

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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APR 26 2016
SC Court of Appeals

Appellate Case No. 2014-002661

John M. English,

Appellant,

v.

Ellen Sexton and John E. White, Jr.,

Respondents.

**AFFIDAVIT OF JOHN E. WHITE, JR.
IN SUPPORT OF MOTION
REGARDING RECORD(S) ON APPEAL**

PERSONALLY APPEARS BEFORE ME, the undersigned, John E. White, Jr., who, being duly sworn, states:

1. Affiant is a pro se Respondent in this matter and makes this Affidavit of his own personal knowledge, excepting only those matters alleged upon information and belief, and, as to such, Affiant believes them to be true.

2. By letter of V. Claire Allen, Deputy Clerk, dated August 28, 2016, all counsel were advised that the record on appeal must be served and filed within 30 days of August 28, 2016.
3. By order dated December 11, 2015, Appellant's appeal was dismissed for failure to file the record on appeal.
4. On December 14, 2015, Appellant's counsel served and filed a motion to reinstate which, in part, stated, "Appellant *can and will file the Record within a week* of receipt of an Order reinstating the matter." [Emphasis supplied.]
5. Affiant filed a return objecting to reinstatement on December 18, 2015.
6. The Honorable Jasper W. Cureton issued his order dated February 5, 2016 which stated:

"Appellant shall serve the record on appeal within 10 days of this order and provide proof of service with this court. Upon receipt, or the expiration of ten days, this court will consider Appellant's motion to reinstate this appeal."
7. Affiant is informed and believes that counsel for Appellant on or about February 16, 2016, Appellant's counsel served Affiant with a record on appeal which did not comply with the requirements of Rule 210(c), SCACR in the following particulars:
 - (a) It failed to include the transcript of testimony for the hearing held August 4, 2014;
 - (b) It failed to include the court reporter's errata sheet.
8. Affiant is informed and believes that counsel for Appellant signed the Rule 210(g) certificate for the initial record on appeal without verifying that the record on appeal contained all matters proposed to be included by any of the parties.
9. On February 29, 2016, Affiant filed (by mailing) and served by mail a return to

Appellants motion to reinstate, objecting to the fact that Appellant had not included the transcript of testimony or the court reporter's errata sheet, both of which were designated by Affiant to be included in the record on appeal

10. By order of the Honorable Jasper w. Cureton dated March 29, 2016, Appellant's motion to reinstate was granted. Such order provided, in part,

“...because the record on appeal does not include all matter designated by the parties, Appellant must serve a supplemental record on appeal. Specifically, the supplemental record must include the transcript and the ‘errata sheet of the court reporter’. Within ten days of the date of this order, Appellant shall serve the supplemental record and file with this court the proof of service.”

11. Despite the terms of this order, and despite the requirements of Rule 210(a) and 210(c), SCACR, Appellant (a) did not file a supplemental record on appeal including “all matter designated by the parties”; (b) did not file a proof of service; and (c) upon information and belief, failed to serve either Respondent.

12. After numerous attempts by telephone and by email to discover if a copy of a supplemental record on appeal had been filed, commencing by no later than April 7, 2016, Affiant contacted Appellant's attorney by telephone (cell to cell) on the afternoon of April 20, 2016 and was advised he had not served Affiant because he expected the printer to effect service. Affiant was notified that he could pick up a copy from the office of Appellant's attorney the next morning or Appellant's attorney would deliver him one the next morning. Affiant picked up a copy of a record on appeal from the office of Appellant's counsel on April 21, 2016 and that same day attempted without success to contact Appellant's counsel to discuss what could or should be done because the transcript again was incomplete, leaving out matters Affiant had designated for inclusion in the record.

13. Affiant is informed and believes that on Friday, April 15, 2016, Appellant's counsel filed with this Court the record on appeal which is the record on appeal Affiant picked up on

April 21, 2016 from the office of Appellant's counsel. However, such record on appeal (hereinafter called the "supplemental record on appeal") failed to comply with the order of Judge Cureton and failed to comply with the requirements of Rule 210(a), SCACR in the following particulars:

- (a) Appellant's counsel failed to serve the record on appeal on Affiant or, upon information and belief, on counsel for Respondent Ellen Sexton; and,
- (b) upon information and belief, no proof of service of the record on appeal has been filed as of the writing of this affidavit.

14. The supplemental record on appeal also violated Rule 210(c) in that it omitted and failed to include the following matters which were proposed by this Respondent in this Respondent's Designation of Additional Matter to be Included on Appeal (all of which had been included in the initial record on appeal filed by Appellant's counsel):

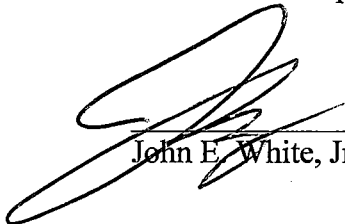
- (a) Affidavit of Co-Counsel in Support of Motion to Alter or Amend Order Concerning Disbursement of Funds, 9/4/14;
- (b) Motion to Alter or Amend Order Concerning Disbursement of Funds, 9/4/14; and,
- (c) Motion for Reconsideration, 10/22/14.

15. Affiant is prejudiced by the failure to include all of the matters required in that Affiant cannot comply with the citation requirements of Rule 211(b)(1), SCACR, and, additionally, Affiant's final brief would be required to reference matter outside the record on appeal in order to conform to affiant's initial brief.

16. Affiant is informed and believes that counsel for Appellant again signed the Rule 210(g) certificate for the (supplemental) record on appeal without verifying that the record on appeal contained all matters proposed to be included by any of the parties.

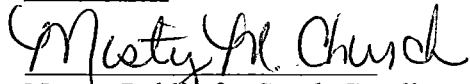
17. Affiant is informed and believes that Affiant is entitled to an order of this Court quashing the deficient records on appeal and providing that, in the event Affiant's award of attorney's fees is not affirmed, costs in any way related to any deficient record on appeal shall not be taxed against Affiant.

18. Affiant is informed and believes that, if the Appellant's appeal is not again dismissed for failure to comply with Judge Cureton's order and/or for failure to again comply with Rule 210, SCACR, Affiant is entitled to an order of this Court providing that Affiant's time to file and serve a final brief shall not commence running unless and until Affiant is served with a record on appeal which includes all matters required by Rule 210(c).



John E. White, Jr.

SWORN TO BEFORE ME THIS
25th DAY OF APRIL, 2016



Notary Public for South Carolina
My commission expires: 5/22/2016

