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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Robert L. Reibold, Administrative Law Judge
Docket No. 25-ALJ-17-0077-CC

Appellate Case No. 2025-001521

Terry Scott, Appellant,

v.

Charleston County Assessor, Respondent.

**MOTION TO STRIKE A PORTION OF APPELLANT’S FINAL BRIEF
AND/OR, IN THE ALTERNATIVE,
MOTION TO AMEND RESPONDENT’S DESIGNATION OF
MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent Charleston County Assessor respectfully moves this Court pursuant to Rule 240 and Rule 211 of the South Carolina Appellate Court Rules to strike a portion of Appellant’s Final Brief on the grounds that it contains changes, a new issue and argument that were not presented in Appellant’s Initial Brief.

In the alternative, Charleston County respectfully moves to amend its Designation of Matter to be Included in the Record on Appeal on the grounds that including other additional materials will provide relevant evidence that addresses the portion of the Final Brief containing the changes, a new issue and argument.

Charleston County files this Motion with considerable hesitancy recognizing that the filing prolongs the case and delays the ultimate decision of this Court. However, Appellant’s

Final Brief incorporates replies to statements and issues in the County's Initial Brief that the County is prejudiced by not having an opportunity to respond to the new issue and arguments given that no responsive brief is permitted at Respondent's filing of its Final Brief.

Respectfully submitted,

CHARLESTON COUNTY ATTORNEY'S OFFICE

s/ Bernard E. Ferrara, Jr.

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Charleston, South Carolina

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**MEMORANDUM OF LAW IN SUPPORT
OF RESPONDENT’S MOTION TO STRIKE
AND/OR, IN THE ALTERNATIVE, MOTION TO AMEND**

Appellant’s Final Brief fails to conform to the requirements of Rule 211 of the South Carolina Appellate Court Rules. The majority of Appellant’s Final Brief is identical to Appellant’s Initial Brief; however, the Final Brief contains changes, a new issue and argument. Appellant’s argument regarding the new issue contains baseless, unsupported accusations in reply to statements and issues raised in Respondent’s Initial Brief. The arguments are the subject matter of a reply brief; however, in this case, Appellant did not serve a brief in reply to the brief of Respondent.

In support of the Motions to strike those portions of the Final Brief and in the alternative to amend its Designation of Matter to be included in the Record on Appeal, Respondent would respectfully show this Court the following.

I. APPELLANT’S FINAL BRIEF DOES NOT COMPLY WITH RULE 211, SCACR.

Appellant signed her Final Brief. Rule 211(a) provides that the signature constitutes a certificate that the final brief complies with Rule 211(b), which provides that the final brief shall be identical to the initial brief filed pursuant to Rule 208. Other than references to the record and corrections of typographical errors and misspellings, no other changes may be made.

The Final Brief does not comply with Rule 211(b). It is not identical to the Initial Brief previously served and filed with this Court. It contains changes that include a new issue and argument that are outside the scope of permissible changes. Specifically, the changes and new issue and argument include the following:

- a. Appellant’s Initial Brief is outlined “Arguments” I. A., B., C., D.; and II. The Final Brief is outlined “Argument #1” A., B., C., D.; “Argument #2”; and “Argument #3.”
- b. Appellant’s section titled “Argument #3” at page 15, line 11–page 17 of the Final Brief is a new argument.
- c. Appellant’s section titled “Statement of Issues on Appeal” at page 1 of the Final Brief has been changed to add a third issue: “Was the order of summary judgment based upon false data regarding the appellant’s property that is only land with no structure.”
- d. Appellant’s sections titled “Table of Contents” at page i and “Table of Cases and Authorities” at pages ii-iii of the Final Brief are changes which are not present in the Initial Brief.

- e. Appellant’s section titled “Statement of the Case” at page 1, line 3 of the Final Brief has been rewritten.
- f. Appellant’s section titled “Facts of the Case” at page 4, line 2 of the Final Brief has been rewritten.
- g. Appellant’s section titled “Facts of the Case” at page 4, line 5 has been rewritten to include a new factual assertion.
- h. Appellant’s section titled “Argument #2” at page 13, line 15–page 14, line 4 is a new argument.
- i. Appellant’s section titled “Conclusion” at page 17, lines 10–12 seeks new relief.

These changes introduce a new issue and argument that were not previously raised in Appellant’s Initial Brief. This is a direct violation of Rule 211, SCACR. As a result, Respondent is prejudiced by the changes by not having an opportunity to respond to the new argument given that no responsive brief is permitted at Respondent’s filing of its Final Brief.

However, in an effort keep this case uncomplicated and not prolong this Court’s decision in the case, Respondent asserts the changes identified above as “a, d, e, f, g, h, and i” are marginal offenses and requests that this Court strike only those portions of the Final Brief identified above as “b” and “c” that contain the new issue in the Statement of Issues on Appeal and argument identified as Argument #3.

II. APPELLANT’S NEW ISSUE AND ARGUMENT ARE NOT PRESERVED ON APPEAL FOR APPELLATE REVIEW.

Appellant did not raise the new issue and argument in her Notice of Appeal to the Administrative Law Court, or in her reply to Respondent’s Motion for Summary Judgment,

or in her Notice of Appeal to this Court, or in her Initial Brief. Thus, it is not preserved for appeal.

