

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

MAR 30 2015

Ralph King Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Appellate Case No. 2014-002489

Billie Mueller,

Appellant,

v.

South Carolina Department of Employment
and Workforce, and Ebtron, Inc.,

Respondents.

RESPONDENTS' JOINT MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES, AND FOR FAILURE TO PRESENT ANY COGNIZABLE APPEALABLE ISSUE OR ARGUMENT UPON WHICH ANY RELIEF CAN BE GRANTED

Respondents, the South Carolina Department of Employment and Workforce (DEW) and Ebtron, Inc. (Ebtron), respectfully move to dismiss Appellant Billie Mueller's appeal due to her continual failures to comply with the South Carolina Appellate Court Rules. Respondents note that Appellant has received repeated deficiency letters from the Court, yet Appellant persists in not following either the letter or the spirit of the requirements in the Rules. Most recently, Appellant (Mueller) filed documents with the Court on February 9, 2015, to purportedly correct the "proof of service" deficiencies outlined in the Court's February 4, 2015, memo to Appellant. Ironically,

Appellant failed to serve her February 9, 2015, corrective filings upon the Respondents. Thus, Respondents were unaware of Appellant's filings with the Court, until Respondents, on their own initiative, made an inquiry with the Court in order to determine the status of Appellant's appeal.

Appellant has failed to submit and serve an Initial Brief of Appellant that is in compliance with Rule 208, SCACR. Appellant has also failed to submit and serve Respondents with a Designation of Matter that is in compliance with Rule 209, SCACR. Additionally, Appellant's brief is fatally deficient because Appellant sets forth no cognizable presentation of issues, arguments or citation of legal authority in her brief, upon which this Court can grant any relief under S.C. Code Ann. § 1-23-380(5). Accordingly, Appellant's brief must be disregarded.

For all of these reasons, Respondents move for this appeal to be dismissed. This motion is more specifically made pursuant to Rules 208, 209 and 260, SCACR, as well as relevant South Carolina law, as set forth below.

BACKGROUND and RELEVANT LAW

This action is an appeal from the Order of the S.C. Administrative Law Court (ALC), affirming a final administrative decision of Respondent DEW on Appellant's claim for unemployment benefits. Pursuant to S.C. Code Ann. § 1-23-380, appellate review is confined to the same record upon which the agency reached its decision, and is limited to determining whether the DEW's decision is supported by substantial evidence on the record as a whole, or controlled by error of law. The ALC found substantial evidence supported DEW'S finding that Appellant was discharged for misconduct from

her employment with Ebtron and she was properly disqualified from unemployment benefits under S.C. Code Ann. § 41-35-120(2)(a).

Appellant has filed an appeal to this Court, seeking reversal of the ALC Order and DEW's final decision. By virtue of her request for judicial review in this matter, Appellant has an obligation to advance her position by filing a brief that complies with the statutory and procedural requirements of the Court. As the S.C. Supreme Court declared in Henning v. Kaye, 415 S.E.2d 794, 307 S.C. 436 (1992) "the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with Rules and facilitates appellate review ... Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court."

The Rule governing initial briefs expressly requires that an Appellant's Initial Brief include certain content, be divided into appropriately-headed sections, and be filed in the appropriate format. *See* Rule 208(b)(1)(A) – (E) & (b)(8), SCACR; Rule 267, SCACR (mandating Form of Papers filed in the appellate courts). The Rule governing designation of matter specifically requires that the designation "may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be **properly** included in the Record on Appeal [See Rule 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal.**" Rule 209(b), SCACR (emphasis added).¹

¹ *See also* Rule 210(c) & (h), SCACR (the Record on Appeal "shall not ... include matter which was not presented to the lower court or tribunal" and "the appellate court will not consider any fact which does not appear in the Record on Appeal.")

