

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 14 2025

SC 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

THE CLOUD LAW FIRM, LLC

Jennifer M. Cloud, Esquire

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(803) 693-5721

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”) 210, 240, and 260 and pursuant to this Court’s Order, dated June 20, 2025. 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.

On March 31, 2025, Respondent filed a Motion to Dismiss, or in the alternative, an Order striking the Record on Appeal because the Record on Appeal was not organized properly, was missing matters designated by Respondent, and included matters not presented to the circuit court. (March 31, 2025, Respondent's Motion to Dismiss and June 20, 2025, Non-Dispositional

Decision- Order). On April 8, 2025, Appellant filed a Motion to Deny Respondent's Motion to Dismiss and Allow Appellant to Correct the Record on Appeal. (April 8, 2025, Appellant's Motion to Deny Respondent's Motion to Dismiss and Allow Appellant to Correct the Record on Appeal). On the same day, Appellant filed a Reply to Respondent's Motion to Dismiss. (April 8, 2025, Appellant's Reply to Respondent's Motion to Dismiss).

Pursuant to the Court's June 20, 2025 Order, the Court denied Respondent's Motion to Dismiss, granted Appellant's Motion to Deny Respondent's Motion to Dismiss, granted Respondent's Motion to Strike the March 31, 2025 Record on Appeal, and granted Appellant's Motion to Correct the Record on Appeal. (June 20, 2025, Non-Dispositional Decision- Order). The Court's Order states that the Record on Appeal must include all matters designated by Respondent; shall be organized as provided by Rule 210(c) of the SCACR; contain correctly paginated pages; shall not include the notarized statement from page 144 of the Record on Appeal; and shall not contain any other matter not designated by either Respondent or Appellant in their respective designations of matter. (*Id.*).

On July 21, 2025, Appellant filed an Amended Record on Appeal.

ARGUMENT

I. This appeal should be dismissed because Appellant has failed to comply with the South Carolina Appellate Court Rules, specifically now with Appellant's erroneous Amended Record on Appeal.

This Court should dismiss Appellant's appeal given her repeated failure to comply with the Rules, specifically failing to comply with Rule 210, SCACR, and this Court's June 20, 2025 Order. Pursuant to Rule 210, 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, this Court’s June 20, 2025 Order specifically stated that Appellant shall file an Amended Record on Appeal and in so doing, to not include any matter not designated by either Respondent or Appellant in their respective designations of matter and any matter which was not presented to the lower court or tribunal. (June 20, 2025, Non-Dispositional Decision- Order). This Court further stated that “[f]ailure to comply with this order may result in the dismissal of the appeal.” (June 20, 2025, Non-Dispositional Decision- Order).

Moreover, 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.

1. Appellant Erroneously Included Matters in the Amended Record of Appeal that were not Included in Appellant’s or Respondent’s Designation of Matters.

In Appellant’s Amended Record of Appeal, Appellant has included matter that was not previously stated in either Appellant’s, or Respondent’s, designation of matters. The only documents stated in both designation of matters are as follows:

Orders/Judgments

- (1) Form 4 Order, dated July 25, 2023;
- (2) Form 4 Order, dated February 12, 2024;
- (3) Form 4 Order, dated March 5, 2024; and
- (4) Order Granting Summary Judgment in Favor of Respondent, dated March 26, 2024.

Pleadings and Exhibits Thereto

- (5) Plaintiff's Complaint;
- (6) Plaintiff's Amended Complaint and Exhibit D; and
 - a. Exhibit D: Addendum to Prior Contracts
- (7) Defendant's Amended Answer and Exhibits A-F.
 - a. Exhibit A: Email from Appellant, dated January 29, 2023;
 - b. Exhibit B: Agreement to Buy and Sell Real Estate Residential;
 - c. Exhibit C: Real Estate Contract of Sale;
 - d. Exhibit D: Title to Real Estate;
 - e. Exhibit E: Promissory Note for Sale
 - f. Exhibit F: Letter from Respondent, dated February 10, 2023, and Updated Check Register

Transcripts

- (8) July 24, 2023, Transcript of Proceedings, pp. 1-20; and
- (9) February 12, 2024, Transcript of Proceedings, pp. 2-7.

