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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Circuit Court Judge Jean Toal
Charleston County

Case No. 2023-001733

Jian-Yun (John) Dong, M.D., Ph.D.,

Appellant,

v.

Medical University of South Carolina,

Respondent.

RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO MOTION TO STRIKE RECORD ON APPEAL

Respondent Medical University of South Carolina ("MUSC") filed its Motion to Strike Record on Appeal ("Motion") on September 19, 2024. As discussed in the Motion, the Record on Appeal filed by Appellant fails to comply with Rule 210, SCACR.[1] On September 23, 2024, Appellant responded. In response, Appellant states he independently chose not include most all the material designated by Respondent because Respondent included a "vast amount of material

[1] As noted in the Motion, the Record on Appeal filed by Appellant is the *same* Record on Appeal that Appellant previously prepared, filed, and served before Respondent filed its Initial Brief and Designation Matter to Be Included in the Record on Appeal, and that the Court rejected as improperly filed. Consequently, the Record on Appeal now at issue did not and could not consider or account for the issues and arguments raised by Respondent in its Initial Brief or the items included in Respondent's Designation of Matter to Be Included in Record on Appeal.

that is not relevant to the issues on appeal or the issue raised in the Brief of Respondent."

Appellant's general position is that he, and he alone, is arbiter of relevancy in respect to those items included in the record on appeal. Appellant's position is neither consistent with the South Carolina Appellate Court Rules nor existing legal precedent.

In Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992), the Supreme Court stated 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." The same standard applies to Appellant, a *pro se* litigant. For instance, in State v. Burton, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003) the Supreme Court stated, "[a] *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *See also* State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (recognizing the courts should not ignore procedural rules or discard them on appeal simply because a litigant is *pro se*), *overruled on other grounds by* Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999). In this matter, despite Appellant being a *pro se* litigant, the Court should neither ignore nor modify the application of Rules 209 and 210, SCACR.

If Appellant's position that he alone is the arbiter of what is included in the record on appeal (i.e., what is relevant to the appeal) is adopted by the Court, then *every* appellant before the Court becomes the sole arbiter under Rules 209 and 210, SCACR, of what should be included in the record on appeal. Moreover, if the Court adopts Appellant's arguments and assertions, then every appellant before the Court can summarily choose what to place in the record on appeal, regardless of what materials a respondent designates, resulting in every respondent, like the Respondent here,

filing a motion to strike, amend, or otherwise modify the record on appeal filed by an appellant. Allowing an appellant in any case, including Appellant here, to act in such an unrestrained manner will sow chaos, result in endless motions as to the contents of the record on appeal, and, more important, allow an appellant to act contrary to Rule 210(c), SCACR, rendering Rules 209 and 210, SCACR, meaningless.

Rule 210(c), SCACR, is clear that "[t]he Record on Appeal **shall** include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267." Rule 210, SCACR, states "shall," meaning all matter must be included – no more, no less and it is not within an appellant's discretion. The only material the record on appeal "shall not" include pursuant to Rule 210(c), SCACR, is "material not presented to the lower court or tribunal."

Appellant does not assert in opposition or otherwise identify in opposition any material designated by Respondent that was "not presented to the lower court." Consequently, for this reason alone, the Court should grant the Motion, strike the record filed by Appellant, and require Appellant comply with Rule 210(c), SCACR, by including all items designated by Respondent for inclusion in the record on appeal, including *all exhibits* and *attachments* to those items designated by Respondent. Requiring anything less results in an outcome that is inconsistent with the South Carolina Rules of Civil Procedure, Henning, and Holman.

