

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

SANDRA HOLMWOOD, pro se and
HUGH PRICE, pro se
Appellants,

v.

LISA MOLSTAD,
Respondent.

Appellate Case No.: 2023-CP-41-00232

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

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SC Court of Appeals

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

The Motion to Supplement the Record on Appeal should be granted because the certified appellate mandate and post-remand trial court orders are essential to a complete and accurate appellate record, are material to the issues on appeal, were not available when the trial court ruled, and fall squarely within the supplementation procedures established by the South Carolina Appellate Court Rules. For the following reasons, supplementation is both procedurally proper and substantively necessary.

RULE 212(b), SCACR, EXPRESSLY AUTHORIZES SUPPLEMENTATION OF THE RECORD ON APPEAL BY MOTION WHERE THE PARTIES DO NOT CONSENT, AND RULE 240(c) ESTABLISHES THE DOCUMENTARY REQUIREMENTS THAT APPELLANTS HAVE SATISFIED.

A. Rule 212(b) Provides the Procedural Mechanism for This Motion

Rule 212(b), SCACR, provides that "[t]he record on appeal may be corrected or modified at any time by stipulation of the parties... or by order of the appellate court *on motion of a party and notice to all other parties.*" (Emphasis added.) This provision serves two critical functions in South Carolina appellate practice.

First, it establishes that supplementation is permissible even absent stipulation or consent of opposing parties. Where, as here, the parties have not agreed to supplementation, the rule expressly contemplates that the movant may seek leave by motion. This is precisely the procedural posture presented. Appellants have conferred with counsel for Respondent regarding supplementation, consent has not been obtained, and Appellants therefore proceed by motion. The rule anticipates and authorizes this pathway.

Second, the rule imposes no temporal limitation on when a motion to supplement may be filed. The phrase "at any time" reflects a policy judgment that the integrity and completeness of the appellate record takes precedence over rigid procedural deadlines. *See Dawkins v. Dawkins*, 386 S.C. 169, 176, 687 S.E.2d 52, 56 (Ct. App. 2009) ("The rules permit the supplementation of the record on appeal to ensure that the appellate court has before it all materials necessary to properly decide the issues presented."). This flexible approach recognizes that material developments may occur after the initial record is compiled—particularly in cases involving parallel or related proceedings.

B. Rule 240(c) Establishes Documentary Requirements That This Motion Satisfies.

Rule 240(c), SCACR, requires that motions relying upon facts not appearing in the Record on Appeal "be supported by affidavit or other sworn statement or documentation." This requirement ensures the Court has a verified factual basis for evaluating supplementation requests and prevents parties from making unsupported factual representations.

The Motion will fully comply with Rule 240(c) by filing the following documents as soon as these are received from the remanding court. These documents provide both documentation and verification:

- A certified copy of the appellate mandate in the underlying restraining-order matter (Appellate Case No. 2023CP4100171). This is a judicial record certified by the Clerk of the Court of Appeals and constitutes self-authenticating documentation under South Carolina law. See Rule 902(4), SCRE (certified copies of public records are self-authenticating).
- Certified copies of all post-remand trial court orders relevant to this appeal. These orders will be certified by the Clerk of Court for Saluda County and likewise constitute self-authenticating judicial records.
- An affidavit of counsel verifying (a) the date of receipt of the appellate mandate, (b) the date of receipt of the post-remand trial court orders, and (c) that these materials do not appear in the current Record on Appeal. This sworn statement provides the factual foundation required by Rule 240(c) and enables the Court to determine that the proposed supplemental materials are in fact extraneous to the existing record.

These three exhibits, taken together, satisfy both the documentation requirement (certified judicial records) and the verification requirement (sworn affidavit) of Rule 240(c). The Court therefore will have before it a properly supported motion that presents verified facts and authenticated documents as the basis for supplementation.