Other Documents and Exhibits Thereto

- (10) Respondent's Memorandum of Law in Support of Summary Judgment and Exhibits A-C;
 - a. Exhibit A: Respondent's First Set of Interrogatories, Requests for Admission, and Request for Production to Plaintiff
 - b. Exhibit B: Tracking for Respondent's Discovery Requests
 - c. Exhibit C: erroneously listed – no Exhibit C filed.
- (11) Appellant's Response to Interrogatories Provided to Judge and Council [sic] in Court Listing All Objections
- (12) Additional Correspondence, Pages 1-5;
- (13) Notarized Statement Regarding Mortgage Payments;
- (14) Email to Hon. Judge Gibbons, dated March 8, 2024; and
- (15) Email to Clerk of Court, Jennifer Payne, dated March 26, 2024.

Despite the above twenty-five (25) documents being the only documents stated in the designation of matters, Appellant has included approximately fifty-eight (58) matters in the Amended Record on Appeal. (Amend. ROA, pp. 1-5). Specifically, Appellant erroneously included the following: (1) the Form 4 Order, dated January 8, 2024; (2) those Orders numbered 1, 3, 4, and 5, in the second “Order” index; (3) those documents in the “Pleadings” index numbered 1, 4-6, 8, and 11-29; (4) Appellant’s exhibits numbered 1-3 (however, these are duplicates of documents listed on Respondent’s designation of matter); and (5) a Letter to Shelly Spencer, Clerk of Court. (*See generally Id.*)

All of the above documents were not listed on either designation of matter, and therefore, cannot be included in the Amended Record on Appeal.

2. Appellant, Again, Failed to Include all Matter Designated by Respondent in the Amended Record of Appeal.

As per this Court’s June 20, 2025 Order, and pursuant to SCACR, Rule 209, Appellant shall include all matter designated to be included by an party. (Rule 209, SCACR, and June 20, 2025, Non-Dispositional Decision- Order).

In Appellant’s first Record on Appeal, Appellant failed to include the majority of matter as designated by Respondent. Though Appellant did include *some* matter erroneously omitted in the Record on Appeal, Appellant still failed to include the following matter: (1) Respondent’s Exhibit A of Respondent’s Amended Motion to Dismiss and Answer (E-mail from Appellant, dated January 29, 2023); (2) Respondent’s Exhibit D of Respondent’s Amended Motion to Dismiss and Answer (Title to Real Estate); and (3) Respondent’s Exhibit F of Respondent’s Amended Motion to Dismiss and Answer (Letter from Respondent, dated February 10, 2023, and Updated Check Register). Appellant further failed to include the full portion of the February 12, 2024, Transcript

of Proceedings, as Respondent designated pages 2-7 of said transcript; however, Appellant only included pages 1-5. (Amend. ROA, pp. 386-390).

Appellant further incorrectly lists the exhibits attached to Respondent's Amended Motion to Dismiss and Answer. (Amend. ROA, pg. 4).

This Court ordered that Appellant include all matter as designated by Respondent in its June 20, 2025 Order and took special care to explain how to appropriately amend the Record on Appeal. (June 20, 2025, Non-Dispositional Decision- Order) Despite the detailed directions laid out in this Court's order, Appellant has once again failed to comply with SCACR and this Court's Order. (Rule 209, SCACR, and June 20, 2025, Non-Dispositional Decision- Order).

3. Appellant, Again, Included Correspondences that Were Not Reviewed by the Circuit Court.

Appellant included numerous correspondences that are either irrelevant to this appeal or correspondence that were never reviewed by the circuit court. (Amend. ROA, pp. 432-436). All correspondence listed in Appellant's Amended 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 Letter to Shelly Spencer is dated July 28, 2024, which is after the date of the Order signed by the circuit court. (Amend. ROA, p. 440).

Appellant's continued deficiencies have caused multiple delays in this Appeal, which in turn unjustly prejudices Respondent. 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. Disregarding the errors prior, Appellant first failed to file a designation of matter on July 5, 2024. Then, Appellant failed to file an appropriate Record

on Appeal on March 31, 2025. Appellant has again filed an inadequate and erroneous Amended Record on Appeal on July 21, 2025, delaying this appeal for over a year—solely on matters concerning the designation of appeal and the record on appeal. These delays are wholly the fault of Appellant and Respondent cannot proceed forward with her final brief unless there is a correct Record of Appeal. Although deference is given to pro se litigants, continued delays to allow Appellant to comply with SCACR are prejudicial to Respondent and should not be further allowed.

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 SCACR constitutes an undue hardship to Respondent.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this appeal be dismissed and requests such other relief this Court deems just and proper.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 14, 2025, she served a copy of Respondent’s Motion to Dismiss Appeal and this Certificate of Service by Mail upon the person below by depositing the same with the United Postal Service 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