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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon. Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-02475
Court of Appeals Case No. 2024-000440

Nicholas F. Wilson,

Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour
Trustee; James B. Parker; James B. Parker, Sr.;
Mary Ann Parker; Kenneth Gregory Moore;
R&G Corp. d/b/a Century 21 The Harrelson
Group; Patton Development SC, LLC; Flagstar
Bank, N.A.; Sonia M. Raymond; Raymond Law
Firm, P.A.,

Respondents.

**RETURN IN OPPOSITION TO MOTION TO AMEND
DESIGNATION OF MATTER AND RECORD ON APPEAL
BY RESPONDENTS
SONIA M. RAYMOND AND RAYMOND LAW FIRM, P.A.**

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*Attorneys for Respondents
Sonia M. Raymond and
Raymond Law Firm, P.A.*

Respondents Sonia M. Raymond and The Raymond Law Firm, P.A., by and through their counsel of record, submit this Return in Opposition to Appellant's Motion to Amend filed April 10, 2025. For the reasons stated herein, the Court should deny Appellant's Motion to Amend.

PROCEDURAL HISTORY

This Motion is another filed by Appellant in a long line of motions and late filings. The Court must consider – and deny – this Motion considering the procedural history of this appeal. The Court will remember Appellant filed his Notice of Appeal late. See Motion to Dismiss filed June 26, 2024. The Court denied Respondents' Motion to Dismiss based on the late filing without prejudice, and the appeal proceeded¹.

Plaintiff filed his Initial Brief on May 22, 2024. That same day, Appellant filed his first Designation of Matter to be Included in the Record on Appeal. That Designation did not mention a recorded plat or an Horry County webpage. Respondents filed their initial Brief and Designation of Matter on December 19, 2024. Respondents' Brief and Designation did not mention nor rely on a recorded plat or Horry County webpage.

The Court communicated to Appellant that he failed to timely file the Record on Appeal by letter dated February 18, 2025. The Court stated that "failure to timely serve the record on appeal will result in dismissal of the appeal." Appellant filed a Motion to file the Record on Appeal out of time on February 25, 2025.

In response, the Court of Appeals notified the parties that the appeal was "automatically held in abeyance" and took no action on the Motion, as stated in the Court's

¹ Respondents, pursuant to the Court's Order denying the motion without prejudice, incorporated and included Appellant's failure to timely file a notice of appeal in their Appellate Brief. See Respondents' Brief, pp. 18-20.

letter dated February 26, 2025.² The Court refunded Appellant's filing fee. Despite not being granted leave to file a late Record on Appeal, Appellant filed his Record on Appeal late, on February 28, 2025. On the heels of filing a late Record without permission, Appellant seeks permission to again file a late document that has no bearing on the issues before this Court. For the reasons stated herein, the Court should deny the Motion.

ARGUMENT

The Court should deny Appellant's Motion for two reasons. First, Appellant did not provide the proposed documents to the Circuit Court. Second, the proposed documents are irrelevant to the issues on appeal. "The burden is on the appellant to furnish a sufficient record on appeal from which this Court can make an intelligent review." *Taylor v. Taylor*, 294 S.C. 296, 299, 363 S.E.2d 909, 911 (Ct.App.1987). "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." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

Appellant did not present these documents to the Circuit Court.

Appellant seeks to add two documents late: (1) a plat recorded in the Horry County Register of Deeds, and (2) a printout of an Horry County webpage. Plaintiff did not include either of these documents in his Complaint, and Plaintiff did not file either document with his motions or memoranda before the Circuit Court. As proof of this, the Court will note

² Because the Court held the matter in abeyance and refunded Appellant's motion fee, Respondents did not file a return opposing the motion to file a late Record on Appeal. Respondents had communicated with counsel for Appellants about the deadline to file the Record several days before the deadline passed. See email attached as Exhibit A. Because Respondents reminded Appellant of the deadline to file the Record on Appeal before its passage, Respondents contend the Court should have denied the motion and dismissed the appeal.

that neither document bears any time stamp from the e-filing system of the Circuit Court. All of the pleadings, exhibits, motions, memoranda, and Orders in the Record on Appeal contain a time stamp showing when they were filed with the Circuit Court. All of those documents, except the two raised in Appellant's motion.

