

RECEIVED
Jul 01 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-001091

Lower Court Case No. 2025-CP-26-09089

Claran Lundgren,

Appellant,

v.

Ashton Glenn Homeowners' Association, Inc., Waccamaw Management, LLC, and Bob Sauthoff, individually and as agent of the HOA,

Respondents.

**APPELLANT'S QUALIFIED OBJECTION TO RESPONDENTS' DESIGNATION OF
MATTER AND MOTION TO ENFORCE THE RULE 209 AND RULE 210 RECORD
BOUNDARIES**

Appellant Claran Lundgren, proceeding pro se, respectfully objects to Respondents' Designation of Matter pursuant to Rule 209, SCACR, to the extent Respondents seek to include and rely upon their late-filed February 17, 2026 memorandum and Motion Exhibits A through K as substantive Rule 12(b)(6) proof, admitted evidence, undisputed factual matter, or a factual preclusion record on appeal.

To be clear, Appellant does not ask this Court to strike or remove any document from the Record on Appeal. The Record should reflect everything filed below, and Appellant needs Respondents' late-filed memorandum and Exhibits A through K to remain in the Record precisely to show that the circuit court reached beyond the pleadings; Appellant asks only that their inclusion not be treated as substantive proof or as any concession. Appellant therefore does not object to an accurate appellate record showing what was filed, served, objected to, presented, or allegedly relied upon below. Appellant objects only to Respondents' attempt to use their Designation of

Matter to transform late-filed extra-pleading materials into Rule 10(c) pleading exhibits, admitted evidence, undisputed facts, or properly considered Rule 12(b)(6) materials.

In support of this qualified objection, Appellant shows the Court the following:

I. Rule 209 and Rule 210 Require the Record to Reflect the Actual Procedural Posture Below.

Rule 209, SCACR, governs the designation of matter to be included in the Record on Appeal. Rule 210, SCACR, governs the content of the Record on Appeal. Together, those rules ensure that the appellate court reviews the case as it was actually presented below, including the procedural posture, preserved objections, and materials properly before the lower court.

Respondents' Designation of Matter attempts to include their late-filed February 17, 2026 memorandum and Exhibits A through K as though those materials were properly before the circuit court for substantive consideration under a pure Rule 12(b)(6) posture. That is the precise issue Appellant preserved below and raises on appeal.

Appellant's objection is not newly raised in response to Respondents' Designation. Appellant preserved this same procedural defect by written objection before the February 23, 2026 hearing, renewed it on the hearing record before Judge Hyman, preserved it through her Rule 56(f) motion and Rule 59(e) motion, designated the related filings and hearing transcript in her Rule 209 Designation, and raised the same Rule 12/Rule 56 issue in her Initial Brief on appeal.

Appellant's objection is therefore qualified. If Respondents' late-filed memorandum and Exhibits A through K are included in the Record on Appeal, their inclusion should be limited to showing the procedural sequence: what Respondents filed, when they filed it, what Appellant objected to, and whether the circuit court exceeded the Rule 12 posture or triggered Rule 56 conversion. Their inclusion should not be treated as a concession that the materials were timely, admissible, incorporated into Appellant's Verified Complaint, undisputed, or properly considered to resolve preclusion at the pleading stage.

Appellant's own Rule 209 Designation expressly preserved objections to untimely, overbroad, irrelevant, duplicative, or extra-record materials. Appellant's designation of Respondents' filings and related service and transmission proof was a procedural designation, not a substantive adoption of those materials. Respondents therefore cannot treat Appellant's effort to create an accurate appellate record as a concession that Respondents' late-filed materials were timely, admissible, undisputed, incorporated into Appellant's Verified Complaint, or properly considered for substantive Rule 12 purposes.

That distinction is critical. Appellant's Rule 10(c) position applies to the exhibits attached to or filed with her Verified Complaint, which are part of the pleadings. It does not convert Respondents' later February 17, 2026 memorandum, Exhibits A through K, or prior-record materials selected by Respondents into Appellant's pleading exhibits, admitted evidence, undisputed facts, or proper Rule 12(b)(6) proof.

II. Respondents Violated the Court's 10-Day Scheduling Directive.

The Clerk of Court's January 22, 2026 Notice of Motion Scheduling for the February 23, 2026 hearing before the Honorable B. Alex Hyman imposed a clear submission deadline: "All memos and briefs are to be mailed/mailed to the Judge of the week 10 days prior to the date of the hearing." [Scheduling Notice, Jan. 22, 2026 (Designation Item 8)].

Because the hearing was scheduled for February 23, 2026, the 10-day deadline was February 13, 2026. Respondents' extensive memorandum and Exhibits A through K were not timely served within that deadline. Appellant objected in writing before the hearing, noting that she was a Traditional Filer, requesting the official Notices of Electronic Filing and file-stamped copies, objecting to the late memorandum and exhibits, and asking the circuit court to strike or decline to consider those materials. [Feb. 18, 2026 Email Objection / NEF Request (Designation Item 9)].

Appellant then preserved the same objection on the hearing record. At the outset of the February 23, 2026 hearing, Appellant advised the circuit court that the scheduling notice required memos and briefs to be mailed ten days before the hearing, that she had received a lengthy dispositive memorandum after the deadline, and that she respectfully asked the court to strike or decline to consider the late memorandum and exhibits and limit argument to what was timely served. [Feb. 23, 2026 Hr'g Tr. p. 5, ll. 14-22 (Designation Item 19)].