Respondent filed its Designation of Matter to Be Included in Record on Appeal on June 14, 2024, along with the Initial Brief of Respondent. Respondent's Designation of Matter to Be Included in Record on Appeal complied with Rule 209, SCACR, in all respects, including the required certification in compliance with Rule 209(c), SCACR. Subsequently, Appellant filed no motion contesting a single item contained in Respondent's Designation of Matter to Be Included

in Record on Appeal or otherwise raised objection to the items designated by Respondent. In short, Appellant never contested or contended, including by way of a motion, that Respondent's Designation of Matter to Be Included in Record on Appeal failed to comply with Rule 209, SCACR. Instead, months later Appellant files the Record on Appeal without including most of the material designated by Respondent solely because Appellant summarily, and contrary to Rules 209 and 210, SCACR, designated himself as the arbiter of what should be included in the record on appeal. Again, Appellant's position is contrary to Rules 209 and 210, SCACR, and the Court should reject it.

Even if Appellant raised the arguments in a timely, appropriate manner, Appellant's relevancy argument fails. First, Appellant makes no attempt to address why each item he omitted from the filed Record on Appeal is irrelevant for purposes of his appeal. Instead, Appellant makes broad, ambiguous, ill-defined assertions that ill-identified materials designated by Respondent are irrelevant. Indeed, Appellant's response mostly consists of his commenting about the *amount* of material he will need to prepare and include in the record if the Court grants the Motion.

Second, and by way of example, a review of the Final Brief of Appellant shows the broad nature of Appellant's challenges to the Circuit Court's orders regarding discovery and scheduling issues going back at least until 2018. Moreover, one of Appellant's stated issues on appeal is the following: "[i]s violation of due process reversible error, in which the district court restricted the Appellant's discovery to practically nonexistent and granted the summary judgment before Appellant could conduct a discovery?" The Final Brief of Appellant is clear that he is challenging, either directly or impliedly, all discovery and scheduling orders entered by the Circuit Court. Consequently, the orders, motions, and related materials designated by Respondent are relevant to the appeal and relevant to Respondent's Final Brief.

As stated in the Motion, the Record on Appeal filed by Appellant fails to include all items, including exhibits and attachments to those items, contained in Respondent's Designation of Matter to Be Included in the Record on Appeal filed by Respondent on June 14, 2024, and, therefore, the Record on Appeal filed by Appellant fails to comply with Rule 210(c), SCACR.

For the reasons discussed, and those contained in the Motion, Respondent requests the Court strike the Record on Appeal filed by Appellant and, consequently, order Appellant prepare and file a Record on Appeal that complies with Rule 210, SCACR, and contains all items, including every exhibit and attachment to those items, contained in Respondent's Designation of Matter to Be Included in the Record on Appeal filed by Respondent on June 14, 2024.[2] Commensurately, Respondent requests the Court extend the time to file final briefs until twenty days after Appellant files a Record on Appeal that complies with Rule 210, SCACR.

Respectfully submitted,

s/ Bob J. Conley
Caroline Cleveland
Bob J. Conley
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com

Attorneys for Respondent

Charleston, South Carolina
Date: October 10, 2024

[2] Items contained in the Record on Appeal filed by Appellant fail to include all the exhibits and/or attachments to those items as contained in the clerk of court's filing. In other words, items in the Record on Appeal that Appellant filed are incomplete. The Court should order Appellant ensure all filings, pleadings, or other items contained in the record on appeal are complete and accurately reflect the filing with the clerk of court, including all exhibits and attachments to such filings.

Others of Record:

John Dong, M.D., Ph.D.
Pro Se Plaintiff
71 Delahow Street
Charleston, SC 29492
T: (843) 991-2332
Email: johny.dong@me.com
johny.dong@gmail.com

Pro Se Appellant

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PROOF OF SERVICE OF RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO MOTION TO STRIKE RECORD ON APPEAL

Caroline Cleveland
Bob J. Conley
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com

Attorneys for Respondent

I hereby certify that on October 10, 2024, I served a copy of Respondent's Reply to Appellant's Response to Motion to Strike Record on Appeal on the following:

John Dong, M.D., Ph.D.,
Pro Se Plaintiff
71 Delahow Street
Charleston, SC 29492
johny.dong@gmail.com
johny.dong@me.com

by email to both email addresses and by placing a copy of said document in the United States mail with sufficient postage thereon.

s/ Bob J. Conley
Caroline Cleveland
Bob J. Conley
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com

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