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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Dorothy Pierce, Appellant

v.

Danny Singleton, Respondent

Appellate Case No.: 2024-2189

MOTION TO STRIKE RESPONDENT’S INITIAL BRIEF

NOW COMES Appellant Dorothy Pierce, proceeding pro se, and respectfully moves this Court to strike Respondent’s Initial Brief in its entirety. The grounds for this motion are as follows:

I. RESPONDENT’S BRIEF IS BASED ON EXTRA-RECORD MATERIALS

Respondent’s Initial Brief, filed in this matter, relies almost entirely on documents that were never part of the record below. These materials mirror the improper items listed in Respondent’s “Designation of Matter to Be Included in the Record on Appeal” filed September 8, 2025.

As detailed in Appellant’s Motion to Strike that designation, the vast majority of those documents were never presented to the Circuit Court, were not filed in Case No. 2024-CP-37-00080, were not attached to any motion, and were never considered by Judge McIntosh when granting summary judgment.

Among the items improperly cited are probate orders from other dockets, appellate briefs from unrelated cases, a federal amended complaint and docket sheet, and even Appellant’s appellate filings (her Initial Brief and Designation of Matter). None of these were part of the record below.

Few Examples of Extra-Record Citations in Respondent’s Initial Brief

1. Page 9 (Statement of the Case)

- *Quote:* “At its core, this case flows from ... the Oconee County Probate Court where, in 2021, the court determined the will presented by Appellant on behalf of her deceased husband was invalid. (Will of Doyle Pierce, dated 7/7/20; Prob. Ct. Order, 8/18/21, at 8).”

- **Problem:** The 2020 will and the August 18, 2021 probate order were never filed in the 2024-CP-37-00080 record. They arose from Case No. 2021-CP-37-00560.

2. Page 10 (Statement of the Case)

- *Quote:* “Respondent appealed that case to the court of common pleas ... (Not. of Intent, 8/23/21) ... and then to this Honorable Court. (Not. of Appeal, dated 12/30/21). Pursuant to an agreement ... the appeal was later dismissed ... (Ct. App. Order, 2/25/25).”
- **Problem:** These notices of appeal and the Feb. 25, 2025 Court of Appeals Order are collateral filings, not in the circuit record for 2024-CP-37-00080.

4. Page 12–13 (Statement of the Case)

- **Quote:** “Appellant thereafter voluntarily dismissed her appeal with prejudice. (Not. of Dismissal, 2/14/25).”
- **Problem:** This “Notice of Dismissal” belongs to a probate appeal (2023-CP-37-00685), not the circuit case under review (2024-CP-37-00080). Moreover, it was created on February 14, 2025, several months after the September 12, 2024 hearing and the September 16, 2024 Form 4 Order in this case. Because it was never filed, submitted, or considered by Judge McIntosh, it could not have been part of the trial court record and must be excluded under Rule 210(b)(1), SCACR.

3. **Problem:** That filing post-dates the circuit court’s judgment by five months, arose in a different case, and was never before Judge McIntosh. It is a classic collateral filing that cannot be considered on appeal under Rule 210(b)(1), SCACR.

6. Page 14–15 (Statement of the Case)

- **Quote:** “Form 4 Order (3/19/24),” “Circuit Court Order (4/2/24),” “Not. of Appeal, 3/19/24,” “App.’s Mot. to Amend, 8/7/24,” “Agreement to Dismiss Appeal, 2/13/25,” “Ct. App. Order, 2/25/25).”
- **Problem:** Each cited document comes from the probate appellate matter (2023-CP-37-00794), not the circuit case under review (2024-CP-37-00080), and none was filed, presented, or considered in the trial-court record of this case. In addition, the Court of

Appeals Order dated 2/25/2025 post-dates the September 12, 2024 hearing and the September 16, 2024 Form 4 in this case by several months, so it could not have been part of the lower-court record. Accordingly, these are collateral filings outside the record and may not be included or cited under Rule 210(b)(1), SCACR.

