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MAY 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-002524
Case No. 2014-CP-29-00442

Josh Hammond.....Respondent,

v.

Richard Tod HammondAppellant,

v.

Titan Logging, LLC.....Third-Party Defendant.

**RESPONDENT'S MOTION TO STRIKE APPELLANT'S INITIAL BRIEF
AND MOTION TO DISMISS**

Pursuant to Rules 240, 208, 209, and 210 of the South Carolina Appellate Court Rules (SCACR), Respondent Josh Hammond moves this Court for an order striking the Appellant's Initial Brief and dismissing this appeal on the grounds that the Appellant's Initial Brief fails to comply with numerous substantive mandates of the South Carolina Appellate Court Rules (SCACR).

Respondent's motion is addressed in greater detail in the supporting memorandum filed herewith.

Pursuant to Rule 240(b) and Rule 263(b), SCACR, Respondent respectfully requests that this Court hold all deadlines in abeyance until the Court decides this Motion. If this Court denies this Motion, Respondent requests that the Initial Brief of

Respondent be ordered to be served and filed within thirty (30) days after the entry of such order denying this Motion.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

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Murrells Inlet, South Carolina

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PROOF OF SERVICE

The undersigned certifies that, on the below indicated date, the Respondent's Motion to Strike Appellant's Initial Brief and Motion To Dismiss and Respondent's Memorandum in Support of Respondent's Motion to Strike Appellant's Initial Brief and Motion To Dismiss was served on counsel for the Appellant by mailing a copy of the same by United States Mail, with first class postage prepaid to the following address for counsel of record:

Francis L. Bell, Jr.
FRANCIS BELL LAW FIRM, LLC
P.O. Box 867
Lancaster, SC 29721



Stephen L. Goldfinch, Jr.

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**RESPONDENT'S MEMORANDUM IN SUPPORT OF RESPONDENT'S
MOTION TO STRIKE APPELLANT'S INITIAL BRIEF AND MOTION
TO DISMISS**

This appeal arises from the lower court's grant of partial summary judgment to Respondent. Respondent files this Motion to Strike the Appellant's Initial Brief and Dismiss this appeal on the grounds that the Appellant's Initial Brief fails to comply with numerous substantive mandates of the South Carolina Appellate Court Rules (SCACR).

As set forth below, Respondent respectfully submits that the Appellant's non-compliance to the most fundamental of requirements imposed by the SCACR are so pervasive and so substantial that the Respondent is not able to intelligibly respond by way of the Respondent's Initial Brief. For these reasons as set forth below herein, Respondent requests that the Appellant's Initial Brief be stricken and this appeal dismissed.

ARGUMENT

- I. Appellant's Initial Brief fails to comply with numerous essential requirements imposed upon the Appellant by Rule 208(b), SCACR, and therefore, Appellant's Initial Brief should be stricken and this appeal dismissed.

Rule 208(b), SCACR, governs the contents of Initial Briefs filed with appellate courts in this state. In relevant part, when a "statement of facts" is included in the Appellant's Initial Brief, the Appellant must provide "reference to the record on appeal" for those statements of fact. Rule 208(b)(1)(D), SCACR. Specifically, the Appellant's Initial 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.**" Rule 208(b)(4), SCACR (emphases added). Furthermore, "[r]eferences **shall** also be made to where relevant objections and rulings occurred in the transcript." *Id.* (emphasis added). All of these required "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." *Id.*

Here, firstly, the Appellant's nineteen page Initial Brief contains a grand total of three references to the record, all three of which are to portions of the transcript from the lower court's hearing which are irrelevant and immaterial to the issues allegedly presented for review. (*See* Init. App. Br. p. 14 and p. 16). Throughout the Appellant's Initial Brief, the Appellant appears to argue that the Appellant raised certain arguments and raised certain objections in the lower court. However, the Appellant makes no references to where any relevant arguments, objections, or rulings occurred in the transcript. Therefore, the Appellant's failure to provide references in his Initial Brief to

where relevant objections and rulings occurred in the transcript is plainly in noncompliance with the mandate set forth in Rule 208(b)(4), SCACR.

