

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

May 13 2024

SC Court of Appeals

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

ARGUMENT

Arguments Not Raised by Appellant in her Initial Brief are Not Relevant

The scope of this appeal is limited to the arguments Appellant properly raised in her Initial Brief in accordance with the South Carolina Appellate Court Rules. Rule 208(b)(1)(B) of the Rules mandates that Appellant’s brief include:

A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”

Rule 208(b)(1)(B), SCACR.

Furthermore, Rule 208(b)(1)(E) provides, in part, that:

The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority.

Rule 208(b)(1)(E), SCACR. Moreover, Section 62-1-308 of the Code mandates that “[A]ppellant’s brief shall be in a format described in Rule 208(b)(1), SCACR.” S.C. Code Ann. § 62-1-308 (2024).

Given those clearly articulated mandates, courts in South Carolina have repeatedly held that an appellant’s failure to properly raise and support an issue in her brief constitutes an abandonment of the issue. See Medical Univ. of S.C. v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (noting issues are deemed abandoned when the arguments on those issues are conclusory); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority); Hunt v. South Carolina Forestry Comm’n, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) (“Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.”); Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”); R & G Constr., Inc. v. Lowcountry Reg’l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) (finding that where no authority is cited and argument in brief is conclusory, issue is deemed abandoned.); State v. Colf, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned.); Forest Dunes Assocs. v. Club Carib, Inc., 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990) (holding that “[e]very ground of appeal

ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to ‘grope in the dark’ to ascertain the precise point at issue.”).

Here, Appellant incorrectly asserts that arguments raised in her motions for reconsideration but not in her initial brief are relevant to this appeal. It appears that Appellant also incorrectly believes that she can expand the scope of the appeal by asserting new arguments in her recently filed Return. Specifically, she improperly attempts to raise an issue concerning an alleged voluntary appearance of Respondents. (Return, p. 7.) She failed to pose any such argument in her Initial Brief. Other than a single conclusory sentence, Appellant failed to make any argument or cite supporting authority concerning any issue of voluntary appearance in her Initial Brief. Therefore, this issue has been abandoned and is not within the scope of this appeal.

The issues on appeal are: (1) whether the trial court correctly determined that Plaintiff 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 Plaintiff’s tort claims against Trooper Goshorn; and (3) whether the trial court properly denied Plaintiff’s motion to amend her Complaint. In accordance with South Carolina precedent and the South Carolina Appellate Court Rules, all other issues have been abandoned and any arguments concerning such issues are not properly before this Court and should not be considered in this appeal.

The Materials that Respondents Seek to Strike are Not Relevant

Respondents seek to strike materials that Appellant submitted for the first time with her Rule 59(e) motion which are neither referred to in her Initial Brief nor are relevant to the issues 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.

In her Return, Appellant does not dispute that the materials Respondents seek to strike from her Designation of Matter are not referenced in her Initial Brief. Instead, Appellant argues that all of the materials she first presented with her motions for reconsideration should be included in the Record on Appeal. The scope of this appeal does not include all of the arguments that Appellant raised in her motions for reconsideration but is limited to the issues that Appellant properly asserted in her Initial Brief. Therefore, the Record on Appeal must be confined to matters that are relevant to those issues. Rule 209(b), SCACR.

Notably, in its August 16, 2023 Order denying Appellant's motion for reconsideration, the Trial Court refused to consider the materials presented and arguments made during the motion for reconsideration that were not previously presented to the Trial Court at the hearing on Respondents' motions to dismiss. Appellant did not appeal the Trial Court's decision to not consider the untimely documents and arguments. As such, she has abandoned any issue concerning that portion of the Trial Court's ruling. Therefore, the irrelevant materials included by Appellant in her Designation of Matter should be stricken.

In her Return, Appellant argues that, in contravention to Rule 209, because she failed to set forth with specificity the parts of her motions for reconsideration that she proposes to include in the record on appeal, she should be permitted to include the materials that Respondents seek to strike from her Designation of Matter.

Rule 209 provides, in part, that:

At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal

a Designation of Matter to be Included in the Record on Appeal which **shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.**

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].

Rule 209(a) & (b), SCACR.

Appellant's Designation of Matter lists her Motion for Reconsideration of Form 4 Order filed on May 24, 2023 and her Amended Motion for Reconsideration filed on June 30, 2023. Appellant does not identify any exhibits to those motions in her Designation. Accordingly, Respondents did not move to strike materials that were not clearly identified in Appellant's Designation of Matter. Instead, Respondents moved to strike the materials as enumerated in Appellant's Designation. To the extent that Appellant sought to include certain exhibits to her motions in her Designation, the South Carolina Appellate Court Rules required her to clearly specify that information. Accordingly, Respondents request this Court to interpret the scope of Respondents' motion to strike to include all copies of those materials.

Appellant belatedly offers to present additional materials, i.e. photographs, that were not presented to the trial court. (Return, p. 8 n. 3.) Appellant had an opportunity to obtain and present to the Trial Court evidence she deemed appropriate to oppose Respondents' motions to dismiss. This Court should not accept new evidence never heretofore presented to the Trial Court in this case.

CONCLUSION

Respondents request that the Court strike the documents and materials enumerated in Respondents' Motion to Strike because these documents are not referenced in Appellant's Initial Brief on Appeal and are not relevant to the limited issues on appeal.

May 13, 2024

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