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Aug 19 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2022-001312

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is theAppellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgard
Insurance Company, SC Department of Public Safety, Chevrolet, GMC, Unknown
John Does, Defendants,

Of whom Kevin Carter is theRespondent.

**RESPONDENT’S REPLY TO APPELLANT’S UNAUTHORIZED SECOND AMENDED
RETURN**

After more than nine (9) months, nine (9) extensions, and numerous deficiency letters, Appellant has still not served a compliant Record on Appeal. Appellant’s latest delay and noncompliance is part of a long pattern of such conduct in this case that has been ongoing for more than six (6) years. Appellant has never given the Court an explanation for her repeated failures to comply with court orders. Moreover, her latest “Record on Appeal” filing, attached to her unauthorized Second Amended Return to Respondent’s Motion to Dismiss, is again deficient. Therefore, Respondent Kevin Carter respectfully requests that this Court grant his Motion to

Dismiss the Appeal with prejudice or, in the alternative, to require Appellant to promptly and fully correct the Record on Appeal.

With her Return alone, Appellant has sought (and presumptively taken) numerous extensions. On June 24, 2024, Appellant filed a Motion for Extension to file her Return to Respondent's Motion to Dismiss the appeal. On July 15, 2024, Appellant filed a second Motion for Extension. As a result, her final Return was due on July 25, 2024. (July 17, 2024 Order). Appellant filed a Return on July 25, 2024, but she then proceeded to file an Amended Return on August 1, 2024, without leave of the Court. On August 12, 2024, Respondent Carter filed and served his Reply to Appellant's Amended Return. Thereafter, Appellant emailed a Second Amended Return, again without leave of the Court – which is essentially an unauthorized sur-reply to Respondent's Reply that should not be considered.

Moreover, with each of her submissions, Appellant has filed amended after amended "Record on Appeal" as Exhibit A without extensions or leave from the Court. *See* Rule 212(b), SCACR (requiring a party to move the appellate court for leave to supplement the Record on Appeal). On May 29, 2024, the Court sent Appellant a letter noting deficiencies with her Record on Appeal. (May 29, 2024 Letter). The letter stated that "***any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed.***" (May 29, 2024 Letter) (emphasis added). Thus, Appellant's corrected record was due on June 10, 2024 – not on August 12, 2024 as part of an unauthorized sur-reply.

In the event the Court decides to consider Appellant's Second Amended Return, its "Exhibit A" has many of the same issues as her April 19, 2024 filing, June 11, 2024 filing, and August 1, 2024 filing. (Ex. A to Appellant's Second Amended Return). This "Record of Appeal" is deficient on its

face. On its index, it purports to have documents numbered through page 1089. (*Id.* at p. 7). The record itself is only 883 pages long. (*Id.*).

There are numerous issues with this Record on Appeal. First, the documents themselves are not consecutively numbered, making it unworkable as a record on appeal. *See* Rule 210(c), SCACR. There are items listed on the index that were not included in either party's designation of matter and documents included in the record itself that were not included in either party's designation of matter. *See* Rule 210(g), SCACR. There are also numerous duplicates included and several unreadable pages. *See* (Appellant's Second Amended Return, pp. 103-107, 122). It is now over nine (9) months from when Appellant was originally required to serve the Record on Appeal, and Appellant still has not served a compliant Record on Appeal.

CONCLUSION

For the above-stated reasons and those set forth in Respondent Carter's Motion to Dismiss, Respondent respectfully requests that the Court dismiss the appeal with prejudice. Alternatively, Respondent respectfully requests that the Court require Appellant to promptly submit a fully correct record on appeal.

Respectfully submitted,

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August 19, 2024

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John Does, Defendants,

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PROOF OF SERVICE

I certify that I have served one copy of the Respondent’s Reply to Second Amended Return on Appellant by depositing a copy of it in the United States Mail, postage prepaid to Heidi Gersten, on August 19, 2024, and by email only to opposing counsel on the same date.

s/Wesley B. Sawyer
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