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May 17 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,

**RESPONDENT'S
MOTION TO DISMISS APPEAL**

Respondent South Carolina Department of Juvenile Justice (hereinafter "Respondent") hereby moves for an Order dismissing the above-captioned appeal for violation of the Court's Order dated February 7, 2024, requiring the Appellant to file an amended record on appeal that includes all items designated for inclusion in Respondent's designation of matter, filed November 8, 2023. In support of this motion, Respondent states as follows:

1. On November 8, 2023, Respondent filed a Designation of Matter regarding the following pleadings and orders 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;
- 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 Matter.

3. The initial Record on Appeal submitted by Appellant, and the motion he recently filed with this Court did 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. In short, Appellant has filed an insufficient Designation of Matter and Record on Appeal pursuant to Rule 209(b), SCACR.

4. Plaintiff 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. On February 7, 2024, this Court granted Plaintiff's motion to supplement the record, but noted in its Order that "Appellant must file an amended record on appeal that includes all items designated for inclusion in Respondent's designation of matter, filed November 8, 2023, in addition to the items designated by Appellant...Moreover, the amended record must not include any matters which were not presented to the Administrative Law Court." The Order directed Appellant to file the amended record on appeal within 30 days of the Order (i.e., March 8, 2024).

6. On April 26, 2024, this Court issued another Order to Appellant, denying his “motion for extension of time and motion to request hearing to discuss reply to Respondent’s response to motion for supplemental record on appeal.”

7. By letter dated May 1, 2024 from the Clerk’s office of this Court, the Court reminded Appellant that the deadline for filing the amended record on appeal had passed, and granting him ten (10) additional days from the date of the letter to file the amended record on appeal, “or your filing will not be considered.”

8. On or about May 14, 2024, Appellant filed an “Amended Record on Appeal” that again excluded several important pleadings or orders that Respondent designated. For instance, Appellant’s “Amended Record on Appeal” excludes the following items:

- a. Appellant’s Motion to Compel dated March 8, 2023;
- b. SCDJJ’s Response to Motion to Compel dated April 14, 2023;
- c. Appellant’s Appeal to Order Denying Motion for Reconsideration dated August 16, 2023;
- d. ALC’s Memo/Order dated August 17, 2023;
- e. Appellant’s Notice of Appeal dated August 21, 2023

9. Because of Appellant’s continuing unwillingness to meet his basic obligations to the Court and to Respondent concerning the Record on Appeal, Respondent requests that the Court dismiss his Appeal.

10. “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).

11. Appellant's failure to comply with the Court Rules has significantly delayed this appeal and has hindered the ability of Respondent to prepare their Final Brief. For that reason, and in accordance with the Court's letter of May 1, 2024, Respondent respectfully requests this Court to dismiss Appellant's appeal with prejudice.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



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COUNSEL FOR RESPONDENT

May 17, 2024
Columbia, South Carolina

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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 Motion to Dismiss 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 May 17, 2024:

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


Mary Jane Wilson
Legal Assistant