

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 12 2024

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

Phillip Lenski, Administrative Law Judge

Docket No. 23-ALJ-22-0342-AP

Appellate Case No. 2024-000251

Bridgette M. Chabot,

Appellant

v.

South Carolina Department of Employment and Workforce and
Wells Fargo & Company, Inc.,

Respondents

**RESPONDENT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND
WORKFORCE'S RESPONSE TO APPELLANT'S SECOND MOTION TO
STRIKE RESPONDENTS' BRIEFS AND RESPONSE TO APPELLANT'S
MOTION TO COMPEL**

On August 2, 2024, Appellant filed both a Motion to Compel the Production of Evidence and a Motion to Strike and Dismiss Respondents' Briefs. These motions are meritless and frivolous and the South Carolina Department of Employment and Workforce (the Department) asks this Court to deny the motions and, additionally, to sanction Appellant for her repeated frivolous filings, misleading statements, and attempts to evade this Court's rules and prior Orders.

I. Motion to Compel

Appellant's Motion to Compel asks this Court to compel the Department and Wells Fargo & Company, Inc. (Wells Fargo) to produce surveillance footage from the incident which led to her termination. Appellant cites "SC Court Rule 37" which appears to refer to Rule 37 of the South Carolina Rules of Civil Procedure; however, this is made unclear by her subsequent quotation of outdated language from Rule 37 of the Federal Rules of Civil Procedure on page four of the motion. In any case, a motion seeking to compel discovery is completely inappropriate at this stage in the legal proceedings. This case is on appeal from Judge Lenski's Order at the Administrative Law Court. S.C. Code Ann. § 1-23-610(B) provides: "The review of the administrative law judge's order must be confined to the record...." Further, Rule 210(c) of the South Carolina Appellate Court Rules provides "...The Record shall not, however, include matter which was not presented to the lower court or tribunal...." No surveillance footage was presented to the Department's Appeal Tribunal and no such footage was part of the Record presented to either the Department's Appellate Panel or the ALC. Finally, this Court has already made it abundantly clear that she would not be permitted to supplement the record with the surveillance footage which had not been presented to the lower court. *See* May 9, 2024 Order of the S.C. Court of Appeals, Appellate Case No. 2024-000251 ("To the extent Appellant seeks to supplement the record with information not presented to the lower court, we deny the motion."). This Court should deny Appellant's motion to compel as it is manifestly without merit and is seeking a ruling this Court has already denied.

II. Motion to Strike

Appellant's Motion to Strike seeks to strike the Department's brief based on an accusation that the Department's brief lacks substantial evidence. This is Appellant's second attempt to strike the Department's Initial Brief, having been unsuccessful in her first attempt. *See* July 3, 2024 Order of the S.C. Court of Appeals, Appellate Case No. 2024-000251 ("After careful consideration...we deny Appellant's motion to strike Respondent South Carolina Department of Employment and Workforce's initial brief.").

Appellant's Motion to Strike first argues that because the full, signed Employee Handbook was not offered into evidence before the Appeal Tribunal, the relevant portions of Wells Fargo's policies and procedures which were entered into evidence without objection cannot be used as evidence against her. In addition to being an inappropriate basis for striking the Department's brief, this argument is also manifestly without merit. Further, when asked if she had an objection to the transaction approval procedures being entered into evidence, Appellant stated, "No, I do not object. You can definitely have that." (ALC Record p.78, line 13). Now Appellant wants this Court to strike the Department's brief because the entirety of Wells Fargo's Employee Handbook was not included in the Record along with the procedures which were actually relevant to Appellant's separation. This Court should disregard this meritless argument and deny Appellant's Motion.

Appellant further argues that Wells Fargo's witness, Tracy McCarthy, offered hearsay testimony which cannot be considered substantial evidence. This argument is both meritless and not a proper basis for a motion to strike the Department's Initial Brief. As explained in more detail in the Department's Initial Brief, Tracy McCarthy's testimony

was properly included in the Record. Department regulations state, "Evidence will not be excluded solely because it may be hearsay...." S.C. Code Regs. 47-51(C)(3). Further, Appellant, despite her contention to the contrary, did not make any sort of hearsay objection during the Tribunal hearing. Additionally, this argument is a blatant attempt to avoid this Court's preservation rules. As explained in the Department's Initial Brief, no prior Court has ruled on any issues related to hearsay and any such issue is not preserved for review by this Court. This court should disregard this meritless argument and deny Appellant's Motion.

