

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2014-40-00993

Appellate Case No. 2016-001058

RECEIVED

JAN 09 2017

SC Court of Appeals

Justin T., a minor, by and through his parent
Caren D. Taylor

APPELLANT

vs.

Richland County School District One,
and Percy Mack

RESPONDENTS

**PETITION FOR REHEARING
JUDGE GEATHERS' ORDER
FILED 12/22/2016**

Caren D. Taylor
2139 Oak Street
Columbia, South Carolina 29204
(803) 765-2107

Appellant *Pro Se*

TABLE OF CONTENT

Table of Content..... 1

Table of Authorities..... 2

Question for Review.....3

Statement of Case.....3

Argument

**1. THE COURT OVERLOOKED THAT THE DEFENDANT’S
MEMORANDUM OF LAW IN SUPPORT OF THE MOTION
TO DISMISS WAS NOT PRESENTED TO THE LOWER
COURT.....4**

Conclusion.....6

TABLE OF AUTHORITIES

SOUTH CAROLINA APPELLATE COURT RULES

Rule 210(c).....4, 6

SOUTH CAROLINA RULES OF CIVIL PROCEDURES

Rule 5(e)5

QUESTION FOR REVIEW

Did this Court err by granting in part Respondent's Motion to Supplement the Record on Appeal with the Defendant's Memorandum of Law in Support of the Motion to Dismiss because it was not presented to the lower court?

STATEMENT OF THE CASE

This case evolved from an Appeal hearing on January 14, 2014 to the Richland County School District One Board of Trustees ("The Board") which upheld the Hearing Officer's expulsion of Appellant ("The Student") from A. C. High School and assigning him to the "Evening School."

On March 11, 2014 Dwayne T. Mazyck, Esquire, Attorney for Respondents, filed the Defendant's Motion to Dismiss on the ground that the Circuit Court lacked subject matter jurisdiction of the appeal under S.C. R. Civ. P. 12(b)(1) and (6).

A hearing on the Defendant's Motion to Dismiss was heard on April 15, 2016 at 11:00 am before Judge Letitia H. Verdin. The Form Order dismissing the appeal for lack of subject matter jurisdiction was signed by the Judge on April 15, 2016 and entered on April 18, 2016

A timely Notice of Appeal and Proof of Service to Respondents were filed with this Court on May 19, 2016; and a redacted Notice of Appeal and Proof of Service to Respondents were filed on May 31, 2016.

The Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal were filed on August 24, 2016. The Respondent's Designation of Matter to be Included in the Record on Appeal was filed on September 23, 2016. (Appendix, p. 9b -10)

The Record on Appeal was served on the Attorney of Record, Dwayne T. Mazyck, on October 24, 2016. (Appendix, p. 8) The Certificate on page 25 of the Record on Appeal gives a list of Respondents' Designated Matter which was not included in the Record on Appeal pursuant to Rule 210(c), SCACR. (Appendix, p. 7)

On November 3, 2016 the Appellant filed the RECORD ON APPEAL in the Court of Appeals. (Appendix, p. 6)

On the November 3, 2016 the RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD ON APPEAL was filed (Appendix pp.11-13). The Respondents also filed an APPENDIX TO THE RECORD ON APPEAL on the same date which contained the DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS on pages 042 to 045. (Appendix pp. 2-4a)

ARGUMENT

I. THE COURT OVERLOOKED THAT THE DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS WAS NOT PRESENTED TO THE LOWER COURT.

South Carolina Rules of Civil Procedure, RULE 5(e) - SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS – provides in pertinent part:

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules **shall be made by filing them with the clerk of court, except that the judge may permit the papers to be filed him, in which event he shall note thereon the filing date and transmit them to the office of the clerk.** Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. (Emphasis added)

Accordingly, all papers filed with the Richland County clerk of court are stamped "FILED". The filed stamp appears on documents in the RECORD ON APPEAL on the following pages:

1. Page 3, NOTICE OF APPEAL;
2. Page 5, CERTIFICATE OF SERVICE;
3. Page 6, AMENDED NOTICE OF APPEAL;
4. Page 9, DEFENDANT'S MOTION TO DISMISS; and
5. Page 11, CERTIFICATE OF SERVICE BY MAIL.

