended Final Brief resembles the Initial Brief.²

Appellant's Amended Final Brief therefore violates Rule 211, SCACR, which governs Final Briefs. That rule provides the following as to the content of the Final Briefs:

- (b) **Content.** *The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:*
- (1) **References to the Record.** The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).
 - (2) **Correction of Typographical Errors and Misspellings.** The party may correct obvious typographical errors and misspellings which were contained in the initial brief. *No other changes may be made.*

(emphasis added). Rule 211(b)(2) explicitly prohibits any party from submitting a Final Brief that is substantively different than the Initial Brief, much less a brief that is entirely re-written and contains new arguments, as Appellant's Amended Final Brief does. The reasons for such a rule are obvious – Respondent's brief is a response to the Appellant's brief, and Appellant cannot be allowed to surprise Respondent with new arguments that are different than those raised in the Initial Brief. *See* Rule 211(a), SCACR (providing that the Appellant and Respondent's final briefs are due on the same day – 20 days after service of the Record on Appeal – and should be identical to the initial briefs).

“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *See State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). Our Court of Appeals has previously dismissed

² Appellant's Amended Final Brief also contains no references to the record, in violation of Rules 208 and 211, SCACR, which is another ground on which to dismiss the appeal.

appeals for failure to comply with Rule 211, SCACR. *See Best v. Glover*, No. 2013-UP-194, 2013 WL 8508101, at *1 (S.C. Ct. App. May 15, 2013) (holding a “procedural defect precludes meaningful review of this appeal” and dismissing the appeal pursuant to “the following authority: Rule 211(b), SCACR (requiring the content of a party's final brief to be identical to the initial brief, with the exception of including references to the record on appeal and correcting obvious typographical errors and misspellings contained in the initial brief)”); *Epps v. Epps*, No. 2012-UP-146, 2012 WL 10841280, at *1 (S.C. Ct. App. Mar. 7, 2012) (“Because procedural defects preclude meaningful review of this appeal, we dismiss pursuant to Rule 220(b)(1), SCACR, and the following authorities: . . . Rule 211(b), SCACR (requiring the content of a party's final brief to be identical to the initial brief, with the exception of revising the references ‘to indicate where the material appears in the Record on Appeal’ and correcting obvious typographical errors and misspellings contained in the initial brief)”). The Court of Appeals has also held “the right to an appeal may be lost through a variety of actions by an appellant, such as: . . . failure to serve and file a record on appeal and final brief under Rules 210 and 211, SCACR.”

Respondent has already filed a pending Motion to Dismiss based upon Appellant’s continued failure to file a Record on Appeal that complies with Rules 210 and 212 and prior orders of the Court. Additionally, as noted in Respondent’s Initial and Final Brief, Appellant’s Initial Brief failed to comply with Rule 208, as it (a) did not identify the issues on appeal, (b) did not contain references to the record, and (c) did not contain any authority in support of any arguments, nor does it contain any reference to the standard of review. Appellant’s failure to comply with Rules 208, 210, 211, and 212, each amount to procedural defects that preclude meaningful review of this appeal. *See Epps v. Epps*, No. 2012-UP-146, 2012 WL 10841280, at *1 (S.C. Ct. App. Mar. 7, 2012) (“Because procedural defects preclude meaningful review of this appeal, we dismiss pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 208(b)(1)(B), SCACR (‘Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.’); Rule 211(b), SCACR (requiring the content of a party's final brief to be identical to the initial brief, with the exception of revising the references ‘to indicate where the material appears in the Record on Appeal’ and correcting obvious typographical errors and misspellings contained in the initial brief); Rule 210(c), SCACR (excluding from the record any ‘matter which was not presented to the lower court’)”). As such, this appeal should be dismissed. *See* Rule 260, SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements

of these Rules, *the clerk shall issue an order of dismissal*, which shall have the same force and effect as an order of the appellate court.” (emphasis added)).

As such, Respondent respectfully requests that the Court strike Appellant’s Amended Final Brief and dismiss the appeal.

Respectfully submitted,

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May 8, 2024

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

The undersigned, an attorney in this matter for Respondent, certifies that on **May 8, 2024**, I have served copies of **Respondent’s Motion to Strike Appellant’s Amended Final Brief and to Dismiss The Appeal** upon Joe Clemons, Pro Se Appellant via e-mail to Joe Clemons, clemonswelding1@gmail.com

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