

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Appellate Case No: 2014-000148
Civil Action No.: 2011-CP-07-04407

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SC Court of Appeals

Alexander Pastene.....Appellant,

vs.

Thomas Trobaugh, Mr. and Mrs. Norman Ginsburg,
W. Richard Beetle, Country Club of Hilton Head,
Club Corp of Dallas, Texas,
Members of the CCHH Tennis Committee.....Respondents.

**FINAL BRIEF OF RESPONDENTS,
THOMAS TROBAUGH, NORMAN GINSBURG
AND LINDA GINSBURG**

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STATEMENT OF ISSUES ON APPEAL

- I. DOES THE INITIAL BRIEF OF THE APPELLANT COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES?
- II. WAS THE APPELLANT'S NOTICE OF APPEAL TIMELY FILED DUE TO THE SUCCESSIVE MOTIONS FOR RECONSIDERATION?
- III. HAS THE APPELLANT FAILED TO ASSERT ANY ARGUMENT CONCERNING HIS ISSUES ON APPEAL?

STATEMENT OF THE CASE

The Appellant filed suit against the Respondents, Thomas Trobaugh and Mr. and Mrs. Norman Ginsburg, W. Richard Beetle, Country Club of Hilton Head, Club Corp of Dallas, Texas, and CCHH Tennis Committee Members, alleging assault, defamation, and public policy wrongful termination. This Brief is on behalf of the Respondents, Thomas Trobaugh and Norman and Linda Ginsburg (hereinafter referred to as "Respondents").

Respondents filed an Answer and Counterclaim with a general denial, affirmative defenses, and a Counterclaim for defamation and relief under the South Carolina Frivolous Civil Procedures Sanctions Act.¹

The Appellant filed a Motion to Disqualify Respondents' counsel on March 1, 2012. (R. pp.70-72) The Appellant filed an Amendment to Motion to Disqualify Respondents' counsel on March 5, 2012. (R. pp.73-75) The Appellant filed an Addendum to Amendment to Disqualify Respondents' counsel on March 30, 2012. (R. pp. 76-81)

The Appellant did not file any Reply to the Counterclaim and an Affidavit of Default was filed in the Lower Court on March 14, 2012.² No damages hearing on the Counterclaims was held by the Lower Court.

The Lower Court filed an Order on May 17, 2012 denying the disqualification or any request to continue any time for the Appellant to respond.³ On May 23, 2012, the Appellant

¹ The Answer and Counterclaim was not included in Appellant's Record on Appeal despite being designated for inclusion by Respondents.

² The Affidavit of Default was not included in Appellant's Record on Appeal despite being designated for inclusion by Respondents.

³ The Honorable Marvin H. Dukes III's Form 4 Judgment in a Civil Case dated May 17, 2012 was not included in Appellant's Record on Appeal despite being designated for inclusion by Respondents.

filed a Motion to Reconsider Judge Marvin Dukes, III's Order dated May 17, 2012. (R. pp. 122-124)

The Lower Court denied the Motion to Reconsider the Disqualification by Order dated and filed on July 10, 2012.⁴ On July 13, 2012, the Appellant filed and served a Motion to Continue the Disqualification of Respondents' counsel. (R. pp.125-128)

The Lower Court, by Order dated October 18, 2012 and filed on October 19, 2012 denied the Appellant's Motion to Continue the Disqualification of Respondents' counsel and issued an Order that sanctioned the Appellant in the amount of Eight Hundred Twenty-Five and No/100 (\$825.00) Dollars for Respondents' attorneys' fees. The Order gave the Appellant thirty (30) days to make the payment or the Court would entertain a Motion to Dismiss. (R. pp. 9-11)

The Appellant then filed a Response to Honorable Master-in-Equity's Order dated October 18, 2012. This Response was filed in the Lower Court on November 2, 2012. (R. pp. 152-155) In Paragraph 3 of that Response, the Appellant says the he "graduated from law school." On November 14, 2012, the Appellant then filed yet another Motion to Reconsider Master-in-Equity's Order dated October 18, 2012 (R. p. 156)