Appellant does not explain in his Motion how or why the Court of Appeals could consider these two documents, which were not presented to the Circuit Court. When pages of documents are not presented to the lower court, the Court of Appeal cannot consider them. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 85, n. 4, 749 S.E.2d 139, 148 (Ct. App. 2013). And as the South Carolina Supreme Court has held, "the Record on Appeal shall not contain any matter not presented to the trial court." *Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992). Plaintiff did not present these documents to the trial court, and this Court should exclude them from the Record on Appeal.

The documents are not relevant to the Appeal.

Plaintiff's proposed amended Designation contains a certification that "this designation contains no matter which is irrelevant to this appeal." This is certainly not true. In fact, when the Court reviews Appellant's initial Brief, the Court will note that Appellant merely refers to these late proposed documents. Appellant does not indicate how they are relevant to the issues raised in the appeal.

In fact, these two documents are mentioned for the very first time in Appellant's Initial Brief. Appellant did not mention these documents in any of his filings before the Circuit Court. As the Court can see from reading Appellant's memoranda filed with the Circuit Court, Appellant did not mention a recorded plat. See R. pp 62-67; 68-70; 71-75; 81-83; 110-113; 120-127; 169-172. Rather, Appellant focused on the unrecorded survey

he was provided and *exclusively* relied on.³ During the hearings on the various motions before the Circuit Court, Appellant only once referenced the recorded plat, stating that Appellant never received it. R. at 152, line 4. Even then, Appellant never argued the relevance or significance of the recorded plat or its contents, either regarding the statute of limitations or in response to other argument by counsel for Respondents.

In his memoranda filed with the Circuit Court, Appellant did not mention the term “GIS”. See R. pp 62-67; 68-70; 71-75; 81-83; 110-113; 120-127; 169-172. Similarly, in the hearings before the Circuit Court, Appellant did not use or invoke the term “GIS”. See R. pp. 177-211 and 212-243.

Finally, Plaintiff does not explain the relevancy of these two documents. Appellant does not allege in his Complaint that he was provided the recorded plat. Appellant does not allege in his Complaint that he saw the GIS webpage at any point. And Plaintiff never argued to the Circuit Court that these documents had any bearing on the applicability of the statute of limitations to Appellant’s claims against Respondents. As a result, these documents are irrelevant to the appeal, and contradict Appellant’s Rule 209(c), SCACR certification.

CONCLUSION

In summary, Appellant did not provide these documents to the Circuit Court. And these documents are not relevant to the application of the statute of limitations, which is the sole basis for the Circuit Court’s Order dismissing Appellant’s action against Respondents. Appellant cannot meet his burden of showing these designations, even if

³ The unrecorded Original Survey clearly and unambiguously reveals the existing thirty-foot access easement and the proposed fifty-foot shared driveway. Both of which would have encumbered Appellant’s fee simple and put Appellant on notice as early as February 2, 2020 that he would not receive unencumbered fee simple title to tract “D.” See Respondent’s Final Brief at pp. 15-18.

timely, should be made part of the Record on Appeal. Therefore, the Court should deny Appellant's Motion.

Respectfully Submitted,

s/ Bruce Wallace

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EXHIBIT A

R. Bruce Wallace

From: R. Bruce Wallace
Sent: Thursday, February 6, 2025 3:56 PM
To: Wes Few
Cc: Anne M. Johnson
Subject: Wilson v. Gochenour Appeal [IMAN-NPDOCUMENTS.FID17925503]

Wes,
I had on my calendar that the Record on Appeal was due. Do you have a different date to submit it? Let me know. Thanks.

R. Bruce Wallace

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