THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

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SC Court of Appeals

Case No. 2011-CP-10-1559

Wildflower Nursery, Inc. d/b/a Pleasant Landscapes.....Appellant,

v.

Joseph W. Beasley, Jr. a/k/a Bill Beasley.....Respondent.

FINAL REPLY BRIEF OF APPELLANT

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I. **Respondent effectively waived its unsupported arguments in its Initial Brief because Respondent failed to carry its burden to provide citations to authority or to facts in the Record.**

A review of Respondent's Initial Brief reveals virtually no citations to the Record (in the form of place-holder cites, final citations, or even references to specific items in Respondent's Designation of Matter) that would inform this Court of how Appellant Wildflower was adequately served notice of either: (1) when the motion to strike would be heard; or, (2) when the trial would take place.[1] The complete lack of notice provided to Appellant Wildflower is the heart of this appeal. Such a failure to provide notice amounted to a clear violation of Wildflower's due process rights. Subsequently, those due process violations resulted in such harm that Appellant Wildflower requests both the reversal of the trial court's July 3, 2014 Order and requests this Court remand for a new trial on the merits.

Wildflower acknowledges that it carries the burden to provide this Court with Record sufficient to make an intelligent review, but the failings of Respondent to provide any guidance or citation cannot be overstated. *See Price v. Pickens Cnty.*, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992) ("The burden is on the appellant to provide a sufficient record such that this court can make an intelligent review."). Despite Appellant's burden to provide a sufficient record, it is also well-established that "[a]n issue is ***deemed abandoned*** and will not be considered on appeal ***if the argument is raised in a brief but not supported by authority***." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (emphasis added). Similarly, "conclusory

[1] Conversely, in the Parker Affidavit, Parker detailed that he made the requisite dutiful inquiries to the status of the trial, only for Appellant Wildflower to be left in the dark of both the hearing for the motion to strike and the subsequent 'trial'. (R. pp. 106-07).

statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding that a failure to cite authority results in a conclusion by the reviewing court that the party is deemed to have abandoned the argument); and *see also Jones v. Leagan*, 384 S.C. 1, 21, 681 S.E.2d 6, 17 (Ct. App. 2009) (finding an argument to be conclusory, and therefore not appropriate for review by the Appellate Court, when that argument was not supported by any citation or authority).

Generally, the above-cited authority dealt with deficiencies in an appellant's brief; however, under SCAR 208, "[t]he brief of the ***respondent*** shall conform to the requirements of Rule 208(b)(1)(A)-(E). SCAR 208(b)(2) (emphasis added). In effect, the South Carolina Appellate Rules place same basic requirements on appellants and respondents by incorporating all of appellant's burdens, by direct reference, to respondents (i.e. through SCAR 208(b)(2)'s reference to 208(b)(1)(A)-(E)). This includes the specific requirement that a respondent's Arguments section include "citations of authority." SCAR 208(b)(1)(D). A respondent is also under a duty to follow SCAR(b)(4) for "References to Record," and this section requires, *inter alia*, the following:

> The ***brief shall contain references to the transcript, pleadings, orders***, Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. ***In the initial briefs, these references should be to the page and line number of the transcript*** prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used.

SCACR 208(b)(4) (emphasis added).

Respondent's Initial Brief contains repeated conclusory statements, unsupported by precedent, and which were made without any citation to the transcript, pleadings, orders or elsewhere in the Record. Instead, Respondent baldly asserts that the Clerk of Court sent Wildflower appropriate notice, arguing that "the file itself made it apparent that notice had been sent." (Respondent's Initial Brief, 4).[2] This assertion is conclusory, and it fails the clear requirements in SCAR(b)(4). Because it is a conclusory statement, made without supporting authority, it should be deemed abandoned by Respondent and not reviewable in this Appeal. *See Glasscock,* 348 S.C. at 81; *see also Bryson v. Bryson*, 378 S.C. at 510.

Respondent seems to argue, again without any citation to authority or guidance to anything in the Record, that because the address on file with the Clerk's Office and the address on the Complaint filed by Appellant Wildflower in Magistrate's Court are the same, that there is "no question about the fact that Appellant was served with the Motion to Strike." (Respondent's Initial Brief, 4). Whether the address on file is the same is not dispositive.

When considering Respondent's unfounded argument, the Court's file fails to show how the Clerk's Office notified Wildflower of the hearing on the motion to strike or of the trial date. What the transcript does reveal is that the trial court made no inquiry

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[2] Confusingly, Respondent claims "[i]t is easily possible to demonstrate that all necessary steps and actions were taken to ensure that such notice was received [by Appellant]." (Respondent's Initial Brief, 5). However, Respondent only contends that the address on file was correct, and concludes without factual support that because the address was correct, then notice must have been mailed—fully satisfying the due process requirements of notice. *See id.* The Record does not bear out that notice was adequate.

into whether Wildflower was notified of the hearing and apparently relied solely on defense counsel's statement, "We notified them of this hearing, and they still haven't shown up." (R. p. 77, lines 24 – 25, p. 78, lines 1 – 3). However, this statement does not provide any details about when or by what means the notification took place, nor did counsel submit any documentation of such notification based on the transcript. In contrast to that lack of evidence showing notice, the owner of Wildflower has submitted an affidavit swearing under oath that he never received such notice. (*See* R. pp. 106-07).

