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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2024-2189

Appeal from Oconee County

Hon. R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-CP-37-00080

Dorothy Pierce, Appellant,

v.

Danny Singleton, Respondent.

APPELLANT'S MOTION TO STRIKE RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant Dorothy Pierce, appearing pro se, moves under Rule 210(b)(1), SCACR, to strike Respondent's "Designation of Matter to Be Included in the Record on Appeal," dated September 8, 2025. Respondent never properly served Appellant with this filing, rendering it procedurally defective. Even if service were perfected, the designation is fatally improper. In the Circuit Court, Respondent introduced only two exhibits in support of his Motion for Summary Judgment: (1) the Magistrate Judge's Report and Recommendation in Pierce v. Singleton, No. 8:23-cv-05609 (D.S.C.), and (2) the corresponding Federal District Court Order dismissing that case. Nothing more. Now, Respondent attempts to smuggle in dozens of collateral records—probate orders, appellate dismissals, and federal filings—that were never filed, presented, tendered, or considered in Case No. 2024-CP-37-00080. He cannot prove otherwise because these materials were never before Judge McIntosh.

This is not an innocent mistake. It is a calculated attempt to rewrite history, inflate the record, and mislead this Court. Rule 210(b)(1) flatly forbids such tactics, limiting the record to what was actually presented below. To allow Respondent's designation to stand would reward misconduct, prejudice Appellant, and distort appellate review.

I. INTRODUCTION

Respondent asks this Court to consider forty-six (46) items, the overwhelming majority of which come from other probate files, other circuit appeals, and a separate federal case, none of which were made part of the record in this case when Judge McIntosh granted summary judgment. In the Circuit Court, Respondent introduced only two exhibits supporting his summary-judgment motion: (1) the Magistrate Judge's Report and Recommendation in *Pierce v. Singleton*, No. 8:23-cv-05609 (D.S.C.), and (2) the corresponding federal District Court Order. Nothing more was presented by Respondent.

By contrast, Appellant did file a memorandum with exhibits in opposition. The September 12, 2024 hearing transcript confirms: opposing counsel acknowledged Appellant "filed…a memorandum," stated he had "not had a chance to study" it; the Court confirmed it would consider filings that were relevant and asked for a copy to ensure the Court had it; and Appellant confirmed the Court already had it. (Hr'g Tr. 10–13.) Thus, the record below is limited to the pleadings, motions, orders, and the two exhibits attached by Respondent, plus Appellant's properly filed memorandum and exhibits. Respondent may not now "backfill" the record with materials never before Judge McIntosh.

Rule 210(b)(1) is clear: *the record on appeal consists only of matters presented to the lower court, accepted by it, or filed in the case.* Materials outside that universe must not be included.

II. RELEVANT BACKGROUND

1. **Case posture.** Appellant filed this action (2024-CP-37-00080). Respondent moved for summary judgment primarily on judicial-immunity grounds and attached **two** federal-court documents as his only exhibits.

2. **Appellant's filing.** Appellant filed a memorandum with exhibits in opposition. At the **Sept. 12, 2024** hearing:

    - Respondent's counsel stated: "She filed…a memorandum… We have not had an opportunity to refute her memorandum." (Tr. 10–11.)

    - The Court: "Do you have your memorandum?… If you don't, make sure that we have a copy before you go." Appellant: "You do." (Tr. 12–13.)

- The Court: "If you file it and it is relevant, I will [consider it]." (Tr. 13.)

3. **Dispositive order.** On **Sept. 16, 2024**, the court issued its Form 4 decision granting Respondent's dispositive motions. No additional materials were received into evidence or otherwise made part of the record in this case after the hearing.

4. **Respondent's designation.** On **Sept. 8, 2025**, Respondent served a 46-item designation that sweeps in materials from **separate** probate files, **unrelated** appeals, and **federal** filings that were **never** filed, presented, or accepted in this case.

III. LEGAL STANDARD

Rule 210(b)(1), SCACR. "*The 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."

Appellate review is confined to the record made below; extra-record matter cannot be considered. See, e.g., (principle widely recognized by South Carolina appellate courts).