Appellant, in both her Motion to Compel and her Motion to Strike, also argues that Respondents have violated Rule 3.3 of the Rules of Professional Conduct. This is a very serious accusation and the Department objects in the strongest possible terms. The accusation is patently false and without any legal merit. Appellant argues that the Department made false statements to the Court about Tyler Faizo's involvement in the transaction at issue, and also that the Department made a false statement about Appellant's lack of objection to alleged hearsay testimony by Tracy McCarthy.

The Department's brief provides details of Tyler Faizo's involvement in the transaction, complete with citations to the record before the ALC, and specifically notes:

Appellant repeatedly argues that the transaction was technically under her coworker's name; however, she does not contest that she was the one that used Nadi's credentials to approve the transaction which was above her preset limit. The fact that the transaction was technically completed under her coworker's name is irrelevant.

(Department's Initial Brief, p.3; p.7 fn1). The accusation by Appellant that the Department is somehow trying to mislead the Court about Mr. Faizo's involvement in the transaction is simply and provably false and it should be disregarded by this Court.

Appellant also argues that the Department's contention that "Appellant made no contemporary objections to any alleged hearsay testimony" is false and that she attempted to object but was interrupted by the Tribunal Hearing Officer. Appellant argues that the following exchange, which occurred after both the Hearing Officer and Wells Fargo's attorney had completely finished questioning Ms. McCarthy represents a legal objection to hearsay:

HEARING OFFICER: Ms. Chabot, do you have any questions for Ms. McCarthy?

BRIDGETTE CHABOT: No question. Well, actually, what page is the breach of contract on the employee handbook? Breach of contract and dishonesty.

TRACY MCCARTHY: Page 23.

BRIDGETTE CHABOT: Okay. I have a copy of it right here, so I'll just read that. Other than that, I just want to state that it is false.

HEARING OFFICER: Well, no. Do you have any questions for her? No. No, ma'am.

BRIDGETTE CHABOT: That was it.

HEARING OFFICER: Do you have any questions for Ms. McCarthy?

BRIDGETTE CHABOT: No, ma'am.

(ALC ROA p.57, lines 12-24). No reasonable person could view that exchange and interpret it to mean Appellant was objecting to McCarthy's testimony as hearsay and asking

that it be excluded from evidence. Appellant is attempting to take a single sentence out of context and use it to argue that the Department has engaged in unethical conduct. Appellant's baseless and easily disprovable accusations of unlawful conduct should be disregarded by this Court.

Appellant's motions are repetitive, frivolous, and manifestly without merit. Appellant's Motion to Compel the surveillance footage for inclusion in the Record on Appeal is entirely inappropriate and also directly contrary to this Court's prior ruling. Appellant's second Motion to Strike the Department's brief lacks any legal basis and also seeks to bypass this Court's preservation rules by asking the Court to take adverse action against Respondents based on issues which were not preserved for appeal. Further, Appellant makes extremely serious accusations regarding the Department's candor to this Court which are both deliberately misleading and easily disprovable. Respondent requests that this Court deny Appellant's Motion to Compel and her second Motion to Strike the Department's brief. Respondent further requests that this Court sanction Appellant under Rule 269, SCACR, for her frivolous, repetitive, and inflammatory motions. Respondent believes that dismissal of Appellant's appeal is an appropriate sanction for her actions in this case.

[Signature on Following Page]

Respectfully Submitted,



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SC Dept. of Employment and Workforce

August 12, 2024.

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PROOF OF SERVICE

I certify that I have served RESPONSE TO APPELLANT'S SECOND MOTION TO STRIKE RESPONDENTS' BRIEF AND RESPONSE TO APPELLANT'S MOTION TO COMPEL on the parties in this case by mail on August 12, 2024, addressed to the parties at their addresses of record:

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Myrtle Beach SC 29579

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August 12, 2024



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SC Court of Appeals

By Email at ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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RE: Bridgette Chabot v. SC Department of Employment and Workforce and
Wells Fargo & Company
Appellate Case No: 2024-000251

Dear Ms. Kitchings:

Enclosed is Respondent DEW's Response to Appellant's Second Motion to Strike Respondents' Brief and Response to Appellant's Motion to Compel in the above referenced case. A proof of service is also included in this mailing.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Ben Cook
Attorney for Respondent South Carolina
Department of Employment and Workforce