This was not a technical objection divorced from prejudice. Respondents' late memorandum and Exhibits A through K supplied the expanded preclusion framework and outside-record universe later used to support dismissal, while Respondents simultaneously maintained that the motion remained within Rule 12.

III. Respondents' Hearing Representations Confirm the Rule 12 Boundary.

At the hearing, the circuit court recognized the Rule 12 boundary, stating: "What you're talking about is a motion for a dismissal under some form of Rule 12. Yes, I am bound by what's included in the pleadings." [Feb. 23, 2026 Hr'g Tr. p. 14, ll. 21-25 (Designation Item 19)].

Respondents' counsel then represented that Respondents were not asking the court to consider outside documents, discovery, or similar materials, stating: "I'm not asking you to consider any documents, or discovery, or anything like that." [Feb. 23, 2026 Hr'g Tr. p. 21, ll. 17-25 (Designation Item 19)].

Respondents cannot preserve a Rule 12 posture below by disclaiming reliance on outside materials, then use their Designation of Matter to transform those same extra-pleading materials into substantive appellate proof supporting preclusion. At most, the materials may show what Respondents filed and what Appellant objected to. They may not be used as factual proof to resolve disputed record-integrity, scope-of-adjudication, privity, later-accruing injury, notice and hearing, or preclusion issues against Appellant at the pleading stage.

Respondents likewise cannot use their Designation of Matter to retroactively shield disputed prior-record materials under the guise of judicial notice. A court may take judicial notice that prior filings, orders, or proceedings exist, but judicial notice cannot be used at the pleading stage to resolve disputed factual issues, record-integrity disputes, the completeness of a challenged prior record, or the preclusive effect of those materials without converting the matter to Rule 56 and affording the required Rule 56 protections.

IV. Respondents' Designation Creates the Same Procedural Fork Preserved Below.

Appellant preserved the following procedural fork below and continues to preserve it here: either the circuit court excluded Respondents' outside materials and decided the motion strictly from Appellant's Verified Complaint and its incorporated Rule 10(c) exhibits; or the circuit court considered Respondents' outside materials, prior-record materials, or Exhibits A through K for their truth, completeness, or preclusive effect, which required conversion to Rule 56 and a reasonable opportunity for Appellant to pursue Rule 56(f) discovery and preservation of the disputed native audio and related record-integrity materials.

Respondents' Designation of Matter cannot erase that fork. If Respondents' late-filed materials are set aside from substantive consideration, then the dismissal must be tested only against the Verified Complaint and its properly incorporated exhibits. If those materials were considered to resolve disputed preclusion facts, then the Rule 12 dismissal was procedurally improper without Rule 56 conversion and without Appellant's requested Rule 56(f) discovery and forensic preservation.

V. Requested Relief.

For these reasons, Appellant respectfully requests that this Court sustain this qualified objection and enforce the Rule 209 and Rule 210 boundaries as follows:

1. Hold that Respondents' late-filed February 17, 2026 memorandum and Exhibits A through K, though properly included in the Record on Appeal, may be considered only for the procedural-history purpose of showing what was filed, when it was filed, what Appellant objected to, and whether the circuit court exceeded the Rule 12 posture or triggered Rule 56 conversion, and not as substantive Rule 12(b)(6) proof, admitted evidence, undisputed facts, or a factual preclusion record;
2. Hold that the inclusion of those materials in the Record on Appeal does not constitute a concession that they were timely, incorporated into Appellant's Verified Complaint, admitted, undisputed, or properly considered below;
3. Preserve Appellant's argument that if the circuit court relied on those extra-pleading materials for their truth, completeness, or preclusive effect, the Rule 12 dismissal must be reversed because Rule 56 conversion, Rule 56(f) discovery, and forensic record-preservation protections were required; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Claran Lundgren
Claran Lundgren
Appellant Pro Se
Horry County, South Carolina
Dated: July 1, 2026

CERTIFICATE OF SERVICE

I certify that on July 1, 2026, I served the foregoing Appellant's Qualified Objection to Respondents' Designation of Matter and Motion to Enforce the Rule 209 and Rule 210 Record Boundaries on counsel for Respondents by electronic mail and U.S. Mail at the addresses listed below:

Mark Nappier, Esquire
Joye, Nappier, Risher & Hardin, LLC

RECEIVED

Jul 01 2026

SC Court of Appeals

3575 Highway 17 Business
Murrells Inlet, South Carolina 29576
Email: MNappier@inletlaw.com
Counsel for Respondents

Elizabeth S. Millender, Esquire
Jonathan Lane, Esquire
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29464
All Mail To: P.O. Box 12519
Columbia, South Carolina 29211
Email: elizabeth.millender@mgclaw.com; jonathan.lane@mgclaw.com
Counsel for Respondents

Jeffrey Kuykendal, Esquire
McAngus Goudelock & Courie, LLC
6302 Fairview Road, Suite 700
Charlotte, North Carolina 28226
Email: jeffrey.kuykendal@mgclaw.com
Counsel for Respondents

Date: July 1, 2026

s/ Claran Lundgren
Claran Lundgren
Appellant Pro Se