Rule 56(c), SCRCP. On summary judgment, the court may consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any"—i.e., **in the case at bar**, not collateral files. Materials must be **in** the case file to be "on file."

IV. ARGUMENT

A. Respondent's designation includes materials not presented to, filed in, accepted by, or considered by the Circuit Court in this case. The Circuit Court's record in 2024-CP-37-00080 contains the parties' pleadings and motions; Respondent's **two** federal-case exhibits; Appellant's filed memorandum with exhibits; and the court's orders. It **does not** contain the vast majority of the forty-six items now designated. Because those materials were **never before Judge McIntosh**, they cannot be added post-hoc to the appellate record. Rule 210(b)(1), SCACR.

B. The hearing transcript forecloses Respondent's insinuation that Appellant offered "no evidence," and simultaneously confirms the narrow scope of Respondent's submissions. At the Sept. 12, 2024 hearing, Respondent's counsel admitted Appellant had filed a lengthy memorandum; the Court confirmed it would consider relevant filings and ensured it had a copy; and Appellant confirmed the filing. (Tr. 10–13.) Respondent identified only the two federal

exhibits in support of his motion. There is no suggestion the court received or considered the collateral probate, appellate, or federal materials Respondent now tries to designate.

C. Rule 56 does not open the door to collateral case files; "on file" means in this case file. Respondent will likely argue that summary-judgment review encompasses "pleadings…on file." Rule 56(c), SCRCP. But that phrase is limited to the pleadings and materials filed in this action—2024-CP-37-00080—not in other probate, circuit, or federal dockets. Rule 210(b)(1) enforces the same boundary at the appellate stage.

D. Inclusion of extra-record matter is prejudicial and invites error. Allowing Respondent to "smuggle" collateral materials into the record would (1) distort the scope of review; (2) force Appellant to brief issues never litigated below; and (3) risk a merits decision grounded on documents the trial court never saw. Rule 210(b)(1) exists to prevent exactly this harm.

E. Specific items that must be stricken. Without waiving the request to strike the **entire** designation, the following items (by Respondent's numbering) were not filed, presented, tendered, or accepted in 2024-CP-37-00080 and must be stricken:

The following items are therefore **improperly designated** and must be stricken:

1 — Purported Will of Doyle Pierce, dated July 7, 2020.
2 — Order on Motion to Determine Validity of Will (Aug 18, 2021).
3 — Notice of Intent to Appeal to Circuit Court, 2021-CP-37-00560 (Aug 23, 2021).
4 — Order of Circuit Court, 2021-CP-37-00560 (Dec 29, 2021).
5 — Notice of Appeal, 2021-CP-37-00560 (Dec 30, 2021).
6 — Order of Court of Appeals, No. 2021-001552 (Feb 25, 2025).
8 — Notice of Appeal on Order on Petition to Appoint Special Administrator, 2022-CP-37-00596 (Aug 16, 2022).
9 — Motion to Strike Notice of Intent to Appeal and Dismiss Appeal, 2022-CP-37-00596 (Aug 16, 2022).
10 — Withdrawal of Notice of Intent to Appeal, 2022-CP-37-00596 (Aug 23, 2022).
12 — Notice of Appeal, 2023-CP-37-00685 (Sept 11, 2023).
13 — Return to Appeal, Oconee County Probate Court (Mar 22, 2024).
14 — Letter by Respondent (Mar 21, 2024).

15 — Notice of Voluntary Dismissal of Appeal with Prejudice, 2023-CP-37-00685 (Feb 14, 2025).

17 — Notice of Appeal, 2023-CP-37-00794 (CP filed Oct 13, 2023; Pr. Ct. filed Nov 2, 2023).

22 — Order on Motion to Reconsider (Nov 9, 2023).

23 — Appellant's Brief, 2023-CP-37-00794 (Nov 29, 2023).

26 — Form 4 Order, 2023-CP-37-00794 (Mar 19, 2024).

27 — Notice of Appeal, 2023-CP-37-00794 (Mar 19, 2024).

28 — Order on Appeal from the Oconee County Probate Court, 2023-CP-37-00794 (Apr 2, 2024).

29 — Motion to Amend Notice of Appeal, No. 2024-000455 (Aug 7, 2024).

