

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

JUL 22 2016

SC Court of Appeals

Marvin H Dukes, III, Maser in Equity and Special Circuit Court Judge

Case No. 2015-CP-07-1343
Appellate Case No. 2016-000955

John Alden Bauer, III,

Appellant,

v.

Beaufort County School District,

Respondent.

**RESPONDENT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE
APPELLANT'S DESIGNATION OF MATTER AND INITIAL BRIEF, TO REQUIRE
AN AMENDED BRIEF THAT COMPLIES WITH THE RULES, AND FOR AN
EXTENSION OF TIME TO FILE RESPONDENT'S DESIGNATION OF MATTER AND
INITIAL BRIEF**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Beaufort County School District moves to dismiss this appeal for Appellant's refusal to comply with the appellate court rules. Among other things, Appellant's Designation of Matter impermissibly lists materials not presented in the proceedings below, and his Initial Brief cites these improper materials in support of arguments which are not properly before this court or within the scope of this appeal of a school board's decision to terminate Appellant's employment as a teacher. In the alternative, Respondent moves for an order striking portions of Appellant's Designation of Matter to exclude documents not admitted or presented below and requiring

Appellant to amend his Initial Brief to exclude all references to and reliance upon improper documents and the arguments they purportedly support. If the Court grants Respondent's relief in the alternative, Respondent requests 30 days after filing to respond to Appellant's brief if and when he brings his brief into compliance with this Court's rules.

I. Procedural Posture

Appellant Bauer appeals the circuit court's order upholding the decision of the Beaufort County School District's Board of Education to terminate Appellant's employment with the District. The initial hearing before the school board and the subsequent appeals, first to the circuit court and now to this Court, are governed by the South Carolina Teacher Employment and Dismissal Act, S.C. Code Ann. § 59-25-410 *et. seq.* Pursuant to § 59-25-480, the standard of review in such appeals, and the only question before the circuit court and this Court, is whether the school board's action is supported by substantial evidence on the record on the whole. *See Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 25, 489 S.E.2d 191, 193 (1997) ("Judicial review of a school board decision terminating a teacher is limited to a determination whether it is supported by substantial evidence.").

Appellant, who is proceeding *pro se*, has, throughout the appellate process, continually refused to recognize, and proceed in accordance with, the nature and scope of his appeal and the applicable standard of judicial review. Appellant has effectively sought a re-trial or a trial *de novo* by attempting to introduce evidence that was not entered into the record during the school board's hearing and presenting arguments that were either not raised and ruled on by the board or were beyond the scope of a teacher dismissal hearing. Even in the early stages of his appeal to

this Court, Appellant has evidenced his intent to ignore this Court's rules and precedent by attempting to present new evidence and arguments, as further discussed below.

Appellant's futile approach to the appellate process may result from a realization of the consequence of his steadfast refusal to testify or introduce relevant evidence on his behalf at the school board's hearing, despite the opportunity to do so and repeated efforts by the board and its advice counsel to convince him otherwise. In refusing to testify or present and have admitted relevant documentary evidence, Appellant forfeited the means by which to introduce evidence he felt supported his position. Consequently, Appellant's presentation at the school board's hearing was limited to the testimony he believes supports his position that he obtained during limited cross-examination of the administration's witnesses and the few documents which were introduced during that cross-examination. The circuit court properly upheld the board's decision based on uncontroverted, substantial evidence that good reasons for his termination existed.

Accordingly, Respondent will argue in this appeal that the record overwhelmingly, and virtually without contradiction, supports the board's decision to terminate Appellant's employment. At this juncture, Respondent herein objects to Appellant's Designation of Matter and the Initial Brief, based on Appellant's clear failure to follow the appellate court rules.

II. The appeal should be dismissed because Appellant has intentionally violated this Court's rules by including in his Designation of Matter and Initial Brief evidence and arguments not considered below.

This Court may dismiss an appeal when an appellant proceeds without regard for the appellate court rules. *Lawson v. Mills*, 259 S.C. 308, 309, 191 S.E.2d 637, 637 (1972) (per curiam); *see also Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (stating that the court would be "completely justified" in dismissing an appeal based on the appellant's numerous violations of the rules regarding his brief, but declining to do so in favor of allowing

the appellant to bring his brief into compliance). This Court has stated 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,” and that an appellant must provide material that both complies with the Rules and facilitates appellate review. *Henning*, 307 S.C. at 437, 415 S.E.2d at 794.

The fact that Appellant is *pro se* does not insulate him from being required to follow this Court’s rules. A *pro se* appellant “assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003); *see also State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (stating that established rules of procedure are not to be discarded on appeal merely because a party appeared *pro se*), *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

The procedural requirements of this Court’s rules regarding the Designation of Matter and the Initial Brief are straightforward and important for the proper disposition of an appeal. Rule 209(b) states “the Designation [of Matter] 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)].” Rule 210(c) states “the Record [on Appeal] shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(h) further provides that, with limited exceptions not relevant to this case, “the appellate court will not consider any fact which does not appear in the Record on Appeal.”

As noted above, this matter is an appeal from an order entered by the Respondent’s school board, upheld by the circuit court sitting in its appellate capacity pursuant to S.C. Code § 59-25-480. This Court is therefore bound by the record established at the school board’s

hearing, which was, in effect, the trial of this matter. *See Argabright v. Argabright*, 398 S.C. 176, 179, n.3, 727 S.E.2d 748, 750, n.3 (2012) (noting that the supreme court was “of course, bound by the record established at trial,” and citing Rule 201(c)); *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) (concluding that a co-defendant's statement that was not presented to the lower court could not be properly included in the record on appeal.)

