

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Judge

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Appellate Case No. 2015-000778  
Case No. 2013-CP-23-01762

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**RECEIVED**  
AUG 24 2016  
SC Court of Appeals

Carol Simpson,

Appellant,

v.

Frank A. Landgraff, Carol Sutton, Sutton & Associates  
Investigations, Inc., Defendants,

Of Whom Frank A. Landgraff is the

Respondent.

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APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE APPELLANT'S  
FINAL BRIEF, OR ALTERNATIVELY, GRANT APPROPRIATE RELIEF

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“Appellant should be held to the same standards as Respondent.” Appellant unequivocally agrees with this axiomatic statement made by Respondent in Paragraph 10 of his Motion to Strike. Respondent asks this Court to strike Appellant’s Initial Brief because she added references.<sup>1</sup> Appellant did not complain about Respondent’s added references in her motion to strike. Thus, Respondent should not complain about Appellant’s added references in his motion to strike. They should both be held to the same standard. As a result, the Court should dismiss Respondent’s motion and allow Appellant Final Initial Brief to stand as filed.

The appropriate standard is found in SCACR 211(b):

The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:

- (1) References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. **These revised references may be in place of or in addition to the initial references . . . .**
- (2) Correction of Typographical Errors and Misspellings. The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made. (Emphasis added).

Respondent tediously demonstrates that Appellant only added citations “in addition to the initial references.” Without supplying the missing citations, Appellant feared that she would not be in compliance with the rule. Viewing this as what the rule requires, Appellant made no complaint that Respondent also added citations.<sup>2</sup>

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<sup>1</sup> Significantly, Respondent has no issue with Appellant’s Final Reply Brief.

<sup>2</sup> On page 4 of her Motion to Strike, Appellant stated the following:

Respondent’s attorneys made almost 100 changes to the final brief – some minor and some quite substantial – that were not to correct “obvious typographical errors and misspellings.” This number would increase if one counted all the references to the supplemental record that is the subject of Respondent’s Motion to Supplement Record on Appeal.

Most of the changes involve adding or deleting single words. Approximately, 20 changes add or delete phrases, emphasis, or dependent clauses. In a display of unmitigated audacity, Respondent’s attorneys added more than 25 complete sentences.

If Appellant had counted the added citations as improper, the number of his improper changes would have been 10% higher. Even so, Respondent's romance with exaggeration mandates close scrutiny of his list of Appellant's citations that he argues are improper. He claims that he was prejudiced by a "series of record citations appearing nowhere in her initial brief." In reality, Appellant added only 4 citations to identify the location of her complaint, her motions, and documents probably drafted by Respondent's attorneys.

First, on page 1 of her Initial Brief, Appellant lists documents – a Complaint, a Motion to Proceed Under Pseudonym, and an *Ex Parte* Motion for a TRO -- that she sent to the trial court. On page 1 of her Final Initial Brief, Appellant added "(R. p.27-29, 113-128)" to show where these documents were in the Record. Granted, their location could be easily ascertained by looking at the Index of the Record on Appeal, but, upon review, Appellant thought the citation was proper under the rules.

Second, on page 15 of her Initial Brief, Appellant cited the Order that is the subject of this appeal. Upon review, she added "(R. p. 6)" on page 14 of her Final Initial Brief to identify its location the order in the record.

Third, on page 15-16 of her Initial Brief, Appellant referred to Respondent's Family Court documents. She added "(R. p. 385)" on page 15 of her Final Initial Brief. Given the same attorneys representing Respondent in this appeal represented him in that case, and likely drafted the documents, Appellant cannot imagine any prejudice to Respondent.

Fourth, on page 21 of her Initial Brief, Appellant stated that she made a "claim for specific damages . . . ." She added "(R. p. 37)" to identify the location of the Complaint in the Record on Appeal. Respondent answered the Complaint and is fully aware of its contents.

The remaining citations of which Respondent complains were in complete compliance with SCACR 211(b). Each replaced an existing citation.

First, on page 8 of her Initial Brief, Appellant's reference was "(First Motion for Recon, p. 24)." In her Final Initial Brief, Appellant properly replaced the reference with "(R. p. 236)." Page 236 of the Record is page 24 of the first Motion for Reconsideration.

Second, on page 12 of her Initial Brief, Appellant's reference was "(Second Motion for Recon, p. 17-18)" to support the statement that "the Greenville County Sheriff and SOVA have clearly concluded that Appellant was the victim of video voyeurism committed by [Respondent]." In her Final Initial Brief, Appellant properly replaced the reference with the correct reference of "(R. pp. 389, 398)." Page 389 of the Record is part of the Incident Report from Greenville County Sheriff's Department and page 398 is Award Letter from State Office of Victim Assistance.

Third, on page 21 of her Initial Brief, Appellant's reference was "(Memo in Opposition, p. 21)" regarding the basis of her civil conspiracy claim. In her Final Initial Brief, Appellant properly replaced the reference with "(R. p. 37)" which is the page of the Complaint where she made the civil conspiracy claim.

In Paragraph 5 of his Motion, Respondent tries to create an issue where none exists. Appellant correctly states on page 1 of the Final Initial Brief that she presented certain documents to the trial court on March 18, 2013. One of the documents was an *Ex Parte* Motion for a TRO which by its nature was presented directly to the trial judge rather than filed with the clerk.

In Paragraph 6 of his Motion, Respondent discusses the date-stamp on the documents. Had Respondent turned to the next page of Appellant's Final Initial Brief, his fabricated mystery

would have been solved:

On March 20, 2013, the trial court instructed Appellant to “file the Summons and Complaint and Motion for Temporary Injunction and serve the Respondents in this matter. Once proof of service has been received by the Court, we will schedule a hearing, allowing for 10 day’s notice to the Respondents.” (R. p. 466). On March 27, 2013, Appellant filed the Summons, Complaint, and Motion to Proceed under Pseudonym. (R. p. 27-29, 113).

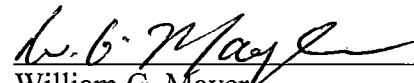
On a crucial side note, Respondent cites Rule 208(E)(4) to correctly state that his brief should “contain references to . . . the Record on Appeal to support the salient facts alleged.” Respondent has incessantly alleged the most salient “fact” of this case – Appellant engaged in wrongful conduct defined as an adulterous affair with no support. Significantly, Respondent has not once included a reference in any filing before the trial court to support this “fact.” Nor can he, because none exists.

#### CONCLUSION

For the reasons stated, this Court should deny Respondent’s Motion to Strike Appellant’s Final Brief and deny any other relief.

Respectfully submitted

August 22, 2016

  
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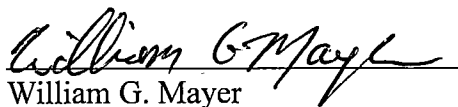
Of Whom Frank A. Landgraff is the

Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served a copy of APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE APPELLANT'S FINAL BRIEF, OR ALTERNATIVELY, GRANT APPROPRIATE RELIEF upon the individuals named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the addresses below on this 22nd day of August, 2016:

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
P. O. Box 11629  
Columbia, SC 29211