RULE 210(c), SCACR, LIMITS APPELLATE REVIEW TO THE RECORD ON APPEAL, AND THE CERTIFIED MANDATE AND POST-REMAND ORDERS ARE MATERIAL TO QUESTION 2 BECAUSE THEY DIRECTLY AFFECT THE FAVORABLE-TERMINATION INQUIRY AND THE PROPRIETY OF SUMMARY JUDGMENT

A. The Appellate Court Is Strictly Limited to the Record on Appeal.

Rule 210(c), SCACR, provides that "[t]he record on appeal shall consist of" the designated portions of the lower court record and related materials, and further provides that "[t]he appellate

court shall not consider any other evidence." This limitation is not merely procedural—it reflects fundamental principles of appellate review in South Carolina.

The South Carolina Supreme Court has consistently held that appellate courts are confined to the record on appeal and may not consider matters *dehors* the record. *Stokes v. First Nat'l Bank of S.C.*, 306 S.C. 46, 49, 410 S.E.2d 248, 250 (1991) ("This Court's review is limited to the record on appeal and we may not consider matters *dehors* the record."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that this Court cannot consider matters outside the record on appeal.").

This limitation serves important purposes. It ensures fairness by requiring that all parties have notice of and opportunity to address the materials before the appellate court. It promotes judicial efficiency by establishing clear boundaries for appellate review. And it maintains the proper relationship between trial and appellate functions—the trial court develops the factual record, while the appellate court reviews that record for legal error.

But the corollary principle is equally important: *when material facts or documents are missing from the record, the appellate court cannot properly adjudicate the issues before it.* To require this Court to decide the present appeal without the certified mandate and post-remand orders would force the Court to render judgment on an incomplete—and potentially inaccurate—record. That outcome would disserve the interests of justice and risk an erroneous appellate decision.

B. The Supplemental Materials Are Directly Material to Question 2 of This Appeal

Question 2 of this appeal challenges the trial court's grant of partial summary judgment on Appellants' malicious prosecution and abuse of process claims. The supplemental materials are material to this question in three distinct and critical respects:

1) The Favorable-Termination Element of Malicious Prosecution

Under South Carolina law, a plaintiff asserting a malicious prosecution claim must prove five elements: "(1) the commencement or continuance of original judicial proceedings, either criminal or civil; (2) its legal causation by the present defendant against plaintiff who was defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; and (5) the presence of malice." *Elletson v. Dixie Home Stores*, 329 S.C. 1, 6, 494 S.E.2d 126, 128 (1997) (emphasis added).

The third element—*bona fide termination in favor of the plaintiff*—is often referred to as the "favorable termination" requirement. It is an essential element that the plaintiff must establish. *Id.*; see also *Sowell v. Veal*, 301 S.C. 408, 410, 392 S.E.2d 133, 134 (1990) (same).

The trial court granted partial summary judgment dismissing the malicious prosecution claims in part on the ground that certain of the underlying proceedings had not terminated favorably to Appellants. Specifically, the trial court relied on Mr. Price's guilty plea to a single count of Harassment in the Second Degree and concluded that this plea precluded the malicious prosecution claims.

The post-remand orders may fundamentally alter this analysis. If, as Appellants believe, the trial court entered dismissal orders or warrant recall orders following remand of the underlying restraining order matter, those orders may constitute favorable terminations as to the specific proceedings that were dismissed or recalled. South Carolina law is clear that a malicious prosecution claim may be based on each separate and distinct proceeding initiated by the defendant. See *McKenney v. Jack*

Eckerd Corp., 304 S.C. 21, 22-23, 402 S.E.2d 887, 888 (1991) (recognizing that each separate criminal charge may give rise to a distinct malicious prosecution claim).

Thus, while Mr. Price's guilty plea to Harassment in the Second Degree may preclude a malicious prosecution claim *based on that specific charge*, it does not preclude claims based on *other, factually distinct proceedings* that Respondent initiated against Appellants. To the extent the post-remand orders dismissed or recalled warrants related to those other proceedings—such as allegations of theft, vandalism, animal cruelty, or drug manufacturing—those dismissals or recalls would constitute favorable terminations for purposes of malicious prosecution claims arising from those *separate proceedings*.

