

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Maite Murphy, Circuit Court Judge

RECEIVED

JUN 11 2025

SC Court of Appeals

104942

Appellate Case No. 2025-000108

Case No.: 2023-CP-38-00331

Serge R. Wandji.....Appellant,

v.

The Regional Medical Center.....Respondent,

RESPONDENT’S MOTION TO STRIKE PORTIONS OF APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL ALONG WITH PORTIONS OF APPELLANT’S INITIAL BRIEF REFERENCING THE SAME

The above-named Respondent, by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 240, SCACR, to strike portions of Appellant’s Designation of Matter to be Included in the Record on Appeal (hereinafter “Designation”) and to strike those portions of Appellant’s Initial Brief that rely on any exhibits not properly before this Court on the grounds that the Designation fails to comply with Rules 209(b) and 210(c) of the South Carolina Appellate Court Rules. Specifically, Appellant’s Designation includes exhibits that (1) are not clearly identified in the Designation and/or that were not presented to the lower court, and (2) are irrelevant to the issues on appeal.

Pursuant to Rule 209(b), SCACR:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

(emphasis added).

I. Appellant's Designation Includes Vague and Unclear References to Documents, All of Which Should Be Stricken.

Despite the clear language of Rule 209(b), SCACR, Appellant's Designation includes the following vague and ambiguous reference:

- B(6): Defendant's untimely production of critical discovery documents on November 12, 2024, previously requested by Appellant more than one year earlier.

Respondent is unable to identify what documents Appellant is referencing in this designation. Specifically, it is unclear if Appellant seeks to include all discovery produced on November 12, 2024, any correspondence regarding the production, or something else entirely. Not only is it unclear what documents Appellant seeks to designate, but to the extent he seeks to include any documents or correspondence related to Defendant's November 12, 2024 production, none of those documents were presented to the lower court.

Pursuant to Rule 210(c), SCACR, "[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal." See *Cobb v. Benjamin*, 325 S.C. 573, 579, 482 S.E.2d 589, 592 (Ct. App. 1997) (insurance policy that was not part of the record could not be considered by the court on appeal); *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (noting that pursuant to Rule 209(c), SCACR, matter would not be given substantive consideration if it is not presented to the trial court). Because Appellant's Designation of "B(6): Defendant's untimely production of critical discovery documents on November 12, 2024, previously requested by Appellant more than one year earlier" is vague and ambiguous and appears to reference documents

that were never presented to the lower court, these documents should be stricken from the Designation and any references to them should also be stricken from Appellant's initial brief.

Appellant also seeks to designate thirty-three exhibits as set forth in the section entitled "E. Exhibits." Though this list appears to coordinate with the exhibits attached to Plaintiff-Appellant's third Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Plaintiff-Appellant's Third Opposition"),¹ the descriptions of these exhibits are not wholly consistent with the exhibit list set forth in Plaintiff-Appellant's Third Opposition. (*See* Exhibit List to Third Opposition, Exhibit 1.) Thus, in order to prevent Appellant from incorporating additional documents into the Record on Appeal based on these vague and different descriptions, Respondent requests clarification as to whether Appellant's Designation seeks to include only those documents that were filed as exhibits with his Third Opposition. To the extent Appellant seeks to include documents other than those that were filed with his Third Opposition, Respondent requests that the Court strike these vague portions from the Designation, as well as any references to the same in Appellant's Initial Brief.

II. Appellant's Designation of Matter to be Included in the Record on Appeal Contains Documents Not Relevant to the Appeal and Must be Stricken from the Designation.

On January 15, 2025, the lower court issued an Order granting Defendant-Respondent's Motion for Summary Judgment. (Order Granting Summary Judgment, Exhibit 2.) In the Order, the lower court held "the undisputed facts demonstrate that Plaintiff was terminated from his position because he could not meet the established work standards for the job -- one of the applicable affirmative defenses to a workers' compensation retaliation claim under S.C. Code Ann.

¹ Notably, this was the third memorandum in opposition to Defendant-Respondent's Motion for Summary Judgment filed by Plaintiff-Appellant, which included a voluminous and overbroad production of thirty-three (33) exhibits. Among these thirty-three (33) exhibits, Appellant included numerous documents that were never produced to Defendant-Respondent in the course of discovery.