4. Page 17–18 (Statement of the Case)

- *Quote:* “Appellant filed a federal lawsuit ... on December 4, 2023. (Fed. Comp. at 1) ... The magistrate judge ... issued a report ... (R&R at 4-5) ... The district court ... dismissed with prejudice. (Order, No. 8:23-cv-5609-TMC, at 3).”
- **Problem:** Only the Magistrate’s R&R and District Court dismissal order were exhibits below. The federal complaint and docket were **not**.

II. CITATIONS TO NON-RECORD MATERIALS RENDER THE BRIEF DEFECTIVE

Rule 210(b)(1), SCACR, provides that “[t]he Record on Appeal shall consist only of matters presented to the lower court, accepted by it, or filed in the case. Documents not presented to or considered by the lower court shall not be included.”

By citing to documents that were never part of the case file, never tendered as exhibits, and never ruled upon by the trial court, Respondent has violated this fundamental rule.

South Carolina appellate precedent is clear that review is confined strictly to the record made below. See *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); *State v. Johnson*, 298 S.C. 196, 379 S.E.2d 326 (1989). Respondent’s Initial Brief disregards this limitation and instead builds arguments on matters outside the record, rendering it misleading, prejudicial, and defective.

III. RESPONDENT CANNOT SHOW OTHERWISE

The September 12, 2024 hearing transcript forecloses any claim that these extra-record materials were before the Circuit Court. The transcript confirms:

- **Respondent’s counsel admitted** that Appellant “filed... a memorandum” but had “not had a chance to study” it. (Tr. 10–11).
- **The Court confirmed** that if Appellant’s memorandum was filed and relevant, it would be considered, and directed Appellant to ensure the Court had a copy. (Tr. 12–13).
- **Appellant confirmed** the Court already had it. (Tr. 13).

Thus, the actual Circuit Court record consisted of:

1. The pleadings in Case No. 2024-CP-37-00080;
2. Respondent’s Motion for Summary Judgment with two federal-court exhibits:
 - The Magistrate Judge’s Report and Recommendation in *Pierce v. Singleton*, No. 8:23-cv-5609 (D.S.C.); and
 - The District Court’s dismissal order;
3. Appellant’s September 5, 2024 Memorandum in Opposition with exhibits (filed and served via AIS and email, with proof of service on record);
4. The September 12, 2024 Exhibits submitted to the Judge and the clerk, including to respondents.
5. The September 12, 2024 hearing transcript; and
6. The September 16, 2024 Form 4 Order granting summary judgment.

Respondent introduced no other evidence. He preserved no other arguments or defenses when given the opportunity at hearing. (Tr. 18–21).

IV. PREJUDICE TO APPELLANT

Allowing Respondent to ground his appellate brief in extra-record documents inflicts serious prejudice:

1. It distorts the scope of appellate review, pulling the Court’s attention to collateral matters never litigated below.

2. It forces Appellant to address issues outside the record, contrary to the rules of preservation.
3. It risks a decision based on materials the trial court never saw, undermining the fairness of review.

These are precisely the harms Rule 210(b)(1) is designed to prevent.

VI. REQUEST FOR RELIEF

For the foregoing reasons, Appellant Dorothy Pierce respectfully requests that this Court:

1. Strike Respondent's Initial Brief in its entirety for reliance on extra-record materials that were never filed, presented, or considered in the trial court below;
2. In the alternative, strike all portions of Respondent's Initial Brief that cite or rely upon extra-record materials, including but not limited to the collateral probate filings, appellate dismissals, and federal case documents identified in Appellant's accompanying Appendix of Improper Citations;
3. Order Respondent to refile a corrected brief limited strictly to the proper record on appeal as defined by Rule 210(b)(1), SCACR;
4. Preclude Respondent from citing or relying on any stricken materials in further briefing, oral argument, or submissions to this Court; and
5. Grant such other and further relief as this Court deems just and proper, including costs or sanctions to deter future attempts to enlarge the record and to compensate Appellant for the burden of addressing this improper filing.

Respectfully submitted this 16th day of September, 2025.

/s/ Dorothy Pierce

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