Without the post-remand orders in the appellate record, this Court cannot determine (a) which specific proceedings were dismissed or recalled, (b) the factual basis for those dismissals or recalls, or (c) whether those dismissals or recalls satisfy the favorable-termination requirement for malicious prosecution claims tied to those particular proceedings. The trial court did not have the benefit of these orders when it granted summary judgment. This Court should have them now to determine whether the trial court's ruling was premature or legally erroneous in light of subsequent developments.

2) The Propriety of Summary Judgment on an Incomplete Factual Record

Summary judgment is appropriate only when "there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The party moving for summary judgment bears the burden of

establishing the absence of any genuine issue of material fact. *Tuomey Healthcare Sys., Inc. v. Leverette*, 416 S.C. 491, 498, 787 S.E.2d 24, 28 (2016).

Here, the trial court granted summary judgment at a time when critical factual developments were still unfolding. The underlying restraining-order matter was on appeal. The remand had not yet occurred. The post-remand proceedings had not yet taken place. As a result, *the trial court lacked a complete factual record on the favorable-termination element of the malicious prosecution claims.*

Rule 56(f), SCRPC, expressly contemplates this scenario. It provides: "Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had..." This rule reflects the principle that summary judgment should not be granted when material facts remain to be developed.

South Carolina courts have consistently held that summary judgment is premature when the factual record is incomplete. *Osborne v. Adams*, 346 S.C. 4, 8, 550 S.E.2d 319, 321 (2001) ("The nonmoving party must be given a reasonable opportunity to conduct discovery to develop a factual basis for his claims."); *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (summary judgment improper where "the mere possibility that a genuine issue of material fact exists"). The post-remand orders are precisely the type of material factual development that Rule 56(f) and these precedents contemplate. They bear directly on an essential element (favorable termination) of the dismissed claims. They were not available

when the trial court ruled. And they may well demonstrate that genuine issues of material fact exist that preclude summary judgment. The appellate record should include these orders so that this Court can assess whether the trial court's grant of summary judgment was appropriate under Rule 56.

3) He Certified Mandate will Establish Jurisdiction and Timing

The certified appellate mandate is essential to understanding *when* the post-remand orders became effective and *what* authority the trial court had on remand. Under South Carolina law, "[t]he mandate is the official notice of the appellate court's action that the court transmits to the lower court." Adam Crews, *The Mandate Rule*, 73 S.C. L. Rev. 263, 266 (2021). The mandate serves two critical functions.

First, the mandate "ends the appellate court's jurisdiction and returns jurisdiction to the trial court." *Id.* Until the mandate issues, the trial court generally lacks jurisdiction to take further action in the case. See *Sloan v. Hardee*, 233 S.C. 263, 268, 104 S.E.2d 415, 418 (1958) (holding that trial court lacked jurisdiction to act before mandate issued). The date the mandate issued therefore establishes *when* the trial court regained jurisdiction and *when* any subsequent trial court orders became effective.

Second, the mandate defines the scope of the trial court's authority on remand. "The mandate rule provides that 'the decision of an appellate court is binding upon remand and neither the trial court nor the appellate court may deviate from the mandate in subsequent proceedings in the same case.'" *Strickland v. Strickland*, 375 S.C. 76, 79, 650 S.E.2d 465, 467 (2007) (quoting Crews, *supra*, 73 S.C. L. Rev. at 267). The mandate therefore establishes *what* the trial court was authorized to do on remand.

Without the certified mandate in the appellate record, this Court cannot determine: (a) the effective date when jurisdiction returned to the trial court; (b) the scope of the trial

court's authority on remand; or (c) whether the post-remand orders were within the trial court's jurisdiction and authority. These are fundamental questions that bear on the validity and effect of the post-remand orders. The mandate must be part of the appellate record.