The Defendant's Memorandum of Law in Support of the Motion to Dismiss dated April 15, 2016 and signed by Dwayne T. Mazyck has never been stamped "FILED" by the Richland County Clerk of Court Jeanette W. McBride. (APPENDIX, p. 2) Additionally, the CERTIFICATE OF SERVICE BY MAIL for the DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS on April 15, 2016 to Alex Thomas Postic, Esq. was not signed by Shelley M. Kohr nor "FILED" with the Court. (APPENDIX, p. 5)

The Defendant's Memorandum of Law in Support of the Motion to Dismiss dated April 15, 2016 and signed by Dwayne T. Mazyck also indicates that it was neither filed with Judge Verdin because the requirements for filing with a judge pursuant to SCRPC Rule 5(e) are not written on the Memorandum. (APPENDIX, p. 2)

As discussed in this argument, THE DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS is completely void of having been filed in the Richland County Circuit Court with clerk of court or filed with Judge Verdin pursuant to Rule 5(e), SCRPC.

SC Appellate Court Rule 210 (c) provides in pertinent part:

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. ...

As discussed and shown herein, the **RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL** cannot be added to the RECORD ON

APPEAL. It was not filed in the Richland County Circuit Court. Additionally, The Richland County Common Pleas Case History For Case No. 2014CP40093 printed on 04/15/2016 & 05/10/2016 clearly shows that all the documents requested to supplement the RECORD ON APPEAL have never been filed. (Appendix, pp. 16-19)

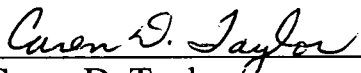
Therefore it is apparent that the Judge overlooked that THE DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS is void of any evidence of having been presented to the Circuit Court and the Order must be reversed. (Appendix, p. 1)

CONCLUSION

This Court should reverse its Order to grant Respondent's Motion to Supplement the Record on Appeal to include the Defendant's Memorandum of Law in Support of the Motion to Dismiss under Rule 210(c), SCACR because it was not filed with the Richland County Clerk of Court nor the Judge as required in Rule 5(e), SCRCF.

Respectively Submitted,

January 6, 2017


Caren D. Taylor
2139 Oak Street
Columbia, SC 29204
(803) 765 – 2107

Appellant, *Pro Se*

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2014-40-00993

Appellate Case No. 2016-001058

RECEIVED

JAN 09 2017

SC Court of Appeals

Justin T., a minor, by and through his parent
Caren D. Taylor

APPELLANT

vs.

Richland County School District One,
and Percy Mack

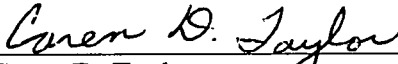
RESPONDENTS

PROOF OF SERVICE

I certify that I have served a copy the Petition for Rehearing and the Appendix on Respondents Richland County School District One and Percy Mack by depositing a copy of it in the United States Mail, postage prepaid and return address clearly indicated, on January 6, 2017 addressed to the attorney of record:

Childs & Halligan, P.A.
Dwayne T. Mazyck, Esquire,
PO Box 11367
Columbia, SC 29211-1367

January 6, 2017


Caren D. Taylor
2139 Oak Street
Columbia, South Carolina 29204
(803) 765-2107

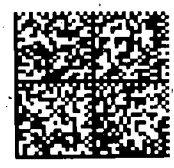
Appellant *Pro Se*

Caren D. Taylor
2139 Oak Street
Columbia, SC 29204

South Carolina Court
of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
JAN 09 2017
SC Court of Appeals

P



U.S. POSTAGE
\$8.30
PM 1-DAY
29201 0024
Date of sale
01/06/17
06 2S00
08282331

PRIORITY MAIL 1-DAY™

EXPECTED DELIVERY 01/09/2017

3 lb. 1.60 oz.

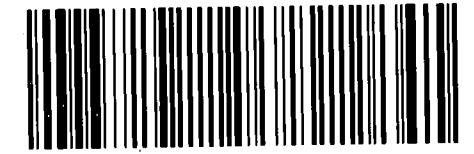
SHIP TO:

0024

SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

COLUMBIA SC 29201

USPS TRACKING NUMBER



9505 5000 0221 7006 0001 63