Inquiry into whether due process rights were violated because of a lack of notice is necessarily a factual inquiry. Therefore, Respondent's total failure to provide ***any*** factual guidance, despite having a duty to provide citations to supporting evidence in the Record under SCAR(b)(4), underscores the need for this Court to deem those unsupported arguments and assertions "abandoned" as a matter of law. *See Bryson v. Bryson*, 378 S.C. at 510.

Because Respondent failed to provide any citations to authority or any citations to the record regarding the disputed notice, as required by SCAR(b)(4) and the relevant case law discussed *supra*, these conclusory assertions should be viewed by this Court as a waiver of the unsupported arguments by Respondent on Appeal. Conversely, Wildflower carried its burden to provide this Court with an intelligent record that demonstrated the obvious deficiencies in notice that would preclude the trial court from having proper jurisdiction to adjudicate Wildflower's rights.

II. Despite Respondent's assertion to the contrary, Appellant Wildflower suffered injury as a result of the failure to provide legally required notice.

Wildflower previously detailed why the lack of notice constituted harm, in the form of a violation of Wildflower's due process rights. (*See* Final Reply Brief of

Appellant, Sec. I(A)). Respondent counters that Wildflower cannot "demonstrate any injury occurred as a result" of the lack of notice and lack of appearance at the May 2013 hearing and trial. (*See* Respondent's Final Brief, 4). Respondent incorrectly assumed that because Wildflower did not have counsel at the time, they would not have retained counsel for the hearing. (*See id.*, 4-5). However, as Respondent acknowledges, Wildflower did retain counsel once Respondent began to undertake collections measures and was aware of the gravity of the situation. (*See id.* at 5). Even if Wildflower appeared at the May 2013 hearing without counsel, there would have been opportunity for the court to go on record, admonishing Wildflower that if counsel was not retained in a timely fashion that their complaint would be dismissed as a matter of law. Because Wildflower never received notice, it never had the opportunity to appear.

Any argument that Wildflower was not injured fails to recognize the importance of due process rights. Respondent is incorrect in asserting that "[Wildflower] had the opportunity to be heard. [Wildflower] chose not to exercise it." (*See id.* at 3). The trial court had no jurisdiction to proceed with the adjudication of Wildflower's personal rights, in either the hearing or the subsequent trial, because Wildflower was not provided due notice. *See Webster v. Clanton*, 259 S.C. 387, 391 (1972).

Wildflower renews its request for this Court to vacate the July 3, 2014 and May 10, 2013 Orders, and to order a trial between the parties on the merits. *See Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986).

III. Respondent admits that the July 3, 2014 Order was issued *ex parte*, and this communication was demonstrably prejudicial in consequence.

As detailed in Appellant's Final Brief Section I(B), the circuit court signed a formal order on June 16, 2014, and this proposed order was, in fact, prepared by Beasley

on behalf of Respondent. (*See* Respondent's Final Brief, 6). Respondent further admitted it does not disagree with the propositions of law laid out in Section I(B) of Appellant's Initial Brief. *See id.*

Respondent denies that SCRCP 5(b)(3) applies because Wildflower did not have counsel at the time that it submitted the proposed order. *See id.* However, Rule 5(b)(3)'s underlying purpose is to provide opposing parties the opportunity to review and comment on proposed orders before they are issued. Regardless of whether Wildflower had counsel at this time, Respondent's communications with the trial court were *ex parte* and in violation of Rule 5(b)(3).

The *ex parte* e-mail admitted to by Respondent (Respondent's Initial Brief, 6) followed Wildflower's exclusion from (due to a lack of notice) of upcoming matters in the trial court from September 2011 until August of 2013. In light of the continuous problems regarding due process, Beasley's *ex parte* communication with regard to the July 3, 2014 Order was prejudicial under the circumstances.

IV. The Motion to Strike was improperly granted by the trial court, and Respondent's interpretation of Brown is erroneous.

Respondent incorrectly asserts that *Brown v. Coe*, 365 S.C. 137, 144, 616 S.E.2d 705, 709 (2005) should be limited to Respondent's interpretation of its facts. (*See* Respondent's Final Brief, 6). Specifically, Respondent urges this Court to find *Brown* to be "immaterial" to this case because *Brown* represented a novel issue, and as such, the nonlawyer in *Brown* maintained a reasonable belief that she could administer the estate, while Mr. Parker clearly could not represent Wildflower in circuit court in the underlying matter on appeal. (*See id.* at 6-7). This understanding of *Brown* is totally unfounded.

