

**The State of South Carolina**  
**In the Court of Appeals**

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Appeal from Charleston County  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

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AUG 05 2013

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Civil Case No. 2012-CP-10-7056  
Appellate Case No. 2013-000948

SC Court of Appeals

Herbert Alonzo Robinson #298364,

Appellant,

v.

Charleston Police Department (CPD),  
WCIV-TV5 (Chanel Five News),  
WCIV-TV4 (Chanel Four News), and  
WCBD-TV-2 (Chanel Two News),

Defendants,

OF WHOM Charleston Police Department (CPD) is the

Respondent.

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**MOTION TO DISMISS**  
\_\_\_\_\_

The Appellant/Plaintiff served and filed a notice of appeal on April 18, 2013, from the trial court's bench ruling granting the Respondent/Defendant Charleston Police Department's motion to dismiss or for summary judgment on the ground that the defamation action is barred by the two-year statute of limitations. Thereafter, the trial court filed a written order on April 25, 2013. The Appellant/Plaintiff did not file/serve a motion for reconsideration in the trial court, nor did he file/serve an amended notice of

appeal as to the written order. Instead, the Appellant served and filed a brief on July 11, 2013.

The Respondent moves to dismiss the appeal on the grounds that the Appellant has not properly perfected his appeal and he has failed to comply with the Appellate Court Rules. In the alternative, the Respondent moves the Court to issue an order striking the Appellant's brief and compelling him to comply with the Rules.

**1. The Appellant has not appealed from the written order as provided in Rule 203.**

As noted above, the Appellant/Plaintiff filed a notice of appeal from the trial court's bench ruling. However, he did not amend his notice of appeal when the written order was entered. Compare Brock v. Kirkpatrick, 69 S.C. 231, 48 S.E. 72, 73 (1904) (an appeal will not lie from a verdict before judgment or order is entered). Respondent submits that the appeal from the bench ruling was premature and that the appeal should be dismissed because the Appellant did not amend his appeal after receipt of the filed, written order.

**2. The Appellant has not paid the filing fee as required by Rule 203.**

Rule 203(d)(1)(B)(ii), SCACR, requires that the appellant must provide a copy of the order to be challenged on appeal. Rule 203(d)(1)(B)(iii), SCACR, requires that the appellant must pay a \$100.00 filing fee at the time of filing the Notice of Appeal; Rule 203(d)(3) further provides that the appeal "shall" be dismissed if the filing fee is not paid in full.

If appears from the Court's correspondence, dated May 7, 2013, that the Appellant did not pay the filing fee or send a copy of the trial court order when he filed

his notice of appeal. On information and belief, the Plaintiff/Appellant did not provide a copy of the trial court order as requested in that letter. Instead, it appears that the Plaintiff/Appellant sent a letter to the Court, dated May 14, 2013, requesting to make payments towards the filing fee. The Appellant did not send a copy of that letter to Counsel for the Respondent, but the letter is referenced in the Court's letter of May 29, 2013, which Respondent did receive.

It appears from the Court's letter of May 29<sup>th</sup>, that the Plaintiff/Appellant was directed to file a motion regarding fees and a copy of the trial court order within ten (10) days of the letter. The Respondent was not served with any such motion, but on inquiry with the Clerk of Court's office, it appears that the Plaintiff/Appellant filed a motion to proceed in forma pauperis and that he finally sent a copy of the trial court order to the Court on or about June 10, 2013.

Respondent submits that the Appellant/Plaintiff's civil defamation action does not fit within one of the statutory exceptions or concern a fundamental right that would justify waiving or deferring the filing fee. Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995). Accordingly, the appeal should be dismissed for failure to pay the filing fee. In addition, it appears that perhaps the Appellant needs to be reminded and directed that Respondent's Counsel must be copied on all communications with the Court and served with any motions, filings, and correspondence with the Court.

**3. The Appellant did not order a transcript as required by Rule 207, SCACR.**

Rule 207, SCACR, requires that the appellant order the transcript within 10 days after service of the notice of appeal. The Notice of Appeal was served on April 18, 2013. Respondent did not receive any copy of a letter requesting the transcript and the Clerk's

Office advises that the Appellant has not sent any copy to the Court of any letter ordering the transcript. Respondent did not waive ordering the transcript and would submit to the Court that the transcript is necessary to establish whether issues were preserved. Thus, since it appears that the Appellant did not order the transcript of the hearing, the appeal should be dismissed or the Appellant should be compelled to order the transcript and the appeal should be held in abeyance pending receipt of the transcript.

**4. The Appellant did not timely serve/file his initial brief as required by Rule 208.**

Rule 208, SCACR, provides that the appellant must serve and file his initial brief within 30 days after receiving the transcript or, if no transcript is ordered, within 30 days after serving the notice of appeal. The Notice of Appeal was served April 18, 2013, but as noted above it does not appear that the Respondent ordered the transcript. To the extent that the transcript was not ordered, the initial brief served July 11, 2013, is untimely and should be stricken and the appeal should be dismissed.

**5. The form of the Initial Brief does not comply with Rule 208 or Rule 267.**

Rule 208(b), SCACR, requires that the table of contents and table of cases contain page references. The brief filed by the Appellant does not comply because there are no page references.