On November 29, 2012, counsel for the Respondents filed an Affidavit indicating that the Appellant had not paid the Eight Hundred Twenty-Five and No/100 (\$825.00) Dollars that he had previously been ordered to pay.⁵

On December 4, 2012, the Lower Court issued an Order dismissing the case against the Respondents herein. That Order was filed on December 7, 2012. (R. pp. 12, 164)

⁴ The Honorable Marvin H. Dukes III's Form 4 Judgment in a Civil Case dated July 10, 2012 was not included in Appellant's Record on Appeal despite it being designated for inclusion by Respondents..

⁵ Affidavit of Terry A. Finger dated November 28, 2012 and filed on November 29, 2012 was not included in Appellant's Record on Appeal despite it being designated for inclusion by Respondents.

On December 14, 2012, the Appellant filed yet another Motion to Reconsider Master-in-Equity's Order dated December 4, 2012. (R. pp. 165-166)

On April 22, 2013, the Appellant filed a Motion to Excuse Honorable Marvin Dukes, III and Appoint Special Referee.⁶ That Motion was denied by Order dated August 15, 2013 and filed on August 20, 2013. (R. pp. 13, 168)

On September 20, 2013, the Appellant filed a "Notice of Civil Appeal" in the Circuit Court claiming that he was appealing the Orders from Judge Dukes dated October 18, 2012 (filed on October 19, 2012) (R. pp. 9-11), December 4, 2012 (filed on December 7, 2012) (R. pp. 12, 164), and August 15, 2013 (filed on August 20, 2013) (R. pp 13, 168).

This same Notice of Civil Appeal indicated that the Appellant was appealing the Order of Judge Mullen dated May 21, 2012. There is no indication that this Notice of Civil Appeal was directed to the South Carolina Court of Appeals.

On or about October 14, 2013, the Appellant filed an Amended Notice of Appeal, this time styled in the South Carolina Court of Appeals. In this Amended Notice of Appeal, the Appellant indicated he was appealing the Order from Judge Kinard dated March 2, 2012 (R. pp. 5-6), the Order of Judge Mullen dated May 21, 2012 (R. pp. 7-8), and the Orders of Judge Dukes dated October 18, 2012 (filed on October 19, 2012), December 4, 2012 (filed on December 7, 2012), and August 15, 2013 (filed on August 20, 2013).

The Court of Appeals dismissed the Appellant's Appeal and remanded the action to the Circuit Court for a ruling on one of the Appellant's Motions, said Motion not involving the Respondents herein.

⁶ Appellant's Motion to Excuse Honorable Judge Marin H. Dukes, III and Appoint Referee dated and filed on April 22, 2013 was not included in Appellant's Record on Appeal despite it being designated for inclusion by Respondents.

Judge Mullen issued an Order December 11, 2013 which denied the Appellant's Motion. (R. pp. 15-17)

The Appellant served a Notice of Appeal dated January 7, 2014. This Notice of Appeal indicates that the Appellant is only appealing the Order of Judge Mullen dated December 11, 2013. (R. pp.15-17) The Notice of Appeal dated January 7, 2014 does not appeal any of the Orders relative to these Respondents.

ARGUMENTS

I. THE INITIAL BRIEF OF THE APPELLANT DOES NOT COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES.

Rule 208 of the *South Carolina Rules of Appellate Practice* describes, among other things, the content of Initial Briefs. The Statement of the Case in the Appellant's Brief does not comply with the requirements of Rule 208(b)(1)(C). The Statement of the Case in the Appellant's Brief is replete with contested matters and does not contain the minimum information that the Court Rule requires.