RULE 220, SCACR, AUTHORIZES REMAND WHERE INTERVENING EVENTS AFFECT THE ISSUES ON APPEAL, AND IF THE SUPPLEMENTAL MATERIALS DEMONSTRATE FAVORABLE TERMINATIONS, REMAND FOR RECONSIDERATION IS APPROPRIATE

Rule 220(c), SCACR, provides that "[t]he appellate court may... remand the proceeding to the lower court for such further action as may be just under the circumstances." This broad remedial authority permits the appellate court to fashion relief appropriate to the specific circumstances of each case. *See Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998) (discussing scope of appellate remand authority).

Here, if the Court grants this Motion and determines that the post-remand orders include dismissals or warrant recalls that constitute favorable terminations for certain of the underlying proceedings, two remedial options would be available under Rule 220.

A. Reversal of the Partial Summary Judgment

First, if the supplemental materials demonstrate that Appellants have satisfied the favorable-termination element as to certain malicious prosecution claims, the Court could reverse the trial court's grant of partial summary judgment as to those claims. The trial court ruled without the benefit of the post-remand developments. A ruling that was correct at the time it was entered may become incorrect in light of subsequent events—particularly where, as here, those events directly affect an essential element of the claim. *See generally Pitts v. Fink*, 389 S.C. 332, 340, 698 S.E.2d 656, 660 (2010) (recognizing that changed circumstances may affect appropriateness of summary judgment).

B. Remand to the Trial Court for Reconsideration

Alternatively, the Court could remand to the trial court for reconsideration of the partial summary judgment in light of the supplemental materials. This approach would permit the trial court, in the first instance, to evaluate the legal effect of the post-remand orders, to determine which (if any) malicious prosecution claims are now supported by favorable terminations, and to reconsider its summary judgment ruling accordingly.

A remand would be particularly appropriate here for several reasons. First, the trial court is familiar with the case and the parties. Second, the trial court may need to make factual findings regarding which specific proceedings were dismissed or recalled and whether those dismissals or recalls constitute favorable terminations. Third, if genuine issues of material fact exist following remand, the trial court is better positioned than this Court to manage further proceedings toward resolution.

In short, Rule 220 provides this Court with ample authority to fashion appropriate relief once the supplemental materials are properly before the Court. But that relief cannot be fashioned without first granting this Motion and supplementing the record.

THE CERTIFIED MANDATE IS ESSENTIAL UNDER THE MANDATE RULE TO ESTABLISH WHEN JURISDICTION RETURNED TO THE TRIAL COURT AND THE SCOPE OF THE TRIAL COURT'S AUTHORITY ON REMAND

The mandate rule is a fundamental principle of appellate practice that governs the relationship between appellate courts and trial courts following an appeal. As Professor Adam Crews explains in his comprehensive treatment of the subject, the mandate serves as the formal mechanism by which the appellate court communicates its decision to the trial court and returns jurisdiction for further proceedings. Adam Crews, *The Mandate Rule*, 73 S.C. L. Rev. 263 (2021).

A. *The Mandate Ends Appellate Jurisdiction and Returns Jurisdiction to the Trial Court*

"The mandate is the official notice of the appellate court's action that the court transmits to the lower court." Crews, *supra*, 73 S.C. L. Rev. at 266. When the appellate court issues its mandate, two things happen simultaneously: the appellate court's jurisdiction over the case ends, and the trial court's jurisdiction is restored. *Id.* at 267.

This jurisdictional shift has important practical consequences. Until the mandate issues, the trial court generally lacks jurisdiction to take any further action in the case. South Carolina courts have held that orders entered by a trial court before issuance of the mandate are void for lack of jurisdiction. *Sloan v. Hardee*, 233 S.C. 263, 268, 104 S.E.2d 415, 418 (1958). Conversely, once the mandate issues, the appellate court loses jurisdiction and cannot reconsider its decision absent extraordinary circumstances.