Rule 267, SCACR, contains certain requirements as to the form of the initial brief, to wit: it must be typewritten, and the type size must be 12-point or larger; and it must be double spaced [Rule 267(c)]; and the left margin must be 1 ½ inch [Rule 267(d)]. The initial brief submitted by the Appellant is handwritten on unlined paper. It is not double-spaced and the margin is not 1 ½ inch.

Under different circumstances, the Respondent would not move to dismiss an appeal for such format errors in a brief. However, in this case, the Appellant has repeatedly submitted filings that do not comply with the Rules, and he has then refused to promptly comply with the Court's directions to correct his errors/oversights. In the alternative, the Respondent would ask the Court to compel the Respondent to correct his brief to comply with the Rules.

**6. The Appellant did not file any designation of matter to be included in the Record on Appeal as provided in Rule 209.**

Rule 209, SCACR, provides that:

At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.

The Appellant did not file or serve any designations with his brief. Rather, he attached three documents as exhibits to his brief. Without a Record on Appeal, there will be no record for the Court to consider. The appeal should be dismissed, or in the alternative, the Appellant should be directed to comply with the Rules.

**7. The Appellant has not complied with the Supreme Court's order of August 13, 2007, on redacting personal information.**

As noted above, the Appellant has attached three documents to his brief. One of the attachments is a "confidential attorney work product" Investigator's Report from the Ninth Circuit Public Defenders office which contains identifying information on the complaining witness [victim] which includes the date of birth, home address, and phone number. The Supreme Court's order requires that home addresses be redacted from

documents filed with the Court. Accordingly, the Respondent would suggest that the Court redact that information, but defers to the Court's discretion as to the other information given the nature of the document.

### **Conclusion**

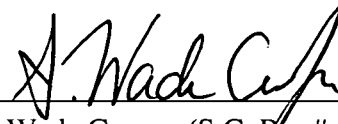
Rule 203 directs that an appellant must comply with the Rules. In the Court's letter of May 29, 2013, Plaintiff/Appellant was warned that: "It is your responsibility to perfect your appeal in accordance with the South Carolina Appellate Court Rules. Failure to comply with the rules can result in the dismissal of your appeal." The Respondent respectfully requests that the Court dismiss the appeal for each and all of the reasons stated above. In the alternative, Respondents respectfully asks the Court to direct the Appellant to comply with the Rules.

In addition, the Respondent would ask the Court to hold the briefing schedule in abeyance until the Court has ruled on this motion as well as the Appellant's motion to proceed in forma pauperis and until the Appellant has ordered the transcript and submitted a corrected initial brief with designations.

Respectfully submitted,

[signature page and Certificate of Service follow]

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Attorneys for Defendant /Respondent  
City of Charleston Police Department

July 31, 2013  
Mt. Pleasant, South Carolina

**The State of South Carolina**  
**In the Court of Appeals**

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Appeal from Charleston County  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

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WCIV-TV4 (Chanel Four News), and  
WCBD-TV-2 (Chanel Two News),

Defendants,

OF WHOM Charleston Police Department (CPD) is the

Respondent.

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**CERTIFICATE OF SERVICE**

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I certify that on this date a copy of the foregoing Respondent's Motion to Dismiss was served on each party or counsel of record by  mailing,  emailing,  facsimile, or  hand delivery in the manner prescribed by the applicable Rule of Civil/Appellate Procedure.

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AUG 05 2013

**SC Court of Appeals**

Copy served on:

Herbert Alonzo Robinson (#298364)  
Allendale Correctional Institution  
F1 - B21 - #298364  
P.O. Box 1151  
Fairfax, SC 29827

This 31<sup>st</sup> day of July, 2013.

A. Wade Cope

# BUYCK, SANDERS & SIMMONS, LLC

ATTORNEYS & COUNSELORS AT LAW

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Chilton Grace Simmons

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Elizabeth W. Ballentine

July 31, 2013

The Honorable Jenny Abbott Kitchings  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Herbert Alonzo Robinson v Charleston Police Dept., et al.  
Tracking No. 2013 - 000948

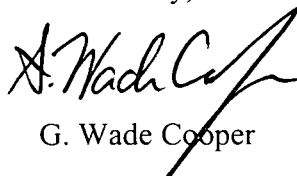
Dear Madame Clerk:

Enclosed for filing please find the original (clipped, but unbound) and seven (7) copies of a Motion to Dismiss on behalf of the Respondent Charleston Police Department along with the certificate of service and the \$25.00 filing fee. Please return a clocked copy to us in the stamped return envelope provided.

Although there is a motion by the Appellant for leave to proceed in forma pauperis still pending with the Court, the Appellant has filed and served his initial brief on July 11, 2013, which would make the Respondent's initial brief due August 10, 2013. In the Motion to Dismiss, we are asking the Court to hold the briefing schedule in abeyance pending a ruling on Appellant's motion as well as our motion to dismiss. Please advise if we also need to make a separate motion for an extension.

I thank you in advance for your assistance and response.

Yours truly,

  
G. Wade Cooper

cc: Herbert Alonzo Robinson (#298364)  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827  
Appellant / Pro Se

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