

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**No. 2013-001825**  
=====

**Appeal from Greenville County  
Court of Common Pleas  
Honorable Letitia H. Verdin, Circuit Judge  
Case below 2011-23-CP-08455**  
=====

**Oscar Z. Sorcia,**

**Appellant,**

**vs.**

**Brady K. Mathis; and  
Palmetto Surety Cor.,**

**Respondent.**

=====

**RETURN to Respondent's Motion to Compel  
or alternate motion to dismiss and to  
Stay deadlines**

=====

**Oscar Z. Sorcia, 338247  
A.C.I. F1-A47  
P.O. Box 1151  
Fairfax, S.C. 29827  
Pro-Se for Appellant**

**OTHER COUNSEL OF RECORD:**  
=====

**Sidney P. Mitchell, Jr.  
MITCHELL RAMSEUR, LLC  
217 East Park Avenue  
Greenville, S.C. 29601  
(864) 233-4566**

**Counsel of Record for  
Respondent**

**RECEIVED**

**NOV 08 2013**

**SC Court of Appeals**

This matter is before the Court on the Respondent's "Motion to Compel Appellant to Order Transcript of Proceeding below, or alternatively, to Dismiss Appeal, and Motion to Stay Deadlines". Dated October 23, 2013.

Appellant submit that the Allendale Correctional Mail Room received said motion on October 25, 2013 and Appellant received notice of said motion October 28, 2013. see (Exhibit # 1) attached.

Appellant comes now respectfully to move this honorable Court on Return to the above mentioned motion and further move this Court to impose sanctions against Respondent and/or their attorney(s) pursuant to rule 269 SCACR; for Respondent's frivolous filing of such motion without any basis in law or fact to support such motion and for dilatory practices.

FIRST: As an initial matter, what Respondents refer to as a hearing, was indeed a hearing on several motions filed by both parties, the Court Ruled on the several motions in a latter "Final Written Order". However, the final order consist of three (3) pages and on Page 3 a section indicating "Court Reporter", is blank clearly indicate no record was taken by a Court Reporter, and Appellant have no recollection of any Court Reporter taking any record and require strict proof from the respondents otherwise.

**SECOND:** Even if a record of some sort was taken, it would be irrelevant to the appeal, because Appellant appeals from the Lower Court's "FINAL ORDER", the written Order disposed of all matters considered by the Court, and Appellant filed a "Rule 59(e) Motion" to Alter or Amend the Final Order of matters believe to have been overlooked in the Court's final order. The Respondents failed to make a timely response to Appellant's Rule 59(e) motion or to file a "Cross Motion" under Rule 59(e) to alter or amend the judgment, if Respondents believed the Court failed to address some issue.

Appellant submit that the "Final Order" is controlling in this matter. Every issue and matter raised by Appellant in the initial brief are matters that was addressed in the Court's final order and the Court's response to the Rule 59(e) Motion.

-----  
**STANDARD OF REVIEW**  
-----

South Carolina adheres to the "Final Judgment Rule" which provides that, with certain exceptions, an appeal lies [only] from a final judgment. *Brunson v. American Koyo Bearings*, (S.C. App. 2005) 367 S.C. 161, 623 S.E.2d 870. Exception to general rule that only final orders are appealable, which exception is for orders that impact the mode of Trial, is confined to orders which abridge a party's constitutional right to Trial by Jury. *Fulmer v. Cain*, (S.C. 2008) 380 S.C. 466, 670 S.E.2d 652.

A Trial Court's [Order] on Summary Judgment must set out facts and accompanying legal analysis [s]ufficient to permit meaningful appellate review; such an order must include those facts which the Trial Court finds relevant determinative of the issues, and undisputed, and the Trial Court should provide [clear] notice to all parties and the [r]eviewing Court as to the rationale applied in granting Summary Judgment. Rules Civ. Proc, Rule 56(c). **Bowen v. Lee Process Systems Co.**, (S.C. App. 2000) 342 S.C. 232 536 S.E.2d 86.

On appeal from an [Order] granting Summary Judgment, the Appellate Court will review all ambiguities, Conclusions, and inferences arising in and from the evidence in a light most favorable to the Non-Moving Party below. Rule Civ. Proc. Rule 56(c). **Hurst v. East Cost Hockey League, Inc.**, (S.C. 2006) 371 S.C. 33, 637 S.E.2d 560. See also **Madison ex rel. Bryant v. Babcock Center, Inc.**, (S.C. 2006) 371 S.C. 123, 538 S.E.2d 650.

=====

**LAW / ANALYSIS**

=====

**Rule 201 (SCACR): Right to Appeal.**

**"(a). Appeal may be taken, as provide by law, from any final judgment, apealable order or decision...."**

In the instant case sub-judice the Respondents stated in the present motion that "the basis of this motion is that Appellant

has failed to order the transcript of the proceeding below." (see Motion to Compel Page 2). Further, Respondents states that "in his initial brief, Appellant has raised issues that were not presented and therefore not preserved in the circuit court." Finally, the Respondents claims that "Respondents are unable to properly respond to the arguments raised in Appellant's initial brief until they have received a transcript of the proceedings below."

Appellant submit that viewing the allegations of the respondents motion in light most favorable to the respondents. Rule 207 (a)(1), does require appellant to order the transcript of the proceedings below from the Court of Common Pleas. However, the respondents failed to present any [p]articular issue, or testimony that took place or presented at the hearing that would aid this court in reviewing the lower Court's Final Order granting them Summary Judgment. The lower Court's order is the judgment being appealed, which clearly indicates what the Court relied upon to make its ruling.