Rule 208(b)(1)(D) specifies the form that arguments must adhere to in a Brief. In the Appellant's Brief, there is no discussion or citation of any authority relative to the Arguments purportedly raised by the Appellant.

The Issues on Appeal listed by the Appellant in his Brief do not match the Arguments put forth in the Appellant's Brief. No effort is made by the Appellant to connect these two portions of the Brief.

II. THE APPELLANT'S NOTICE OF APPEAL WAS NOT TIMELY FILED DUE TO THE SUCCESSIVE MOTIONS FOR RECONSIDERATION.

The Appellant filed a Motion to Disqualify Respondents' counsel on March 1, 2012. (R. pp. 70-72) The Appellant then filed an Amendment to his Motion to Disqualify Respondents' counsel on or about March 2, 2012. (R. pp. 73-75) The Appellant then filed an Addendum to his Amendment to Disqualify Respondents' counsel on or about March 30, 2012. (R. pp. 76-81) By Order dated May 17, 2012, the Court denied the disqualification and any continuance for the Appellant to respond to the Counterclaims.⁷ The Appellant

⁷ The Honorable Marvin H. Dukes III's Form 4 Judgment in a Civil Case dated May 17, 2012 was not included in Appellant's Record on Appeal despite it being designated for inclusion by Respondents.

filed a Motion to Reconsider Judge Marvin Dukes III's Order dated May 17, 2012. In the Motion to Reconsider the May 17, 2012 Order, the Appellant brought up information that was not argued previously and, among other things, alleged that Respondents' counsel "may have conspired to cover up Mayor Peoples' previous drug arrest, conviction, and incarceration in 1974." The Respondents' counsel was still an undergraduate in 1974, did not enter law school until 1976 at the University of South Carolina, did not graduate until 1979, and was not sworn in to practice law until 1979. The record is replete with the Appellant's personal attacks on counsel and the Court, most of which have been allowed to continue unabated. (R. pp. 122-124)

By Order dated and filed July 10, 2012, the Motion to Reconsider Disqualification of Respondent's Counsel was denied.⁸ On or about July 11, 2012, the Appellant filed another Motion to Continue the Disqualification of Respondents' counsel, said Motion being after the Court had already denied same. (R. pp. 125-128)

By Order dated October 18, 2012 and filed on October 19, 2012, the Court denied the Motion to Continue Disqualification of Respondents' counsel and ordered the Appellant to pay to the Respondents the sum of Eight Hundred Twenty-Five and No/100 (\$825.00) Dollars as attorneys' fees/sanction. The payment was to be made within thirty (30) days or the Court would entertain a Motion to Dismiss. (R. pp. 9-11)

The Appellant filed a Response to Honorable Master-in-Equity's Order filed on October 19, 2012, said "Response" being dated October 31, 2012 and filed on November 2, 2012. (R. pp. 152-155) In that Response, the Appellant alleged in Paragraph 3 that he had graduated from law school and he referred to the Respondents' counsel as an "intellectually

⁸ The Honorable Marvin H. Dukes III's Form 4 Judgment in a Civil Case dated July 10, 2012 was not included in the Appellant's Record on Appeal despite it being designated for inclusion by Respondents.

stunted ambulance chaser.” This type of filing with the Court, replete with personal attacks, is consistent behavior from Appellant. This Response to the Order was, in effect, a third attempt at reconsideration.

The Lower Court issued an Order dismissing the case against Respondents dated December 4, 2012 which was filed on December 7, 2012. (R. pp. 12, 164) In response, the Appellant filed yet another Motion to Reconsider Master-in-Equity’s Order dated December 4, 2012 on December 14, 2012. (R. pp. 165-166) No timely Appeal was taken from the various Orders denying the disqualification of Respondents’ counsel or to the Order dismissing the case against the Respondents. None of the various Orders on the successive Motions to Reconsider resulted in any alteration of the original Order. No Appeal was filed until September 20, 2013. At that point, the Appeal was filed only in the Circuit Court and not with the Court of Appeals. On October 14, 2013, an Amended Notice of Appeal was filed by the Appellant, this time styled in the Court of Appeals.