I. APPELLANT FAILED TO FILE A BRIEF COMPLIANT WITH RULE 208, SCACR.

Appellant's filing, although labeled an "Initial Brief of Appellant", is plainly insufficient to be considered a brief within the contemplation of the Rules. Rule 208(b)(1) governs the content of Appellant's Initial Brief and states that each brief shall contain: (A) Table of Contents and Cases, (B) Statement of Issues on Appeal, (C) Statement of the Case, (D) Argument, and (E) Conclusion. Appellant's brief, on its face, does not comply with the format or content of these requirements, and is so deficient in content that it cannot reasonably be construed as a brief. Significantly, the deficient filing does not enable Respondents to meaningfully respond, and the Court to conduct any meaningful appellate review. The two-page body of the brief is largely unintelligible and is so non-compliant with the fundamental purpose of appellate court rules that it should be stricken in its entirety and the appeal dismissed.

Of major importance, Appellant's brief does not contain a "Statement of Issues on Appeal". Pursuant to Rule 208(b)(1)(B), no point will be considered which is not set forth in the statement of issues on appeal. *See State v. Bray*, 342 S.C. 23, 535 S.E.2d 636, (2000) ("it is error for an appellate court to consider issues not raised to it"). The brief does contain a section entitled "Questions Presented on Review", which could possibly be construed to be Appellant's issues on appeal. However, there is no discussion, argument, or citation of legal authority addressing these "Questions Presented on Review" in Appellant's "Summary of Argument" section of her brief. A "failure to provide arguments or cite to authority in support of argument constitutes abandonment of issue on appeal". *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Because Appellant's "Questions Presented on Review" and her "Summary of

Argument” are wholly unrelated and irreconcilable, it is impossible to correctly determine Appellant’s issues on appeal, or identify what issues are actually being argued in her brief, or what legal errors were allegedly committed in the ruling below.

Appellant’s “Summary of Argument” does not set forth any particular issue(s) in distinctive type, followed by discussion and citations of authority. Appellant’s “Summary of Argument” consists of nothing more than improper appellate argument. Appellant makes broad conclusory statements, asserts “facts” not contained in the record below, and argues other matters or issues that were not raised to or ruled upon by the ALC or DEW. Appellant totally disregards Rule 208(b)(4), SCACR, and alleges “facts” with no references to evidence in the record to support them. Appellant’s brief cites to absolutely no law or authority supporting her argument, thereby failing to comply with Rule 208(b)(1)(A-E). In fact, Appellant’s brief, as written, warrants no response whatsoever by Respondents, and the brief should be rejected outright by this Court.

Because Appellant filed this appeal, Appellant bears the burden of arguing the case by filing a proper brief which contains the **issues on appeal with proper arguments restricted to matters contained within the record, and with citation of legal authority**. Broad conclusory statements must be disregarded. Mere allegations of error are not sufficient. It is well settled that “an issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.” *State v Howard*, 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009). *See also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513,514 (1994) (finding the failure to provide arguments or cite to authority in support of argument constitutes abandonment of issue on appeal).

An issue that is abandoned cannot be considered a challenge on appeal. Accordingly, a ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling. *S.C. Coastal Conservation League v. S.C. Dep't of Health and Env'tl. Control*, 363 S.C. 67, 76, 610 S.E.2d 482, 487, (2005).

Respondents should not be required to expend further time, limited resources and incur additional costs to file a Brief of Respondents in this matter, and would be prejudiced in its attempt to decipher and respond to Appellant's severely deficient brief. "There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties." *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16,19 (Ct. App. 1990) quoting *Therens v. Faircloth*, 291 S.C. 451, 354 S.E.2d 54 (Ct. App. 1987).

While Respondents recognize that Appellant is proceeding *pro se*, "[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Moreover, the South Carolina Supreme Court has stated that a *pro se* litigant "who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); see also *State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (the "established rules of procedure are not to be discarded, either in the trial court **or on appeal**, merely because the defendant has been his own lawyer") (emphasis added) *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

Appellant must not be permitted to flagrantly violate the South Carolina Appellate Court Rules. For all of the reasons discussed above, Appellant's brief should be rejected outright by this Court and the appeal dismissed.

