

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 13 2024

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Circuit Court

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-001129

C.A. No. 2023-CP-23-04451

DANNY ROSE,

Respondent,

v.

ROBERT ROSE, GLORIA ROSE-RUCH,
MARY MARGARET DOLL ROSE, and
JOHN DOES 1-99,

of whom ROBERT ROSE, GLORIA ROSE-RUCH,
and MARY MARGARET DOLL ROSE are the

Appellants.

RETURN TO MOTION TO STRIKE
PORTIONS OF APPELLANTS' DESIGNATION OF MATTER

1. Counsel for Respondent moves to strike various items listed in the Appellants' Designation of Matter to be included in the Record on Appeal. The Appellants file their Return to that Motion pursuant to Rule 240(e), S.C.A.R.P.
2. The Respondent objects to items 2., 3., 26., 27., 28., and 29. The Appellants concede that these items reference the collateral conflict relating to their right to discovery in this action, which dispute is now before the Supreme Court on their Petition for *Certiorari*. Those items can be struck.
3. The Respondent objects to the inclusion of item 1. (Order to Unfreeze Assets for Distribution) and item 30. (the Motion which resulted in the item 1. Order). The Rules of this Court prohibit inclusion in the Record on Appeal of matter that "was not presented to the lower court or tribunal." (Rule 210(c), S.C.A.C.R.) This prohibition has no application here, since items 1. and 30. were obviously filed with the Circuit Court.

4. The Rules of the Appellate Courts also prohibit inclusion within the Record on Appeal matter “which is not relevant to the appeal.” (Rule 209(b), S.C.A.C.R.) The Appellants’ argument below was, and in their Brief is, based upon their good faith actions in handling the Respondent’s funds. The existence of Court filings validating their good faith intent must be relevant.

5. The Respondent also objects to the inclusion of item 1. (Order to Unfreeze Assets for Distribution), items 11. and 12. (Temporary Restraining Orders), and item 30. (the Motion which resulted in the item 1. Order) on the ground that the same are not referenced in the Appellants’ Brief. The Appellants contend that the said Orders (items 11. and 12.) evidence the history of the case and are thus relevant to this appeal. As stated above, the Appellants contend that items 1. and 30. are also relevant. The Appellants are unaware of any requirement that only matter specifically referenced within their Brief may be included in the Record on Appeal.

6. The Respondent also objects to the inclusion of item 17. on the ground that the same is not referenced in the Appellants’ Brief. While there is no specific reference to the Motion asking to relieve prior counsel, the fact of that change of counsel is referenced in the Appellants’ Brief, and the Respondent does not object to the inclusion of Order relieving former counsel (item 8.). Under these circumstances, and given the Brief’s characterization of former counsel and his actions, the Appellants contend the inclusion of this Motion is proper.

The Appellants ask that the Court issue its Order accordingly.

June 13, 2024

/s/ John Martin Foster
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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Return to Motion to Strike Portions of Designation of Matter; and
this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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