Throughout the appellate process, beginning with his appeal to the circuit court, Appellant has attempted to turn this appeal into a forum for what he believed were his grievances prior to his termination, which Appellant failed to present to the school board. In his appeal to the circuit court, Appellant repeatedly sought to include impermissible, independent causes of action or claims for relief. Despite prior warnings from the circuit court regarding the nature and scope of the appeal, Appellant proceeded to incorporate those claims in the arguments of his brief to the circuit court, wherein he also cited to exhibits that were not included in the record of the school board hearing. Appellant also filed motions to engage in discovery, seeking what he believed was exculpatory evidence.

During the initial phases of his appeal to this Court, Appellant has continued to disregard the rules. Appellant’s failures thus far include: his failure to inform the Court that he had ordered the transcripts as required by Rule 207, SCACR; his premature filing of his Initial Brief and Designation of Matter; filing a Designation of Matter that was not a list but a series of documents; and his failure to provide proper proof of service of the Initial Brief and Designation, and his failure to provide a certificate of counsel.¹ Appellant continues to attempt to introduce

¹ On July 5, 2016, this Court issued two deficiency notices to Appellant—one regarding his improper proof of services accompanying his Designation of Matter an Initial Brief, and a second regarding his failure to include a certificate of counsel with his Designation of Matter. Both notices state that failure to

evidence and make arguments that should have been presented below, but cannot now be presented. Appellant's Designation of Matter lists documents not presented to the school board and his Initial Brief refers to those documents in support of arguments that are either not proper in this appeal or not preserved.²

Given Appellant's continued and willful refusal to comply with this Court's rules, Respondent respectfully requests that the Court dismiss this appeal.

III. Should the Court decline to dismiss the appeal, the Court should strike Appellant's Designation of Matter and Initial Brief for including documents and arguments supported by those documents that were not presented below.

The appellate court rules state that the Designation of Matter 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, which may not include matter not presented to the lower court or tribunal. Rules 209(b) and 210(c), SCACR. Accordingly, the Court should strike the following items that Appellant seeks to include in his Designation because those items were not presented at the hearing before the school board: all exhibits listed under the heading "Depositions"; all exhibits listed under the heading "Law and Cases"; and all exhibits listed under the heading "Stand Alone Documents" to the extent these documents are not also included in the exhibits contained in the record before the school board.

In addition, Rule 208(b) requires that briefs contain citation to legal authority as well as "references to the transcript, pleadings, orders, exhibits, or other materials which may be

correct the deficiency within 10 days would lead to the dismissal of his appeal. As of July 22, 2016, it appears Appellant has failed to remedy these deficiencies. Dismissal is therefore appropriate.

² Appellant has also filed a motion asking that he be allowed to present evidence not included in the record below, which Respondent has opposed. The motion is still pending. Revealingly, this motion suggests that Appellant is aware of the basic rule of appellate procedure that the appeals court cannot consider evidence outside of the record presented below, but he still refuses to otherwise comply with that basic rule.

properly included in the Record on Appeal [see rule 210(c)]”—that is, material that was presented to the school board. Nearly all of Appellant’s 21 issues on appeal include a reference to exhibits not contained in the record of the school board hearing and not proffered as evidence during any of the circuit court’s hearings in the initial appeal in this matter. Furthermore, Issues 3, 5, 14, 17, and 20 are improper for failing to any cite any legal authority supporting the claim of error.

IV. Conclusion

For the reasons stated above, Respondent requests that the appeal be dismissed for a clear and repeated failure by Appellant to follow this Court’s rules. Alternatively, because Appellant’s Designation of Matter and Initial Brief do not comply with this Court’s rules; the Court should strike Appellant’s Designation of Matter and Initial Brief and require that he serve and file amended versions of each document. If the Court decides not to dismiss this appeal, and allow Appellant to rectify and re-file his Designation and Brief, Respondent requests that it be given 30 days thereafter to submit its Designation and Initial Brief.

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Respectfully Submitted,



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July 22, 2016

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In The Court of Appeals

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Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge

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John Alden Bauer, III,

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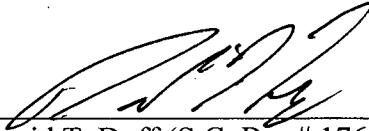
Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss, or, in the Alternative, to Strike Appellant's Designation of Matter and Initial Brief, to Require an Amended Brief that Complies with the Rules, and For an Extension of Time to File Respondent's Designation of Matter and Initial Brief, by depositing a copy of it in the United States Mail, postage prepaid, on July 22, 2016, addressed to *pro se* Appellant John Alden Bauer, III, 5 Gumtree Road E-11, Hilton Head Island, South Carolina, 29926.

July 22, 2016

SEE SIGNATURE NEXT PAGE



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July 22, 2016

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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SC Court of Appeals

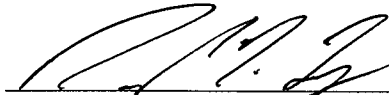
Re: John Alden Bauer, III, v. Beaufort County School District
C.A. No. 2015-CP-07-1343
Appellate Case No. 2016-000955

Dear Ms. Kitchings:

Enclosed for filing is the original and six copies of Respondent's Motion to Dismiss, or, in the Alternative, to Strike Appellant's Designation of Matter and Initial Brief, to Require an Amended Brief that Complies with the Rules, and For an Extension of Time to File Respondent's Designation of Matter and Initial Brief along with Proof of Service for same.

Thank you for your assistance in this matter.

Sincerely,



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The Honorable Jenny Abbott Kitchings

July 22, 2016

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