30 — Agreement to Dismiss Appeal with Prejudice, No. 2024-000455 (Feb 13, 2025).

31 — Court of Appeals Order, No. 2024-000455 (Feb 25, 2025).

32 — Order and Judgment of Direct Criminal Contempt (July 1, 2024).

33 — Notice of Appeal, 2024-CP-37-0490 (July 1, 2024).

34 — Stipulation of Dismissal of Appeal with Prejudice, 2024-CP-37-0490 (Feb 14, 2025).

36 — Amended Complaint and Request for Injunction, Case No. 8:23-cv-05609-TMC (Dec 4, 2023).

39 — Docket, Case No. 8:23-cv-05609-TMC (no date given).

44 — Court of Appeals Notice of Appeal, Case No. 2024-CP-37-00080 (Dec 30, 2024).

45 — Appellant's Initial Brief (June 23, 2025).

46 — Appellant's Designation of Matter to be Included in the Record on Appeal (June 23, 2025).

Improper Inclusion of Appellate and Collateral Filings

Among the documents designated by Respondent are items that arise from collateral probate matters, unrelated appeals, or separate federal filings. None of these were ever part of the record in Pierce v. Singleton, Case No. 2024-CP-37-00080, when Judge McIntosh ruled on summary judgment. They should therefore be stricken.

1. **Court of Appeals Notice of Appeal, Case No. 2024-CP-37-00080 (Dec. 30, 2024).** This is an appellate filing created after the lower court entered its final order. While it forms part of the administrative record in the Court of Appeals, it was never submitted to, considered by, or ruled upon in the Circuit Court proceedings below.

2. **Appellant's Initial Brief (June 23, 2025).** An appellate brief is attorney argument only. It is not evidence and was never before the trial court. Under South Carolina law, appellate briefs cannot expand or supplement the record. See State v. Taylor, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004).
3. **Appellant's Designation of Matter to Be Included in the Record on Appeal (June 23, 2025).** Like the notice of appeal, this is a procedural step in the appellate process. Although it belongs in the Court of Appeals file, it was not part of the Circuit Court record in Case No. 2024-CP-37-00080 and cannot be used to supply evidence that was never presented below.

Each of these items properly belongs, if anywhere, in the Court of Appeals' administrative file. They are not part of the evidentiary record developed in the trial court and therefore must be stricken from Respondent's designation under Rule 210(c), SCACR.

F. Appellant's Memorandum with Exhibits Was Filed and Served September 5, 2024 and September 12 2024.

On September 5, 2024, Appellant filed a 57-page Memorandum in Opposition to Summary Judgment with supporting exhibits in Case No. 2024-CP-37-00080. Proof of Service was filed the same day. All parties had consented to email service, and counsel for Respondent was served both via AIS E-Filing system and directly by email on September 5, 2024 and September 11, 2024.

At the September 12, 2024 hearing, Respondent's counsel admitted he became aware of Appellant's memorandum through public records but falsely suggested it was not served. (Tr. 10–11.) The Court rejected this suggestion, confirmed the filing was before it, and required Appellant to ensure the Court had a copy. (Tr. 12–13.)

Thus, the record indisputably includes Appellant's memorandum and exhibits. Respondent's claim that Appellant "introduced no evidence" is contradicted by the docket, the proof of service, and the hearing transcript. This further demonstrates why Respondent's attempt to enlarge the appellate record with extra-record material is improper: he seeks to erase what Appellant properly filed and replace it with collateral documents never before the Circuit Court.

V. REQUESTED RELIEF

Appellant respectfully requests that the Court:

1. **Strike Respondent's designation in its entirety** for violating Rule 210(b)(1), SCACR; or, in the alternative,
2. **Strike the specific items** identified above as extra-record;
3. **Order Respondent to serve a corrected designation** limited to materials actually presented to, filed in, or accepted by the Circuit Court in 2024-CP-37-00080;
4. **Preclude Respondent's briefing** from citing to any stricken or extra-record material; and
5. Award such other and further relief as the Court deems just, including costs associated with policing the record.

Respectfully submitted this 16th day of September, 2025.

/s/ Dorothy Pierce
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