Here, the certified mandate establishes the *precise date* when jurisdiction returned to the trial court in the underlying restraining-order matter. That date is critical because any post-remand orders entered *before* the mandate issued would be jurisdictionally defective, while orders entered *after* the mandate issued would be valid (assuming they comply with the mandate's terms). Without the certified mandate, this Court cannot make that temporal assessment.

B. *The Mandate Defines the Scope of the Trial Court's Authority on Remand*

The mandate rule also establishes what the trial court may do on remand. "The decision of an appellate court is binding upon remand and neither the trial court nor the appellate court may deviate from the mandate in subsequent proceedings in the same case." *Strickland v. Strickland*, 375 S.C. 76, 79, 650 S.E.2d 465, 467 (2007). The trial court's authority on remand is limited to implementing the appellate court's decision and taking such further action as the mandate permits. Crews, *supra*, 73 S.C. L. Rev. at 279-84.

The scope of the trial court's authority depends on the nature of the appellate court's decision. Where the appellate court reverses and remands with specific instructions, the trial court must follow those instructions. Where the appellate court remands for further proceedings without specific instructions, the trial court has broader discretion—but even then, the court cannot take action inconsistent with the appellate decision. *Id.*

Here, the certified mandate will reveal: (a) what the appellate court decided in the underlying restraining-order matter; (b) what instructions (if any) the appellate court gave to the trial court on remand; and (c) what authority the trial court had to enter the post-remand orders. This information is essential to evaluating the validity and legal effect of those post-remand orders. For example, if the appellate court reversed certain restraining-order proceedings and remanded for dismissal, and the trial court then dismissed those proceedings and recalled related warrants, those dismissals and recalls would have been mandated by the appellate decision and would clearly constitute favorable terminations. Conversely, if the appellate court affirmed the restraining order but remanded on a limited issue, the scope of the trial court's authority on remand would be more constrained.

The point is that *the certified mandate is the definitive source* for understanding what happened in the underlying appeal and what authority the trial court had on remand. Neither the parties' characterizations nor this Court's speculation can substitute for the actual mandate. The mandate must be in the appellate record.

C. Certification is Required for Appellate Consideration

Finally, it is significant that Appellants are providing a *certified* copy of the mandate, not merely a copy from the online docket or the parties' files. Certification by the Clerk of the appellate court ensures authenticity and creates a self-authenticating record under Rule 902(4), SCRE.

This certification gives the Court confidence that the mandate it is reviewing is a true and accurate copy of the appellate court's official action.

Moreover, as a practical matter, certified judicial records are the standard by which appellate courts evaluate procedural history and jurisdictional questions. Providing the certified mandate ensures that this Court has the same quality of record it would expect in any case involving questions of appellate jurisdiction and mandate compliance.

CONCLUSION

The supplemental materials Appellants seek to add to the record—the certified appellate mandate and the post-remand trial court orders—are not peripheral or tangential to this appeal. They are central to Question 2 and essential to a complete and accurate appellate record.

The Motion is procedurally proper under Rules 212(b) and 240(c), SCACR. The supplemental materials are substantively material because they bear directly on the favorable-termination element of the malicious prosecution claims, the propriety of the trial court's grant of summary judgment, and the legal effect of the underlying appeal and remand. The certified mandate, in particular, is essential under the mandate rule to establish jurisdiction and define the scope of the trial court's authority on remand.

To deny this Motion would be to require the Court to decide Question 2 on an incomplete record—without knowing which proceedings were dismissed or recalled, without knowing when those actions became effective, and without knowing whether they constitute favorable terminations. That approach would risk an erroneous decision and would be inconsistent with the principle, well-established in South Carolina law, that appellate review should be conducted on a complete and accurate record.

For these reasons, the Motion to Supplement the Record on Appeal should be granted.

Respectfully submitted this 8th day of December, 2025.

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