

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Aug 12 2024**

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

**SC Court of Appeals**

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 the .....Appellant,

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 the .....Respondent.

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**RESPONDENT’S REPLY**

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After more than nine (9) months, six (6) 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 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.

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.

On August 1, 2024 with her Amended Return, Appellant filed a document purporting to be her corrected Record on Appeal. (Ex. A to Appellant’s Amended Return).<sup>1</sup> This document has many of the same issues as her April 19, 2024 filing and her June 11, 2024 filing. This “Record of Appeal” is deficient on its face. On its index, it purports to have documents numbered through page 1078. (*Id.* at p. 7). The record itself is only 415 pages long. (*Id.*).

There are numerous issues with this Record on Appeal. First, the documents themselves are not consecutively numbered. *See* Rule 210(c), SCACR. Additionally, of the 46 documents listed on Respondent’s Designation of Matter, Appellant has failed to include more than 25 of them in her “Record on Appeal.” *Compare* (Respondent’s Designation of Matter) *with* (Ex. A to Appellant’s Amended Return). Many documents that are listed on the index do not actually appear in the “Record on Appeal.” *See* (Ex. A to Appellant’s Amended Return). Furthermore, there are items listed on the index that were not included in either party’s designation of matter. *See* Rule 210(g), SCACR. 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.

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<sup>1</sup> This Reply is timely in accordance with Rule 263(a), SCACR, and the South Carolina Supreme Court’s August 6, 2024 Order regarding Tropical Storm Debby.

**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,

MURPHY & GRANTLAND, P.A.

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August 12, 2024