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Mar 31 2025

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2024-000557

Roberta Moore, Appellant,

v.

Rebecca Giesler, Respondent.

**RESPONDENT’S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, RESPONDENT’S MOTION TO
STRIKE AND CORRECT RECORD ON APPEAL**

THE CLOUD LAW FIRM, LLC

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Attorney for Respondent

NOW COMES Respondent Rebecca Giesler, by and through undersigned counsel, and hereby moves this Court for an Order dismissing this appeal in its entirety pursuant to South Carolina Appellant Court Rules (“SCACR” or the “Rules”) 210, 240, and 260. In the alternative, Respondent moves this court for an Order striking those irrelevant matters and/or those matters not presented to the Circuit Court as listed on Appellant’s Record on Appeal. In connection with Respondent’s alternative motion, Respondent further moves this Court for an Order requiring Appellant to correct the Record on Appeal by including those matters listed in Respondent’s Designation of Matter on Appeal pursuant to Rules 210 and 240, SCACR. This Motion is based on the filings within this Court and the supporting memorandum hereto. Respondent states the grounds of her motion as follows:

INTRODUCTION

This appeal was filed with this Court on April 2, 2024. On April 19, 2024, Appellant received a deficiency notice from the Appellate Clerk (the “Clerk”) that the notice of appeal could not be considered at that time because the notice of appeal needed to be substantially in format as shown by Form 1 in Appendix C to part II of the SCACR. (April 19, 2024, Deficiency Letter). On April 29, 2024, Appellant received a second deficiency notice from the Clerk that the time for ordering the circuit court’s transcript had expired. (April 29, 2024, Deficiency Letter). The three transcripts from the lower court were finally received by this Court on June 4, 2024. (June 4, 2024, Transcript Documents - Transcript Delivered - Direct Appeal Court Filing). On July 17, 2024, Appellant received a third deficiency notice from the Clerk stating that Appellant failed to include a designation of matter to be included in the record on appeal. (July 17, 2024, Deficiency Letter)

On July 19, 2024, Respondent filed a Motion to Dismiss this appeal based upon Appellant's consistent and material failures in complying with SCACR and failing to preserve any issues on appeal. (Respondent's Motion to Dismiss).

On July 29, 2024, Appellant submitted to this Court a letter complaining of an "ex-parte" communication between Respondent's counsel, Lancaster Clerk of Court, and the Honorable Judge Brian Gibbons, that occurred after the disposition of the lower court case. (July 29, 2024, Appellant's Letter of Complaint of Respondent's Ex Parte Communication). On the same date, Appellant unilaterally filed an Amended Initial Brief. (Appellant's Amended Initial Brief). On August 14, 2024, Appellant was informed that the amended brief would not be considered without an appropriate motion; the designation of matter was incorrect and was returned; and that the letter complaining about the alleged ex-parte communication would not be considered without an appropriate motion. (August 14, 2024, Outgoing Letter from Clerk). Based upon this, Appellant filed three motions: (1) Motion to Accept Amended Initial Brief; (2) Motion to Accept Designation of Matter; and (3) Motion to Dismiss and Overturn Lower Court Decision. (Appellant's Motion to Accept Amended Initial Brief; Appellant's Motion to Accept Designation of Matter; and Appellant's Motion to Dismiss). On August 20, 2024, Appellant received three deficiency notices, one for each motion, informing Appellant she had failed to submit the required motions filing fee. (August 20, 2024, Deficiency Letter for Appellant's Motion to Accept Amended Initial Brief; August 20, 2024, Deficiency Letter; and August 20, 2024, Deficiency Letter, Appellant's Motion to Accept Designation of Matter; and Appellant's Motion to Dismiss).

On January 28, 2025, this Court denied Respondent's Motion to Dismiss and allowed Appellant to file her amended initial brief, along with the designation of matter to be included on

appeal. (January 28, 2025, Appellate Non-Dispositional Order). On February 27, 2025, Respondent filed her Initial Brief and Designation of Matter.

On March 10, 2025, Appellant filed a purported Reply to Respondent’s Brief. On March 31, 2025, Appellant filed her Final Brief and a Record on Appeal.

ARGUMENT

I. This appeal should be dismissed because Appellant has continued to consistently and materially fail to comply with the South Carolina Appellate Court Rules, specifically now, with Appellant’s inadequate and erroneous Record on Appeal.

This Court should dismiss Appellant’s appeal given her repeated failure to comply with the Rules, specifically now failing to comply with Rule 210, SCACR. Pursuant to Rule 10, SCACR, “[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. The Record *shall not*, however, include matter which was not presented to the lower court or tribunal.” Rule 210, SCACR.

Further, pursuant to Rule 260(a), SCACR, “[w]henver it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Rule 260(a), SCACR.

