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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-001088

The School of Hope Christian Academy, Jacqueline McKie,
and Eugene Burden, Sr.,.....Appellants,

v.

South Carolina Department of Social Services,..... Respondent.

**RESPONDENT SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES’
MOTION TO STRIKE APPELLANTS’ DESIGNATION OF MATTER**

Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Social Services (DSS) seeks an order striking items 6 through 9 from Appellants The School of Hope Christian Academy, Jacqueline McKie, and Eugene Burden, Sr.’s designation of matter to be included in the record on appeal. The Court should strike these documents from Appellants’ designation of matter because they were not presented to the lower court, and their inclusion in the record on appeal thus contravenes Rule 210(c), SCACR.

This appeal arises out of the circuit court’s grant of summary judgment for DSS on Appellants’ breach of contract and defamation claims based on the doctrines of collateral estoppel, res judicata, the law of the case, and failure to exhaust. Prior to the hearing on DSS’s motion for summary judgment below, DSS filed a thorough memorandum of law and exhibits supporting

dismissal. Appellants, however, filed no response in opposition. Nor did they submit evidence to the circuit court before, during, or after the hearing. As part of this appeal, Appellants filed their designation of matter to be included in the record on appeal. Items 6 through 9, however, purport to designate matters Appellants never presented to the circuit court. The undersigned consulted with Appellants' counsel several times about the improper designation of matter, but the parties were unable to resolve this issue. Accordingly, this matter comes before the Court on DSS's motion to strike items 6 through 9 from Appellants' designation of matter.

Under the Court's rules, the record on appeal "shall not" "include matter which was not presented to the lower court." Rule 210(c), SCACR. Here, Appellants presented no portion of the depositions of DSS employees Mary Abney Young and Dyeretta Fashion—who are not parties to this case—to the circuit court. And while DSS presented excerpts from Burden's and McKie's deposition transcripts, that does not entitle Appellants to include their entire deposition transcripts in the record on appeal when they never presented them to the circuit court.

What is more, the deposition excerpts DSS presented to the circuit court are already included in item 5: "Defendant South Carolina DSS's Memorandum in Support of Motion for Summary Judgment with attached Exhibits A–F filed January 17, 2024." Specifically, Exhibits E and F contained the deposition excerpts.¹ Of course, DSS takes no issue with their inclusion in Appellants' designation of matter because DSS presented them to the circuit court. But it would violate Rule 210(c) to include portions of depositions that were never presented to the circuit court.

¹ As the public index confirms, DSS filed the cover page and pages 1–4, 91–93, 126, and 179 of McKie's deposition transcript, and it filed the cover page and pages 1–3, 29–30, and 45 of Burden's deposition transcript. *See* Actions, Case No. 2022-CP-40-03390, RICHLAND CNTY. PUB. INDEX, www.publicindex.sccourts.org/Richland/PublicIndex/CaseDetails.aspx?County=40&CourtAgency=40002&Casenum=2022CP4003390&CaseType=V&HKey=4366481018856547398568386841008986102109838610311380561191107810354721165175517756478598795211773; *see also* Rule 201(b), (f), SCRE (judicial notice can be taken at any stage of the proceeding).

Unfortunately, Appellants have done just that. DSS is therefore raising this issue now—instead of moving to strike the record on appeal—to avoid the time and expense of having to redo the record.

For these reasons, the Court should strike items 6 through 9 from Appellants’ designation of matter to be included in the record on appeal.

Respectfully submitted,

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