Appellant submit that [no] testimony was taken at said hearing, Appellant was not sworn, Respondents was not present, the attorney(s) were not sworn and every document presented for which the Court relied on, was made apart of the Record prior to the hearing, as indicated by reference in the Court's Final Order and included in Appellant's Designation of matter to be included in the Record on Appeal.

Again, Respondents claim Appellant raised issues that were not presented to the Lower Court, but failed to say what issues they believe is not preserved. Appellant raises three (3) main issues and three (3) sub-issues. Respondents have not identified which of those issues are reflected by the Lower Court's Final Order, and which issues are not reflected by the Court's Final Order. Because, Appellant appeals the Court's Final Order is the central issue here.

The burden of proof rest with the Respondents to establish or to at least indicate which issues they believe is not preserved, since they are the moving party on said motion.

**Rule 209 (SCACR):**

"(a) ... Designation of matter to be included in the Record on appeal which shall set forth with [s]pecificity those parts of the Transcript, Pleadings, [Orders], Exhibits, or other material which he proposes to include in the Record on Appeal."

"(b) ... A party shall [not] include any matter in his Designation which is not [r]elevant to the appeal."

"(c) The Designation shall be accompanied by a certificate signed by the Party's Counsel of Record that the Designation contains no matter which is irrelevant to the appeal."

The only matter that should not appear in the appellate record are those items a party believes to be not relevant to the appeal. *Forner v. Butler*, (S.C. App. 1995) 319 S.C. 275, 460 S.E.2d 425.

Appellant contends that the transcript of the hearing, if one exist would prove to be immaterial to the Court's Final Order, and if respondent feel that the Court failed to address in its Final Order something they wish to argue on appeal, then they should have filed, as Appellant did, a motion under Rule 59e), Motion to Alter or Amend Judgment. Therefore, any issue not covered in the Court's Final Order is waived for appeal purpose. Hence, any issue the Respondents want to argue even if it had the transcript would not be arguable on appeal. unless it is reflected in the Court's Final Order.

A Trial Court's [Order] on Summary Judgment must set out facts and accompanying legal analysis [s]ufficient to permit meaningful appellate review; such an order must include those facts which the Trial Court finds relevant determinative of the issues, and undisputed, and Trial Court should provide [clear] notice to all parties and the [R]eviewing Court as to the rationale applied in granting Summary judgment. Rules Civ. Proc. Rule 56(c). **Bowen v. Lee Process Systems Co.** (S.C. App. 2000) 342 S.C. 232, 536 S.E.2d 86. On appeal from an [Order] granting Summary Judgment, the appellate Court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Rules Civ. Proc. Rule 56(c) **Hurst v. East Cost Hockey League, Inc.** (S.C. 2006) 371 S.C. 33, 637 S.E.2d 560. See also, **Madison ex rel. Bryant v. Babcock Center, Inc.,** (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650.

In the instant case, the Lower Court's Order "Statement of judgment by thee Court" reads as follows:

"This matter is before the Court on Plaintiff and Defendant's cross motion for summary judgment and Plaintiff's Motion to Strike and Reject Appearance. Upon review of the [p]leadings, [d]ocuments presented, and arguments of counsel, this Court grants Defndants' motion for summary judgment and denies Plaintiff's motions." See (Order of Judgment) attached.

The Court's Order wen on further to describe other specific items of consideration used to reach its judgment; such as, the complaint, the Court acknowledge a contractual agreement, the fact that the Respondents presented an affidavit of Appellant filed in an unrelated case, the Court acknowledge the "ICE" hold prevented Appellant from being released even though Respondents posted the agree-upon bond. Id.

This statement of the judgment is the basis of Appellant's issues on Appeal, and those issues Appellant believe the Court failed to consider, Appellant filed a Rule 59(e) motion to alter or amend the Order, to specifically reflect a ruling on said issues.

=====

**IN CONCLUSION**

=====

The Respondent's motion to compel ordering of the transcript if it exist is without merit, because the Court's Order clearly reflect all issues which Appellant desire to appeal and those issues not specifically reflected, Appellant sufficiently preserved by raising them in a Rule 59(e) Motion.

SIM

The Respondents cannot point to any specific issue as claimed, that Appellant raises and argue in the initial brief, that's not preserved and supported by the Court's Ruling and the proposed record on appeal.

Further, Appellant contends that Counsel and/or Respondents knew there is no basis in law or fact to support the present motion, and that this motion was interposed for the purpose of delay. Because the Respondents have demonstrated this and the exact same dilatory practice in the lower court proceeding, is a flagrant disregard for the timeliness of filings and deceptions, and misrepresentation of facts to the Courts to gain an unfair advantage. Respondents know that Appellant is a prisoner and does not have access to the financial support and other means to turn every corner the Respondents attempt to guide the Court proceedings.


Until Sanctions are imposed Counsel and/or Respondents both will continue to manipulate the Court System with legal maneuvering to gain unfair advantage without impunity.

Therefore, Appellant respectfully ask this Court to deny Respondnet's Motion , require that they immediately file their initial brief without any further delay and also impose sanctions pursuant to Rule 269 SCACR, for filing frivolous motions, knowing the same to be without legal or factual basis to such motion.

In the alternate, Appellant ask the Court to require the Respondents to specify what issues they claim Appellant raises that is not covered by the Lower Court's Final Order.

This 01 day of NOVEMBER, 2013.  
At Allendale County, S.C.

Respectfully Submitted

S/   
-----  
Mr. Oscar Z. Sorcia, 338247  
A.C.I. F1-A47  
P.O. Box 1151  
Fairfax, S.C. 29827

Pro-Se for Appellant