In Appellant’s Record of Appeal, Appellant includes an index of the matters listed but failed to organize the matters as provided in the index. (ROA, pp. 14 & 15). For reference, Appellant lists the “Complaint” as the first indexed item, but Plaintiff’s Amended Complaint is found at page 73 in the Record of Appeal. (*Id.* at 14). Appellant labeled a category within the Record of Appeal as “Pleadings” but then included all filings within this Court, not with the circuit court. (*Id.* at 15).

Further, Appellant failed to include the following matters listed on Respondent’s Designation of Matter: (1) Defendant’s Amended Answer; (2) Defendant’s Memorandum of Law in Support of

Summary Judgment; (3) Defendant's First Set of Interrogatories, Requests for Admission, and Request for Production to Plaintiff, which was Exhibit A to Defendant's Memorandum in Support as listed above; (4) Defendant's Proof of Service for Defendant's First Set of Interrogatories, Requests for Admission, and Request for Production to Plaintiff, which was Exhibit B to Defendant's Memorandum in Support as listed above; (5) the Order Granting Summary Judgment in Favor of Defendant, dated March 26, 2024; and (6) the February 12, 2024, Transcript of Proceedings, pp. 2-7. (Respondent's Designation of Matter).

Lastly, Appellant included numerous correspondences that are either irrelevant to this appeal or correspondence that were never reviewed by the circuit court. (ROA, pp. 15, 139-144, 164). All correspondence listed in Appellant's Record on Appeal are erroneously listed, as none of the correspondences were received into evidence in the circuit court, nor were any of the correspondence reviewed by the circuit court. Notably, Appellant's "Notarized Statement" is dated April 8, 2024, which is after the date of the Order signed by the circuit court. (ROA, p. 144).

Appellant's continued deficiencies have caused multiple delays in this Appeal, which in turn unjustly prejudices Respondent, as Appellant is still residing in the property owned by Respondent and no eviction proceeding can move forward while this appeal is pending. Appellant has failed to file a single correct document since the beginning of this appeal and undersigned counsel has had to spend countless time responding to inadequate and erroneous briefs and motions. Appellant's Record on Appeal is no different, as it, too, is inadequate and erroneous, thus resulting in further delay of this appeal because Respondent cannot submit her final brief with the Record on Appeal as it.

For all the foregoing reasons, this appeal should be dismissed in its entirety. Respondent continues to incur legal fees and other expenses related to this underlying case and Appellant's continued failure to comply with the Rules constitutes an undue hardship to Respondent.

II. In the alternative, this Court should strike Appellant's Record on Appeal and require Appellant to correct the Record on Appeal.

If this Court should deny Respondent's Motion to Dismiss, Appellant's Record on Appeal should be corrected by striking those irrelevant matters and/or those matters not reviewed by the circuit court and including those matters listed in Respondent's Designation of Matter.

As detailed above, Appellant included all filings with this Court as the "Pleadings" but failed to include any actual pleading, other than Plaintiff's Amended Complaint. (ROA, pp. 15, 139-144, 164). Appellant filed the Form 4 Order granting summary judgment but failed to include the formal order granting summary judgment, as listed on Respondent's Designation of Matter, among other matters not properly included. (ROA, pp. 14, 87 and Respondent's Designation of Matter). Appellant filed the July 24, 2023, transcript but did not file the February 12, 2024, transcript, as listed on both Appellant and Respondent's Designation(s) of Matter. (ROA, pp. 15, Appellant's Designation of Matter, and Respondent's Designation of Matter).

Lastly, Appellant included multiple "Correspondence" that are either irrelevant to this appeal or were never presented for review with the circuit court and, as such, should be stricken from the Record on Appeal. (ROA, pp. 15, 139-144, 164).

Based upon the foregoing, and in the alternative, Respondent respectfully requests that this Court strike those irrelevant and improper matters listed in Appellant's Record of Appeal and order that Appellant correct the Record of Appeal to include all matters designated by Respondent.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this appeal be dismissed or, in the alternative, that this Court issue an Order striking improper matters listed in the Record on Appeal and directing Appellant to correct the Record of Appeal to conform to the Rules, and requests such other relief this Court deems just and proper.

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/s/ Jennifer M. Cloud

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Attorney for Respondent

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Rock Hill, South Carolina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 31, 2025, she served a copy of Respondent’s Motion to Dismiss Appeal, or in the alternative, Motion to Strike and Correct Record on Appeal, and this Certificate of Service by Mail upon the person below by depositing the same in the U.S. Mail with proper postage affixed and addressed as follows:

Roberta Moore, Appellant
3194 Pine Bluff Way
Indian Land, SC 29707

s/ Jennifer M. Cloud, Esq.

Jennifer M. Cloud, Esq.
The Cloud Law Firm, LLC

Attorney for Respondent