II. APPELLANT FAILED TO FILE A DESIGNATION OF MATTER COMPLIANT WITH RULE 209, SCACR

Appellant's Designation of Matter fails to comply with the fundamental requirements of Rule 209(b) because it improperly proposes to include material in the Record on Appeal that either (1) does not exist, or (2) was not presented to the lower Appeal Tribunal or (3) is not relevant to the appeal.

Appellant's Designation of Matter seeks to include the following documents:

1. Order of May 28, 2014;
2. Order of July 2, 2014;
3. Complaint;
4. Answer;
5. Transcript of Proceedings pp. 1-16;
6. Defendant's Request to Charge No. 5;
7. Defendant's Exhibit A-J all mentioned in transcript.

The "Complaint", "Answer" and "Request to Charge", do not exist in this matter. Further and more importantly, the "Defendant's Exhibits A-J all mentioned in transcript" is misleading and nothing more than an improper attempt to add additional evidence into the record that was not presented or requested at the hearing with the DEW Appeal Tribunal. Appellant's right to provide evidence was exhausted in the evidentiary hearing held on May 27, 2014, before DEW's Appeal Tribunal. The identified documents are not a part of the hearing transcript and were not presented to DEW until after the evidentiary hearing when Appellant filed her appeal to the DEW Appellate Panel. Appellant also attempted to submit them to the Administrative Law Court for consideration and was summarily rejected for the same reasons as are applicable here. Pursuant to both §§ 1-23-

380(4) and 1-23-610(B), review conducted by this Court “must be confined to the record”. Rule 210(c), SCACR, provides that the Record on Appeal “shall not ... include matter which was not presented to the lower court or tribunal.” The Rule further provides that “the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR.

Appellant’s Designation of Matter reflects her continued attempt to include in the Record on Appeal material that was not presented to the DEW Appeal Tribunal, in violation of Rule 210(c) SCACR, and Rule 208(b)(4) SCACR. Appellant’s Designation of Matter includes matters not relevant to the appeal which violates Rule 209(b), SCACR. Additionally, one of these documents is of a confidential nature and Appellant has a contractual commitment to maintain that confidentiality. The inclusion of these items demonstrates Appellant’s determined effort to disregard the Rules, and to include additional evidence that was not presented to DEW’s lower tribunal and which should be stricken from the Designation of Matter. For all of the reasons discussed above, Appellant’s blatant failure to comply with these Rules warrants dismissal of this appeal.

III. APPELLANT’S “SUMMARY OF ARGUMENT” FAILS TO RAISE ANY COGNIZABLE ISSUE, ARGUMENT OR ANY LEGAL ERROR UPON WHICH RELIEF CAN BE GRANTED BY THIS COURT AND THE APPEAL SHOULD BE DISMISSED UNDER THE LAW-OF-THE-CASE DOCTRINE

In her brief, Appellant has completely ignored the Order of the Administrative Law Court (ALC), and has put forth no argument as to why this decision is in error and cites no authority which would support a ruling that the ALC or DEW erred. Since Appellant has clearly failed to raise any error regarding the ALC’s Order, she is not challenging the specific ruling of the ALC. “An unappealed ruling is the law of the case

and requires affirmance.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). The Court has held a ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling. *S.C. Coastal Conservation League v. S.C. Dep’t of Heath & Env’tl. Control*, 363 S.C. 67, 76, 610 S.E.2d 482, 487 (2005). Appellant’s brief fails to address any of the grounds upon which the lower court’s decision was based. Thus, her appeal to this Court should be dismissed under the law-of-the-case doctrine because there is no relief which can be granted by this Court.