Subsequent South Carolina Supreme Court case law interpreting *Brown* and the

unauthorized practice of law concluded that "we are persuaded by decisions from other jurisdictions which have consistently held the filing of a complaint by a nonlawyer ***constitutes an amendable defect***." *Blue Star Rental & Sales, Inc. v. Ridge Envtl., LLC*, No. 2014-MO-048, 2014 WL 6977616, at *3 (S.C. Dec. 10, 2014) (reversing and remanding for a new trial where the trial court incorrectly relied on *Renaissance Enter., Inc. v. Summit Teleservices, Inc.* and holding that the unauthorized practice of law does not render a "proceeding a nullity" and instead finding it "amounts to an amendable defect.") (emphasis added). The Supreme Court of this State further instructed that the "unauthorized practice of law ***does not operate to void the lawsuit in its entirety***, particularly absent any showing of prejudice to the opposing party." *Id.* (emphasis added).

The issue presented on appeal is not that Mr. Parker was authorized to practice law; instead, the issue, which is totally ignored by Respondent (*see* e.g. Respondent's Final Brief, 6-9), is whether granting Respondent's Motion to Strike was appropriate considering that Appellant never had the opportunity to appear in front of the circuit court. Instead of being admonished by the court to seek counsel, Wildflower's Complaint was stricken in its entirety without the ability to seek counsel.[3]

Respondent cannot demonstrate any prejudice, as required by *Blue Star Rental & Sales*, because Wildflower's Complaint was dismissed at the very first hearing in front of

[3] Here, the Complaint was properly filed in the magistrate's court, where corporations can be represented by non-lawyers. Mr. Parker was not aware that he could not continue to represent the corporation once it was removed to the circuit court, he never received notice of the hearing on the motion to strike, and Wildflower has since hired counsel to champion his Complaint.

the circuit court where Wildflower was absent only because of a lack of notice. *See Blue Star Rental & Sales*, 2014 WL 6977616, at *3. Likewise, the dispositive fact in *Brown* was not the degree of knowledge of the nonlawyer seeking to represent the estate, but whether the personal representative should be granted time to obtain counsel due to a lack of prejudice on the moving party. *See Brown v. Coe*, 365 S.C. 137, 144 (2005).

Respondent also fails to adequately address that the trial court's ruling was manifestly unjust in ignoring Respondent's defective counterclaim under SCRCP 10(e), while striking Wildflower's Complaint. In *Blue Star Rental & Sales*, the Supreme Court found that a complaint signed by a nonlawyer—just as Mr. Parker signed Wildflower's complaint as a nonlawyer—did not render the complaint a nullity. *See Blue Star Rental & Sales*, 2014 WL 6977616, at *1-3. Respondent asserts, again without any citation to authority, that its so-called counterclaim is "routinely accepted in the form in which they are transferred." (*See* Respondent's Final Brief, 8). Without any citation to authority, this argument by Respondent should again be deemed abandoned and waived by this Court. *See Bryson v. Bryson*, 378 S.C. at 510.

V. The Form 4 Order was not a 'final' order, and as a result, Respondent should not have been entitled to enforce judgment against Wildflower before a final order was issued.

Respondent again fails to cite ***any*** authority to counter the clear weight of precedent holding that a Form 4 order is not final when it indicates a formal order will follow. *See Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) (noting that a form order is not a final order if the circuit court specifies that a formal order will be filed); *see also Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.");

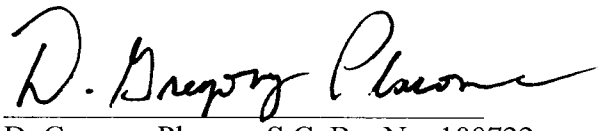
and *see Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009) (finding that a "form [4] order was not in any way final."); Rule 203(b)(1), SCACR ("When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.").

Despite Respondent's urging, what is "immaterial" for this Court to consider is Respondent's clear misunderstanding of what constitutes a final judgment. (*See* Respondent's Final Brief, 9). Respondent admits it attempted to enforce an order before it was final. Such actions constitute a further violation of Wildflower's due process rights.

CONCLUSION

Based on the foregoing, Wildflower asks that this Court vacate the orders issued by the trial court from May 10, 2013 through July 21, 2014 and allow this matter to be tried on its merits.

Respectfully submitted,



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May 12, 2015

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PROOF OF SERVICE

I certify that on this 12th day of May 2015, I have served the foregoing ***Final Reply Brief of Appellant*** via U.S. Mail, first class postage prepaid, on the following counsel of record:

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Briefs comply with South Carolina Appellate Court Rule 211(b).

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