

The South Carolina Court of Appeals

Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation, Respondent,

v.

Dennis Waldrep, Appellant.

Appellate Case No. 2012-207852

ORDER

On July 22, 2013, this appeal was dismissed for the appellant's failure to file a proof of service for the record on appeal. A motion to reinstate was timely filed on August 6, 2013. On September 9, 2013, the Court reinstated the appeal because the appellant provided a corrected proof of service for the record on appeal. However, we cautioned the appellant that he must correct the deficiencies in the record on appeal as set forth in our letter dated September 13, 2013.

On October 3, 2013, the appellant filed an amended record on appeal. This attempt was also riddled with deficiencies, which were set forth in a letter from the Court dated October 14, 2013. Counsel for the respondent subsequently filed a motion to dismiss, alleging the appellant's record on appeal fails to comply with the South Carolina Rules of Appellate Procedure (SCACR) in at least nine respects. The appellant filed a return asking for an opportunity to correct the deficiencies so the appeal could move forward. The respondent filed a return, noting that in addition to the deficiencies noted by the Court, the record on appeal also failed to include matter designated for inclusion. On October 25, 2013, the appellant filed a second amended record on appeal that still fails to comply with the SCACR. The respondent filed a response to the second amended record on appeal, noting it included matter not designated by either party, omitted matter that was designated for inclusion, and failed to comply with form requirements in the SCACR.

After careful consideration, the respondent's motion to dismiss is denied. However, the appellant must file a corrected record on appeal within ten days of the date of the order. The appellant must rectify the following deficiencies in the second amended record on appeal:

- The documents in the record on appeal are not in order as contemplated by Rule 210(c), SCACR. Specifically, the record on appeal should be arranged in the following order: the title page, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate of counsel. Additionally, the transcript does not appear in the record on appeal in chronological order.
- Pages 13-17 of the record on appeal contain material that was not designated by the parties; accordingly, the Court strikes these pages from the record on appeal.
- Page 264 and pages 330-377 of the record on appeal contain material that was not designated by the parties and was not presented to the lower court; accordingly, the Court strikes these pages from the record on appeal.
- Pages 132, 133, 142, 143, 148-150, 152-153, 155, 159, 164, 170, 199, 207, 230, 234, 248, 321, 323, and 325-328 contain handwritten comments that were not presented to the lower court; accordingly, the Court orders the appellant to remove the handwritten marks from the record on appeal. If counsel for the respondent has a clean copy of these pages, counsel must provide a clean copy to the appellant for inclusion in the third amended record on appeal.
- The record on appeal does not contain the following documents designated by the respondent:
 - Trial transcript pages 55-42, 143-155, 182-188, 350-354, 429-457
 - The order and judgment dated July 19, 2011
 - The reply to the answer to the complaint
 - Plaintiff's exhibits 3, 4, 13, and 14
- The certificate of counsel does not comply with Rule 210(g), SCACR. Specifically, it should indicate that the record on appeal contains all material proposed to be included by any of the parties and not any other material.

Failure to rectify each of these deficiencies within ten days of the date of this order will result in dismissal of the appeal.

H B Wilson, J.
FOR THE COURT

Columbia, South Carolina

cc:
Dennis Waldrep
William C. Hood

FILED
12/20/13