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Dec 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

Case No. 2021-CP-10-3609
Appellate Case No. 2023-001334

Jason M. Aryeh,Respondent,

v.

Olivia R. Aryeh.....Appellant.

RETURN IN OPPOSITION TO MOTION TO AMEND

The notice of appeal in this matter is dated August 21, 2023. Appellant filed her initial brief on January 10, 2024. Respondent filed his initial brief and an accompanying motion to strike material designated by Appellant that was not presented to the trial court on March 11, 2024. After numerous deficiency notices and requests for extensions, Appellant finally served a record on appeal on October 30, 2024. Respondent filed his final brief on November 19, 2024.

On that same date and rather than filing a final brief as contemplated by Rule 211, SCACR, Appellant filed a completely new brief. By way of illustration, Appellant’s initial brief was six pages and her purported “Final Brief” is twenty pages. The Court sent a letter on November 25, 2024 requiring Appellant to submit a compliant final brief within ten days.

Appellant has not complied with the Court’s November 25 letter. Instead, she has filed a motion to amend, seeking a “do-over” of her brief. Nothing in the Appellate Court Rules contemplates the type of relief requested by Appellant. The language of Rule 211(b) is mandatory and not permissive. As set forth there, “The final brief(s) *shall* be identical . . .” with the exception of citations to the record and “obvious typographical errors and misspellings[.]” (Emphasis added). The rule does not give Appellant license to file a new brief to make new arguments after seeing Respondent’s brief and realizing “some sections of [her] initial brief are incomplete or could benefit from better organization and stronger arguments.”

The requested relief is extremely prejudicial to Respondent, who has already gone to significant time and expense in responding to Appellant’s initial brief and her many efforts to extend the briefing stage of this appeal. The C-Track entries for this case show both Appellant’s pattern of delay and Respondent’s efforts to bring the briefing to a close. Appellant has moved for eight extensions to date. Respondent, on the other hand, has unsuccessfully sought to expedite the appeal and to prepare the record on appeal himself in hopes of avoiding additional delay.¹ Most recently and concurrent with filing his final brief, Respondent moved for leave to file an appendix to the record on appeal to include the materials he designated that were omitted from the record on appeal served by Appellant.

There is simply no basis at this late juncture to send the briefing process back to square one. Respondent responded to Appellant’s initial brief as required by the rules and filed his final brief in compliance with Rule 211. He should not be required to go to the time and expense of

¹ In denying Respondent’s motion to expedite by order dated October 28, 2024, the Court contemplated that the briefing process was approaching its conclusion, stating as follows: “Appellant must serve and file the record on appeal no later than October 30, 2024. Further, Appellant must serve and file her final brief within twenty days of serving and filing the record on appeal. No further extensions will be granted absent extraordinary circumstances.”

preparing a second brief simply because Appellant has decided she could have done a better job on her briefing.

The Appellate Court Rules were drafted to serve the interests of justice. Respondent has followed the rules and seeks a resolution of this matter at the Court's earliest convenience. Appellant had every chance to present her arguments to the Court in the initial briefing stage. The interests of justice are not served by giving her a second bite at the apple after Respondent has filed his final brief and almost one year after the filing of Appellant's initial brief.

For these reasons, Appellant's motion to amend should be denied with the direction that Appellant must file a final brief that complies with Rule 211(b) or have her appeal dismissed.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill

Stafford J. McQuillin, III, S.C. Bar No. 78203

mmcquillin@hsblawfirm.com

Elliot Condon, S.C. Bar No. 103795

econdon@hsblawfirm.com

P.O. Box 340

Charleston, SC 29402

Telephone: 843.722.3366

Sarah P. Spruill, S.C. Bar No. 68337

sspruill@hsblawfirm.com

P.O. Box 2048

Greenville, SC 29602

Telephone: 864.240.3200

Attorneys for Respondent Jason M. Aryeh

December 5, 2024
Greenville, South Carolina

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PROOF OF SERVICE

I certify that I have served the Return in Opposition to Motion to Amend on all parties of record by depositing a copy of the same in the United States Mail, postage prepaid, , on December 5, 2024, addressed to:

Olivia Aryeh
30 Upland Drive
Greenwich CT 06831


Stacey Carberry, Legal Assistant

**HAYNSWORTH
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
ONE NORTH MAIN STREET, 2ND FLOOR
P.O. BOX 2048 (29602)
GREENVILLE, SOUTH CAROLINA 29601
MAIN 864.240.3200
FAX 864.240.3300
www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

December 5, 2024

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Jason M. Aryeh v. Olivia R. Aryeh*
Appellate Case No. 2023-001334

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Dear Ms. Kitchings:

This firm represents the Respondent in the above-captioned matter. Enclosed for filing, please find Respondent's Return in Opposition to Motion to Amend.

Once the motion has been filed-stamped, we would appreciate your reply to this message with a filed-stamped copy. Thank you for your assistance in this matter.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac

Enclosure

cc: Olivia R. Aryeh (Via U.S. Mail)
Stafford J McQuillin (Via email mmcquillin@hsblawfirm.com)
Elliot Condon (Via email econdon@hsblawfirm.com)