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THE STATE OF SOUTH CAROLINA

AUG 25 2014

IN THE COURT OF APPEALS

SC Court of Appeals

S. Phillip Lenski, Administrative Law Court  
Case No. 2010ALJ-11-0591-AP, 2012ALJ-11-0495-AP

Karen A. Forman

Appellant,

versus

South Carolina Department of Labor,  
Licensing and Regulation, State Board  
of Social Work Examiners,

Respondents.

MOTION TO LIMIT RECORD ON APPEAL

“A party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(b), The respondent’s Designation of Matter to Be Included in the Record on Appeal includes three Transcripts of Record: June 28, 2010 (383 pages), June 29, 2010 (202 pages), and September 17, 2012 (34 pages), a total of 619 pages, exclusive of attachments. Because the initial Brief of Respondent does not cite any reference to any page of any transcript of record, these transcripts, other than the designation by the appellant, should be excluded from the Record on Appeal.

Authorities and Argument

“The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.” Because the

respondent makes no reference to these transcripts, they are not salient or relevant and should not be included in the Record on Appeal.

This is an issue that both the Supreme Court of South Carolina and the South Carolina Court of Appeals have addressed under the prior Rule 4 of the Supreme Court Rules. “The transcript of record in this case is a formidable document of 384 pages.”<sup>1</sup> “The record in this case is over three hundred pages long. We have determined that less than thirty percent of the included material is relevant to the exceptions or additional sustaining grounds before us. The record grossly offends Rule 4 of the Supreme Court Rules.”<sup>2</sup> “Yet, the 219-page transcript of record contains much material that seems irrelevant to any issue on appeal.”<sup>3</sup> The transcripts alone from the respondent’s designation of matter to be included in the record on appeal total approximately two thirds of the total of the three offensive records in *Anderson, Harris, and Merritt*.

Justice Bonham defines the problem in *Anderson*: “This entails on the court an unnecessary burden of reading the irrelevant testimony and weeding therefrom that which is of value in the decision of the issues.”<sup>4</sup> Here, the respondent asks the Court to sort through a haystack that may or may not contain a needle. If the respondent perceives that the haystack contains a needle, it should include that

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<sup>1</sup>*Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 178 S.E. 819, 820 (1934)

<sup>2</sup>*State v. Harris*, 278 S.C. 46, 292 S.E.2d 40 (1982).

<sup>3</sup>*Merritt v. Grant*, 285 S.C. 150, 159, 328 S.E.2d 346, 351 (Ct. App. 1985).

<sup>4</sup>*Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 178 S.E. 819, 820 (1934)

needle in its Designation, while omitting all of the hay. Justice Bonham concludes, “We bring this matter in all kindness of spirit to the attention of the members of the bar, since by a proper preparation of their transcripts of record they may save the court much unnecessary labor.” South Carolina’s appellate court have a much greater caseload and workload today than in 1935, making it even more important that the bar save our courts “much unnecessary labor.”

The per curium opinion in *Harris* is more graphic and explicit in describing the problem. “We denounce not only this casual violation of Rule 4, but also the shocking waste such disobedience begets. At the expense of the State, the mass of irrelevant material in this record has been photocopied, bound, transported, served and stored. We cannot countenance such cavalier disregard of this State’s fiscal resources and of conscientious appellate practice.”

Rule 222(c), SCACR, is an inadequate remedy for three reasons: First, the cost of printing the unnecessary pages is a small part of the cost the appellant will actually incur. Second, it does not provide for attorney’s fees for the additional work that will be required by the appellant. Third, does noting “to ave the court much unnecessary labor” nor does it compensate the Court for the cost of processing, scanning, saving, and storing the hundreds of pages of unnecessary record.

Short, concise, and efficient records on appeal are possible. Judge Goolsby, writing for a panel including Judges Gardner and Cureton, wrote:

In affirming the judgment below, we commend certifying counsel, Thomas F. McDow and Thomas A. McKinney, for their strict adherence to Rule 4 of the Supreme Court Rules. The transcript of

record, which consists of only three pages, is a veritable model of compliance.

Some attorneys, we have noticed, feel compelled to print in the transcript of record everything either occurring during or relating to the trial, including banter between the court and counsel, irrelevant remarks, arguments by counsel relating to questions of law not embraced by an exception, and testimony and documents completely foreign to any issue on appeal. The problem, however, is not a new one [see *Anderson v. Aetna Casualty & Surety Co.*, 175 S.C. 254, 178 S.E. 819 (1935) ] and the threat of sanctions seems not to have cured it. See *State v. Harris*, 278 S.C. 46, 292 S.E.2d 40 (1982); *Merritt v. Grant*, 285 S.C. 150, 328 S.E.2d 346 (Ct.App.1985).<sup>5</sup>

The appellant's motion is consistent with the advice of the Court of Appeals under the prior Rule 4:

If counsel in other cases pending before the Court of Appeals are concerned about a possible violation of Rule 4, they should review the transcript of record in those cases and make an appropriate motion to amend the record should egregious violations of Rule 4 exist. In this way much needless time spent by this court and its staff in reading and preparing the cases for decision can be saved.<sup>6</sup>

The respondent's violation of Rule 209(b), SCACR, is egregious. Granting this motion save "this court and its staff ... reading and preparing the cases for decision ...."

The South Carolina Appellate Court Rules have not provision corresponding to the South Carolina Rules of Civil Procedure's duty to consult,<sup>7</sup> however, on July 30, 2014, Erin K. Urquhart telephoned and e-mailed respondent's counsel

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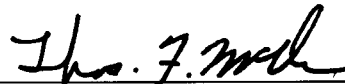
<sup>5</sup>*Coogler v. Thompson*, 286 S.C. 168, 170, 332 S.E.2d 215, 216 (Ct. App. 1985)

<sup>6</sup>*State v. Sumpter*, 286 S.C. 150, 152, 332 S.E.2d 774, 776 (Ct. App. 1985) rev'd in part, 288 S.C. 574, 344 S.E.2d 148 (1986)

<sup>7</sup>Rule 11(a), SCRCRCP.

requesting an modification of the Decimation as “This would save more than 10,500 page in printed paper and printing costs.” Respondent refused.

Law Office of Thomas F. McDow

By  \_\_\_\_\_

Thomas F. McDow  
Attorneys for Appellant  
514 Oakland Avenue, Second Floor  
Post Office Box 891  
Rock Hill SC 29731-6891  
Telephone 803-327-4151

August 22, 2014

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PROOF OF SERVICE

I certify that I served the motion to limit record on appeal by depositing copies of it in the United States Mail, postage prepaid, on August 22, 2014, addressed as follows:

Honorable S. Phillip Lenski  
Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia SC 29201

Lauren N. Kearney  
Assistant Disciplinary Counsel  
S.C. Dept. of Labor, Licensing and Reg.  
Attorney for Respondent  
Post Office Box 11329  
Columbia SC 29211-1329

Law Office of Thomas F. McDow

  
Erin K. Urquhart  
Attorney for Appellant  
514 Oakland Avenue, Second Floor  
Post Office Box 891  
Rock Hill SC 29731-6891  
Telephone 803-327-4151

August 22, 2014



Law Office of Thomas F. McDow  
514 Oakland Avenue, Second Floor  
Post Office Box 891  
Rock Hill SC 29731-6891

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Jenny Abbott Kitchings, Clerk  
South Carolina Court of  
Appeals  
Post Office Box 11629  
Columbia SC 29211

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