As indicated above, Appellant raises the issue whether the Administrative Law Judge's order of summary judgment was based on false data, that being Appellant's property is only land with no structure. Appellant states in Final Brief section titled "Argument #3" at page 16, that "1109 Porcher School Road is only 1.6 acres of rural land as opposed to 2.57-acre parcel used in the valuation and relied upon in respondent's response to this appeal." (emphasis added). Appellant believes the County Assessor valued 2.57 acres to arrive at the property's fair market valuation of \$170,000. Appellant is mistaken. The Assessor valued 1.6 acres.

Respondent takes strong issue with this argument and objects to Appellant including it. It should be stricken because Appellant has not preserved it for appellate review. And, further, Appellant fails to identify any documents or cite any support of her claim that the Assessor valued 2.57 acres of land instead of 1.6 acres.

This Court in *Zinn v. CFI Sales & Mktg.* stated: "We question whether the Zinn Plaintiffs have abandoned this issue on appeal as they failed to cite any authority on this point in either their appellate brief or reply brief. (citation omitted); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal); *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ('An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.')." *Zinn v. CFI Sales & Mktg.*, 415 S.C. 93, 112-13, 780 S.E.2d 611, 621 (Ct. App. 2015).

In Appellant’s Final Brief, she fails to offer *any* facts to support her argument. (emphasis added). Her argument is simply a conclusory statement. Therefore, Appellant has abandoned the new issue on appeal pursuant to *Zinn, First Savings Bank, and Lindsey*.

As stated in Respondent’s Initial Brief at page 12, Appellant did not provide an appraisal of the property. As noted in the Administrative Law Judge’s Order Granting Motion for Summary Judgment, Appellant disputes the propriety of a new assessment, but “she has not challenged the amount of the new appraised value.” (Order at 8, ¶ 2). Without a challenge to the presumption of correctness of Respondent’s value, Appellant concedes the value, and the Administrative Law Judge is correct in concluding the fair market value of the property is \$170,000 for tax year 2023.

III. RESPONDENT IDENTIFIES DOCUMENTS AND OTHER MATERIALS THAT SHOW FAIR MARKET VALUE OF APPELLANT’S PROPERTY WAS BASED ON 1.6 ACRES.

To the extent this Court allows Appellant’s new issue and argument, Respondent respectfully requests that this Court grant Respondent’s motion to amend the Designation of Matter to be Included in the Record on Appeal to set forth with specificity other relevant materials to be included in the record on appeal.

Respondent requests that the Designation of Matter to be Included in the Record on Appeal be amended to include the following:

- a. Respondent’s Appraisal Report of the real property,
- b. Tax Bills for years 2018 through 2024 for the property,
- c. Quitclaim Deed conveying the property to Appellant in 2020,
- d. Charleston County Assessor’s Office Protest of Appraisal/Assessment for Tax year 2024,
- e. Notice of Classification, Appraisal, & Reassessment of Real Estate 2024 Tax Year,
- f. Notice of Appeal of Tery Scott to the South Carolina Administrative Law Court.

The referenced documents show that Appellant's property is identified in the County records as residential property containing 1.6 acres, and that it has been taxed from 2000 - 2024 as 1.6 acres. The documents show that the County Assessor appraised the property based upon the hypothetical assumption that the property is a vacant residential lot with well and septic tank as 1.6 acres using comparable properties ranging from 0.55, 1.40, and 1.88 acres located in Awendaw proximate to Appellant's property. The personal property mobile home located on the property is not subject to the appraisal.¹ Appellant would know that the fair market valuation is based on 1.6 acres had she reviewed the documents listed above when they were provided to her at the administrative level.

CONCLUSION

Respondent contends that Appellant's new issue and arguments have not been preserved on appeal for appellate review and therefore this Court should strike the portion of the Final Brief containing the new issue and arguments. Respondent further contends that the fair market value of Appellant's property for tax year 2023 is based on the valuation of 1.6 acres, not 2.57 acres.

For the foregoing reasons, Charleston County requests that the portions of Appellant's Final Brief containing the new issue in the section titled Statement of Issues on Appeal and argument identified in the section titled Argument #3 be stricken.

¹ Respondent appraised Appellant's property for tax year 2023 based on the valuation of 1.6 acres despite the property description in the recorded quitclaim deeds conveying 2.57 acres to Appellant in 2020 and 2.57 acres from Appellant to her three family members in 2022. The property description in the deeds describe the property as that "parcel or lot of land, measuring and containing 2.57 acres, more or less," which is the valid, legal description of the property. That property description is an incorrect description, creating an inconsistency in the chain of title with potential to cause boundary disputes. This has been perpetuated by Appellant for failure to take into consideration a subdivision plat recorded in 1991. At present, Appellant has neglected to correct the defect in the legal description of the property.

Respectfully submitted,

CHARLESTON COUNTY ATTORNEY'S OFFICE

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PROOF OF SERVICE

I certify that I have served the **Motion to Strike a Portion of Appellant’s Final Brief and/or, in the Alternative, Motion to Amend Respondent’s Designation of Matter to be Included in the Record on Appeal and Memorandum of Law in Support of Respondent’s Motion to Strike and/or, in the Alternative, Motion to Amend** upon Appellant Terry Scott addressed as follows:

Terry Scott
1619 Rodeo Drive
Virginia Beach, Virginia 23464

[Signature on Following Page]

Respectfully submitted,

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