A second or third Motion to Reconsider, filed after the first Motion was denied, does not stay the time for filing a Notice of Appeal. Therefore, Appellant’s Notice of Appeal, filed more than thirty (30) days after the denial of Appellant’s first Motion, was untimely. Coward Hund Construction Co., Inc. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999), Elam v. S.C. Dept. of Trans., 361 S.C. 9, 602 S.E.2d 772 (2004).

III. THE APPELLANT HAS FAILED TO ASSERT ANY ARGUMENT CONCERNING HIS ISSUES ON APPEAL.

The Appellant has failed to assert any error with the actual rulings of the Lower Court. Rather, the Appellant in his Statement of the Case, has made outrageous and disparaging comments about the hiring and conduct of opposing counsel, asserting fraudulent conduct towards the Court, the undue use of “influence,” and the fact that counsel

for the Respondents had previously successfully defended another case against him in 1995. Moreover, the Appellant has failed to specifically support these outrageous and irrelevant allegations with any specific evidence whatsoever.

In Appellant's Brief, absolutely no effort is made to make any legal argument in the portion of his Brief entitled "Arguments." The "Arguments" made by the Appellant are simply naked assertions without any factual or legal support.

The Appellant's first Argument is that the Respondents selected a biased and prejudiced counsel to gain unfair advantage over the Appellant. There is no proof that the Respondents hired the unsigned counsel to gain any unfair advantage over the Appellant. There is nothing in the record to support such an assertion other than the Appellant's rambling and inflammatory accusations.

The Appellant's second Argument indicates that counsel for the Respondents acted in bad faith, provided false information to the trial Court and lent the weight of his influence to bias the case. There is absolutely nothing in the record to indicate that there is any factual support for these outlandish allegations.

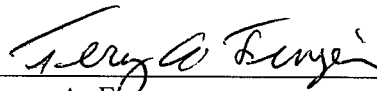
The third Argument put forth by the Appellant in his Brief does not involve these Respondents.

CONCLUSION

The Respondents ask the Court to dismiss the Appeal of the Appellant, without the need for any Oral Argument and the legal expenses attendant thereto. The Appellant has totally failed to provide any factual or legal authority to support his Appeal.

January 16, 2015

Respectfully submitted,



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**THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

Carmen T. Mullen, Circuit Court Judge

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Civil Action No.: 2011-CP-07-04407

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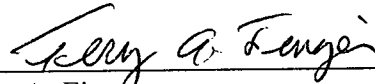
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W. Richard Beetle, Country Club of Hilton Head,
ClubCorp. of Dallas, TX, CCHH Tennis Committee Members.....Respondents.**

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondents, Thomas Trobaugh, Norman Ginsburg and Linda Ginsburg, complies with Rule 211(b), SCACR.

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January 16, 2015

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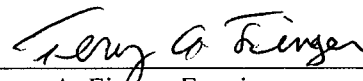
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Club Corp of Dallas, Texas,
Members of the CCHH Tennis Committee.....Respondents.

PROOF OF SERVICE

I certify that I have served copies of a Final Brief of Respondents, Thomas Trobaugh, Norman Ginsburg and Linda Ginsburg, on *Pro Se* Appellant, Alexander Pastene, and Mary H. Lohr, Esquire, Attorney for Respondents, W. Richard Beetle, Country Club of Hilton Head, Club Corp of Dallas, Texas, and Members of the CCHH Tennis Committee, by depositing copies of them in the United States Mail, postage prepaid, on January 16, 2015, addressed to Alexander Pastene at P. O. Box 22298, Hilton Head Island, SC 29925 and Mary H. Lohr, Esquire at Howell, Gibson & Hughes, P.A., Post Office Box 40, Beaufort, SC 29901.

January 16, 2015

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