

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION APPELLATE PANEL

W.C.C. FILE NO. 1205879

APPELLATE CASE NO. 2015-001702

HARRY REESE.....Appellant,

vs.

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH and SC STATE ACCIDENT
FUND,Respondents.

MOTION TO STRIKE

Respondents, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On September 15, 2014, Appellant filed a Form 50 requesting a hearing, alleging an injury pursuant to S.C. Code § 42-1-160(B). Subsequently, the Appellate Panel of the South Carolina Workers' Compensation Commissioner issued an Order a Decision on April 8, 2016, affirming the decision of the single commissioner, which determined that the Appellant did not

meet his burden of proof to establish a compensable workers' compensation claim pursuant to S.C. Code Ann. § 42-1-160(B). Appellant timely filed an appeal.

II.

On appeal, Appellant filed and served his Initial Brief of Appellant and Designation of Matter on July 15, 2016. In his Designation of the Matter, Appellant designated various documentation and correspondence dated after the single commissioner hearing. Appellant further directly cited to portions of these documents in his Initial Brief of Appellant.

III.

Pursuant to our appellate court rules, the Record on Appeal “shall include all matter designated to be included by any party under Rule 209” Rule 210(c), SCACR. Critically though, our appellate court rules further provides the Record on Appeal “shall not, however, include matter **which was not presented to the lower court or tribunal.**” *Id.* (emphasis added).

IV.

Amongst the matter identified in Appellant's Designation of Matter, Appellant designated correspondence and documentation dated after the single commissioner hearing. These documents obviously were not and could not have been submitted to the single commissioner (the lower court). Accordingly, as these documents were not presented to the single commissioner, all documents dated after April 6, 2015 designated by the Appellant cannot properly be included as a part of Record on Appeal pursuant to Rule 210(c), SCACR, and must be stricken from Appellant's Designation of Matter. See *Tant v. Guess*, 37 S.C. 489, 512-513, 16 S.E. 472, 480 (1892) (“[I]f the purpose was to ask this court to consider facts not presented to the Circuit Court, . . . then it is clear beyond dispute that we cannot consider such facts. For, as

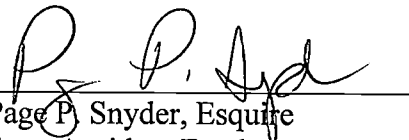
is said by Taney, C. J., in *Russell v. Southard*, 12 How., at page 159: ‘According to the practice of the Court of Chancery from its earliest history to the present time, **no paper not before the court below can be read on the hearing of an appeal.**’ This court has, in numerous cases, recognized and affirmed this doctrine.” (emphasis added)); *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) (“Morris’ statement was not presented to the lower court and cannot properly be included in the Record on Appeal.”); see also *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he 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.”); see generally *Roche v. South Carolina Alcoholic Beverage Control Comm’n*, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975) (“[T]he purpose of appeal under our procedure is ‘to determine if the lower court did something that it should not have done, or omitted doing something it should have done.’ Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him.” (citation omitted)).

V.

Based on the foregoing, the Respondents respectfully asks this Court to strike any and all submissions dated after April 6, 2015 from Appellant’s Designation of Matter and direct Appellant to file the Record on Appeal without including the improperly-designated matter. Additionally, Respondents asks this Court to strike the portions of Appellant’s Initial Brief citing directly to the submissions dated after April 6, 2015 that were not properly before the single commissioner and require Appellant to omit the direct citations to the improperly-designated matter in his Final Brief of Appellant. Furthermore, the Respondents request this Court to hold the filing and service of the Record on Appeal in abeyance until this motion has been ruled upon.

WHEREFORE, the Respondents pray that this Court will strike the improper matter designated by Appellant in his Designation of Matter; strike the portions of Appellant's brief directly citing to the improperly-designated matter; require the service and filing of a Final Brief of Appellant omitting any direct citation to the improper matter; direct Appellant to file the Record on Appeal without including the improperly-designated matter; hold the service and filing of the Record on Appeal in abeyance pending a ruling on this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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(803) 896-5896
Attorney for the Respondents

Columbia, South Carolina
September 16, 2016

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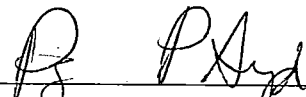
HARRY REESE.....Appellant,

vs.

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH and SC STATE ACCIDENT
FUND,Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Strike on Appellant on September 16, 2016 by depositing a copy of it in the United States Mail, postage prepaid, to 8408 Little John Drive, Columbia, South Carolina 29209.

BY: 
PAGE P. SNYDER, ESQUIRE
S.C. BAR NO. 100239
ATTORNEY FOR RESPONDENT
P.O. BOX 102100
COLUMBIA, SC 29210
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SOUTH CAROLINA
STATE ACCIDENT FUND

HARRY B. GREGORY, JR., Director

September 16, 2016

VIA US MAIL

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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**RE: Harry Reese, Appellant v. South Carolina Department of Mental
Health and The State Accident Fund, Respondents.
Workers' Compensation File No. 1205879
Appellant Case No.: 2015-001702**

Dear Ms. Kitchings:

Enclosed please find for filing the original and six (6) copies of the Respondents' Motion to Strike and the original Proof of Service. I would appreciate you returning the clocked-in copies to me in the self-addressed stamped envelope provide.

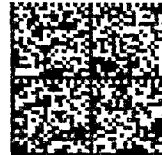
By copy of this letter, I am serving Harry Reese, Pro-Se Appellant with a copy of the same.

Sincerely,

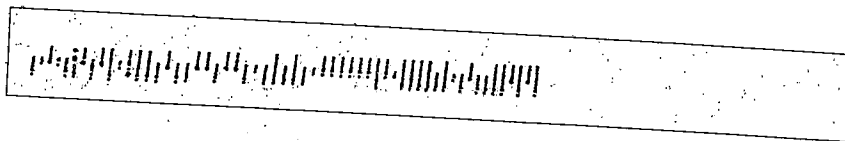


Page P. Snyder
Chief Counsel, State Accident Fund
S.C. Bar Number 100239

PPS/bjt
Enclosures
cc: Harry Reese



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