§ 41-1-80.” (Exhibit 2.) Despite the narrow issue ruled upon by the lower court, and now subject to this appeal, Appellant seeks to include numerous documents that contain inadmissible settlement communications, protected health information, and various information entirely unrelated to the Appellant’s appeal of the lower court’s grant of summary judgment.

A. *Inadmissible Settlement Communications*

As an initial matter, Appellant purports to include irrelevant and inadmissible Rule 408 settlement communications as part of the record. These documents must be stricken from Appellant’s Designation and any reference to these irrelevant matters must be removed from Appellant’s brief pursuant to Rule 408, SCRE:

- D(12): Email correspondence documenting the Appellant’s offer of court-annexed mediation/arbitration and good-faith settlement, and the Defendant’s written rejection of the same.
- Exhibit 12: Settlement offer from Defendant (TRMC) to Plaintiff.

B. *Confidential and Protected Health Information on Non-Parties*

Appellant also seeks to designate the following documents which contain the protected health information of individuals other than just Appellant himself:

- Exhibit 24: Internal memo identifying COVID-19 patients present in the facility on August 6, 2021.
- Exhibit 25: List of COVID-19 patients treated by Plaintiff during August 2021.

Not only do these documents include protected health information that should not be part of the public record, but they are entirely irrelevant to issue before this Court. Respondent does not contest that Appellant contracted COVID-19. Rather, the issue before the lower court was whether Respondent terminated Appellant in retaliation for filing a workers’ compensation claim. As such, the foregoing items regarding the health information of individuals other than Appellant should be stricken from the Designation as irrelevant and any references to them removed from Appellant’s initial brief. If Appellant is permitted to include these documents in the Record on Appeal, then

Appellant should be required to redact the names and confidential patient information contained in the documents.

C. Irrelevant Documents from Underlying Worker's Compensation Case

As set forth above, after the hearing on Defendant-Respondent's motion for summary judgment, Plaintiff-Respondent filed a Third Opposition brief. The lower court granted Plaintiff-Appellant leave to file this additional Opposition because Plaintiff-Appellant asserted he did not have an opportunity to address the one supplemental document produced by Defendant-Respondent a few days before the hearing. (Transcript Excerpt, Exhibit 3.) Notably, however, Plaintiff-Appellant's Third Opposition brief did not address how this supplemental production provided a basis for the lower court to deny Defendant-Respondent's motion for summary judgment. Instead, the Third Opposition included numerous arguments that were completely irrelevant to Defendant-Respondent's grounds for summary judgment and incorporated over thirty exhibits with over 180 pages of documents that were similarly irrelevant to the narrow summary judgment issue before the lower court. In fact, many of the documents attached to Plaintiff-Appellant's brief are part of Appellant's separate dispute over whether or not he is entitled to worker's compensation benefits. Appellant's appeal of his worker's compensation case is also pending before this Court (Appellate Case No. 2024-001935).

These two matters (the worker's compensation case and the worker's compensation retaliation case) were litigated separately with different defense counsel and separate discovery processes. Notwithstanding the foregoing, Appellant seeks to designate documents, depositions, and discovery from Appellant's worker's compensation case that in many instances, were not produced to Respondent during the discovery process, and which address facts and circumstances outside the issues that are the subject of this appeal, including the following:

- C(11): Deposition transcript of Mr. David Sutherland, CEO of TRMC.

- This deposition testimony was taken in Appellant's workers' compensation case. The undersigned counsel was not party to that action, did not participate in the deposition, and Appellant did not produce the transcript in discovery.
- Exhibit 9: Personal checks written by Plaintiff to maintain insurance coverage after medically ordered work removal.
 - These documents were not produced during the discovery process and Plaintiff-Appellant's payment of his insurance premiums is not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards.
- Exhibit 20: Email exchange between HR Director Norris and labor attorneys regarding termination strategy.
 - This document is an attorney-client privileged email that was withheld from Defendant-Respondent's production and included on a privilege log. (Privilege Log, Ex. 4.) It is unclear where or how Appellant received a copy of this privileged email. It was not produced by the undersigned counsel during discovery, nor was it produced by Appellant.
- Exhibit 23: Written testimony from Dr. Samies, showing bias as a member of Defendant's Board of Trustees.
 - Dr. Samies was not named as witness by Respondent in the subject action, nor did Respondent rely on any testimony by him in the worker's compensation retaliation case. Rather, the statement referenced in this exhibit was prepared by Dr. Samies in the workers' compensation case and is not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards, particularly in light of the fact that Dr. Samies has asserted he had no involvement in the termination of Appellant's employment. (Dr. Samies Affidavit, Exhibit 5.)
- Exhibit 26: Defendant's Pre-Hearing Brief from the Workers' Compensation Commission.
 - These documents were not produced during the discovery process and the submissions or filings made to the workers' compensation commission are not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards.
- Exhibit 27: Transcript excerpts from the workers' compensation hearing.
 - These documents were not produced during discovery and the submissions or filings made to the workers' compensation commission

are not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards.

