

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

RECEIVED

Jan 14 2026

SC Court of Appeals

Common Pleas Case No.: 2024-CP-08-01894
Appellate Case No.: 2025-001090

Erik Lebkicher, Carissa Lebkicher, and
E. L., a minor child,.....Appellants,

v.

Stephanie Davidson & Drew P.
Finnegan,.....Respondents.

**APPELLANT’S MOTION FOR LEAVE TO FILE A CORRECTED INITIAL BRIEF TO
INCLUDE STATEMENT OF ISSUES ON APPEAL**

Appellants, by counsel, respectfully move this Court pursuant to Rule 210, SCACR, for leave to file a corrected Initial Brief for the limited purpose of including a Statement of Issues on Appeal that was inadvertently omitted from the filed brief due to a clerical PDF-formatting error. The proposed Statement of Issues are attached as Exhibit “A”.

ARGUMENT

I. THE OMISSION WAS CLERICAL AND INADVERTENT.

Appellants timely filed their Initial Brief in this appeal. During the final compilation and conversion of the brief into PDF format, however, the “Statement of Issues on Appeal” section

was inadvertently omitted as the result of a clerical formatting error. The omission was entirely unintentional, non-substantive, and purely ministerial in nature. At no time did Appellants intend to waive, abandon, or forgo review of any appellate issue, nor did the omission reflect any strategic or substantive decision regarding the scope of the appeal.

II. ALL ISSUES WERE FULLY BRIEFED AND ARGUED.

Notwithstanding the clerical omission, every issue Appellants seek to present on appeal was clearly, thoroughly, and fully briefed in the Argument section of the Initial Brief. The brief expressly identifies the specific circuit court rulings being challenged, sets forth the applicable standards of review governing each issue, and presents detailed legal authority and analysis in support of Appellants' positions. The substance of each issue is plainly set forth such that Respondents were afforded full and fair notice of the questions presented for appellate review.

Importantly, this motion does not seek to introduce any new issues, expand the scope of the appeal, modify existing arguments, or supplement the record. Rather, it seeks only leave to insert the formal "Statement of Issues on Appeal" section required by Rule 208(b)(1), SCACR, so that the brief's organizational structure accurately reflects the arguments that were already fully presented to the Court.

III. THE OMISSION IS NOT JURISDICTIONAL AND DOES NOT CONSTITUTE ABANDONMENT.

The omission of a "Statement of Issues on Appeal" does not constitute a jurisdictional defect under Rule 208(b)(1), SCACR, and does not deprive this Court of authority to consider the appeal. South Carolina appellate courts have consistently held that issues are deemed abandoned only when they are not fairly presented and argued in the body of the brief. Where, as here, the

substantive arguments have been fully developed and properly supported with legal authority, the absence of a formal heading does not operate as a waiver of those issues.

Because the appellate issues were clearly and extensively argued in the Initial Brief, no abandonment occurred, and no party's substantive rights have been affected by the clerical omission.

IV. NO PREJUDICE TO RESPONDENTS.

Allowing Appellants to file a corrected brief will not prejudice Respondents in any respect. The proposed corrected brief will add only the formal "Statement of Issues on Appeal," which mirrors the issues already briefed and argued. It introduces no new claims, theories, authorities, or factual content, and it does not alter the substance of the appeal. Moreover, Respondents have already addressed the merits of Appellants' arguments and therefore will suffer no unfair surprise, disadvantage, or impairment of their ability to respond.

CONCLUSION

Wherefore, Appellants respectfully request that the Court grant leave to file a Corrected Initial Brief for the limited and sole purpose of inserting a formal Statement of Issues on Appeal consistent with the arguments already presented in the Initial Brief and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

January 14, 2026

/s/ Paul B. Ferrara, III

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Other Counsel of Record:

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EXHIBIT A

STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court erred in dismissing Appellants' action with prejudice on the ground that the action was not timely commenced under Rule 3, SCRCPP, where the Summons and Complaint were filed within the statute of limitations and service was ultimately effected within the Rule 3 period.
2. Whether the circuit court abused its discretion in denying leave to amend under Rule 15, SCRCPP, where Appellants sought amendment prior to trial and where dismissal with prejudice was not required as a matter of law.
3. Whether the circuit court erred in concluding that amendment would be futile and that the relation-back doctrine under Rule 15(c), SCRCPP was categorically unavailable, under the facts and procedural posture of this case.
4. Whether the circuit court erred in rejecting Appellants' tolling and equitable relief arguments, including relief necessary to prevent a forfeiture of claims under circumstances inconsistent with the purposes of the Rules of Civil Procedure.

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Stephanie Davidson & Drew P.
Finnegan,.....Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2026, I served a true and correct copy of the foregoing Motion and Cover Letter for Leave to File a Corrected Initial Brief to Include Statement of Issues on Appeal upon the following parties via electronic mail at the addresses shown below:

Sarah P. Spruill – Attorney for Drew Finnegan

sspruill@hsblawfirm.com

Respectfully submitted,

January 14, 2026

/s/ Paul B. Ferrara, III

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*Paul B. Ferrara, III**
*Janel K. Ferrara**

**(also Admitted in N.C.)*

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Jan 14 2026

SC Court of Appeals

January 14, 2026

SENT VIA U.S. MAIL AND ELECTRONIC FILING:

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Lebkicher v. Davidson & Finnegan
Common Pleas Case No.: 2024-CP-00-01894
Appellant Case No.: 2025-001090
Our File No.: 23-561

Dear Ms. Kitchings:

Please find enclosed a clock copy of Appellant's Motion for Leave to File a Corrected Initial Brief to Include Statement of Issues on Appeal along with a \$50 check for the motion fee.

Sincerely,

FERRARA LAW FIRM, PLLC



Paul B. Ferrara III

Enclosures: as stated
cc: Sarah Spruill, Esq. via email