The object of an exception is to point out some specific error complained of, to present some distinct principle or question of law which the appellant claims to have been violated by the lower court in the trial of the case and to present it in such a form that it may be properly reviewed. *Forest Dunes Associates v Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990). In this case, Appellant has failed to present any cognizable issue, argument, or citation of legal authority that would support any reversal of the ALC’s Order. Thus, Appellant has presented nothing upon which this Court can grant any relief to Appellant.

Instead, Appellant improperly asserts new “facts” and issues that were not presented to the Appeal Tribunal, and improperly argues matters that are not before this Court for review. In other words, she has not presented any appealable issue this Court can review.

Appellant’s “Summary of Argument” in her brief upon which she bases her entire appeal, is completely unrelated to the issues on appeal that were raised to and ruled upon by the ALC, and states the following:

During the telephone hearing with the SCDEWS Appeal Tribunal the Appellate was not given any of the documents that are part of the

Appellates unemployment file so that Appellate could put on a proper defense. Appellate was also not given a copy of the telephone hearing regulations. Appellates Subpoenaed witness David Dougan did not participate at the telephone hearing. The Appellate had never seen any of the unemployment file documents till September 2, 2014.

- 1) Never a formal letter or reprimand
- 2) Never a notice of warning or management's attention to variance
- 3) Approximately 6,350.00 of unpaid commissions falling into the 3rd Quarter of the 2013 obligation
- 4) There was absolutely no loss or revenue to Ebtron or the accuracy of the Invoicing to Daikin/McQuay.

These allegations are outside the Record, are not preserved for review and therefore, cannot be considered. The foregoing demonstrates Appellant's determined effort to: (1) represent as "facts," matters that were not presented in the proceedings below; and (2) present arguments to this Honorable Court based upon "facts" that were not presented below, in flagrant violation of Rule 209(b), SCACR, Rule 210(c), SCACR, and Rule 208(b)(4), SCACR.

The Court is fully within its rights to dismiss this appeal based on Appellant's numerous infractions of the Rules, and failure to set forth issues and arguments in her appeal upon which relief can be granted. Henning, supra. The Court has been lenient and accommodating to Appellant in recognition of her *pro se* status. However, she is not relieved of the responsibility to present her appeal in accordance with the South Carolina Appellate Court Rules. Appellant's failure to understand the procedures to be followed in pursuing an appeal cannot excuse her lack of compliance with the rules. See Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001) (finding that a party's lack of familiarity with legal proceedings does not constitute excusable neglect which would relieve the party from a default judgment). Lack of familiarity with legal proceedings is

unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Appellant’s repeated disregard of the Rules justifies dismissal of her appeal.

CONCLUSION

Based on all the foregoing reasons, Respondents jointly and respectfully move that Appellant’s appeal be dismissed with prejudice, pursuant to Rule 260(a), SCACR, and that all time requirements and deadlines be held in abeyance pending resolution of this motion.

Respectfully submitted,



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March 25, 2015

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

South Carolina Department of Employment
and Workforce, and Ebtron, Inc., S.C.
Administrative Law Court,

Respondent,

v.

Billie Mueller,

Appellant.

PROOF OF SERVICE

I hereby certify that I have this 25th day of March, 2015 served a copy of the foregoing **RESPONDENTS' JOINT MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES, AND FOR FAILURE TO PRESENT ANY COGNIZABLE ISSUE OR ARGUMENT UPON WHICH ANY RELIEF CAN BE GRANTED** by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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March 25, 2015

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SC Court of Appeals

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

RE: Billie Mueller v. SC Department of Employment and
Workforce and Ebtron Inc.
Appellate Case No: 2014-002489

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Joint Motion to Dismiss of the Respondents DEW and Ebtron in the above case. Also enclosed is a Proof of Service to Ms. Mueller.

Please let me know if you have any questions.

Sincerely,

Jessica Chesley

Jessica Chesley
Administrative Legal Assistant for
Sandra Grooms
General Counsel

ORCE

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