- Exhibit 29: Deposition excerpt of Mr. David Sutherland, CEO of TRMC.
 - As set forth above, this deposition was taken in the worker's compensation matter, was never produced to Respondent in discovery, and is irrelevant to the issues before the Court on appeal.

- Exhibit 33: Plaintiff's HIPAA-related email correspondence
 - This email correspondence was not produced in discovery and includes communication between Plaintiff-Appellant and workers' compensation counsel regarding the production of documents in the workers' compensation matter. These email communications, which took place in the context of the workers' compensation action after Plaintiff-Appellant was no longer employed is not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards. Notably, the lower court dismissed Appellant's claims relating to this correspondence on a motion to dismiss, and Appellant did not appeal that Order. (Order Granting Partial Motion to Dismiss, Exhibit 6.)

- Exhibit 30: COVID-19-related medical bills inappropriately charged to Plaintiff.
 - These documents were not produced during the discovery process and Plaintiff-Appellant's medical bills for COVID-19 treatment are not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards. Notably, the lower court dismissed Appellant's claims relating to these bills on a motion to dismiss, and Appellant did not appeal that Order. (Order Granting Partial Motion to Dismiss, Exhibit 6.)

- Exhibit 31: Debt collection letters to Plaintiff related to those unlawful medical charges.
 - These documents were not produced during the discovery process and debt collection letters sent are not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards. Notably, the lower court dismissed Appellant's claims relating to these bills on a motion to dismiss, and Appellant did not appeal that Order. (Order Granting Partial Motion to Dismiss, Exhibit 6.)

- Exhibit 32: Identification of Defendant's initial labor attorney involved in Plaintiff's termination.

- The online biography of counsel utilized by Defendant-Respondent is not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards.
- Exhibit 32a: Details regarding the involvement of the second labor attorney.
 - The online biography of counsel utilized by Defendant-Respondent is not relevant to the issue of whether or not the court properly granted summary judgment due to Plaintiff-Appellant's inability to meet established work standards.

Pursuant to Rule 209(b), the foregoing documents must be stricken from Appellant's Designation and any reference to these irrelevant matters must be removed from the brief.

CONCLUSION

Respondent The Regional Medical Center respectfully requests that this Court grant its Motion to Strike Portions of Appellant's Designation of Matter To Be Included in the Record on Appeal Along with Portions of Appellant's Initial Brief Referencing the Same.

Respectfully submitted,

s/Amanda C. Williams

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June 11, 2025
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Maite Murphy, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2025-000108

Case No.: 2023-CP-38-00331

Serge R. Wandji.....Appellant,

v.

The Regional Medical Center.....Respondent,

PROOF OF SERVICE

The undersigned hereby certifies that we served the above-named Appellant, Serge R. Wandji, with a copy of the attached **RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL ALONG WITH PORTIONS OF APPELLANT'S INITIAL BRIEF REFERENCING THE SAME**, this 11th day of June 2025, by electronic mail and U.S. mail, as follows:

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June 11, 2025

VIA HAND DELIVERY and EMAIL: ctappfilings@sccourts.org

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

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JUN 11 2025

SC Court of Appeals

Re: ***Serge R. Wandji v. The Regional Medical Center***
Appellate Case No.: 2025-000108
Trial Court Case No.: 2023-CP-38-00331

Dear Mrs. Kitchings:

Enclosed please find Respondent's Motion to Strike Portions of Appellant's Designation of Matter To Be Included In Record on Appeal Along With Portions of Appellant's Initial Brief Referencing the Same, our Proof of Service, and Check No. 522385 in the amount of \$50.00 in satisfaction of the filing fee.

Should you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Williams".

Amanda C. Williams

Enclosures

cc: Serge R. Wandji (via electronic mail and U.S. Mail)

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