Secondly, the Appellant included a four page "Statement of Facts" section in his Initial Brief without setting forth any references to the record. (*See* Init. App. Br. p. 2-6). Appellant's failure to provide any references to the record to support the facts stated is a palpable violation of the mandate imposed by Rule 208(b)(4), SCACR. This failure to do so is significant because our appellate courts will not consider any fact which does not appear in the Record on Appeal. *See* Rule 210(h), SCACR. Therefore, in addition to violating this Court's rules, the Appellant's failure to provide references to anything in the record on appeal in support of any of the facts stated thereby forces this Court to undertake the burden of scouring the record in search of support for the Appellant's factual assertions.

The Appellant's Initial Brief flatly fails to comply with this our state's appellate court rules. The Appellant would have this Court reverse the judgment of the lower court's Order, yet the Appellant does not even reference any of the language of the Order he seeks reversal of. Appellant has failed to include citations or references to materials that may be properly included in the record on appeal to support the allegedly salient facts.

Our Supreme Court has clearly explained that the "South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

For the foregoing reasons, this Court should strike the Appellant's Initial Brief. Furthermore, for the foregoing reasons and because of the Appellant's violations of the appellate court rules, dismissal of this appeal is completely justified. *See Henning*, 307 S.C. at 437, 415 S.E.2d at 794 (1992).

II. **Appellant's Designation of Matter to be Included in the Record on Appeal does not clearly identify with any specificity what Appellant proposes to have included in the Record on Appeal.**

Pursuant to Rule 209, SCACR, the Appellant's Initial Brief must be accompanied by his Designation of Matter to be Included in the Record on Appeal which "shall set forth with specificity" those parts of the materials which he proposes to include in the record on appeal. Rule 209(a), SCACR. Specifically, the Appellant's Designation of Matter "must clearly identify" what he desires to include in the Record on Appeal. *See* Rule 209(b), SCACR. "The purpose of the Designation is to streamline the process for compiling the appellate record and to ensure the record does not contain any irrelevant material." Jean Hoefler Toal, et al, *Appellate Practice in South Carolina*, p. 405 (3rd ed. 2016).

Here, the Appellant's Designation of Matter fails to clearly and specifically identify what Appellant proposes to be included in the Record on Appeal. Chiefly, Items 2, 3, 4, and 5 enumerated in the Appellant's Designation generically propose to include "supporting documents" associated with affidavits and memoranda. By way of example, Item 4 proposes to include "Appellant's Memorandum in opposition to Respondent's Motion for Summary Judgment [sic] with Appellant's 2nd Affidavit and other supporting documents filed September 3, 2015." (Designation App. p. 2). In doing so, the Appellant proposes general, unspecific wholesale categories of materials without identifying nor specifying the materials comprising the "supporting documents" whether

by title, exhibit enumeration, or otherwise. This lack of clarity and specificity in Appellant's Designation of Matter is not just a mere technical noncompliance with Rule 209, SCACR. Significantly, the Appellant's noncompliance with Rule 209, SCACR, precludes the Respondent from determining which specific materials are proposed to be included and which are not, whether any of the proposed materials are proper to be included in the record on appeal, what if any of the proposed materials are irrelevant to the appeal, and whether any of the proposed materials should be stricken. Furthermore, this lack of clarity and specificity, if not brought into compliance at this stage of the appeal, will likely necessitate further motions as to the Record on Appeal, increased costs and time, and unnecessary complication. Therefore, if this Court does not order dismissal of this appeal as argued above herein, Respondent respectfully requests that this Court, for the foregoing reasons, order the Appellant's Designation of Matter to be Included in the Record on Appeal be stricken and re-filed in compliance with Rule 209.

CONCLUSION

For the foregoing reasons, Respondent respectfully moves before this Court for an Order striking Appellant's Initial Brief and dismissing this appeal and, in the alternative, striking Appellant's Designation of Matter requiring re-filing in compliance with Rule 209.

Pursuant to Rule 240(b) and Rule 263(b), SCACR, Respondent respectfully requests that this Court hold all deadlines in abeyance until the Court decides this Motion. If this Court denies this Motion, Respondent requests that the Initial Brief of Respondent be ordered to be served and filed within thirty (30) days after the entry of such order denying this Motion.

Respectfully submitted,



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