

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

RECEIVED
MAR 06 2017
SC Court of Appeals

Appellate Case No. 2016—001239

Biafra Monique Curtis.....Appellant

v.

South Carolina Department of Public Safety, Warren Ganjehsani, Mike Oliver, Leroy Smith, Kenneth Phelps, Anthony Grice, William Taylor, Nicklous King, Willie McCauley, Jr. Ada Schmidt, Aaron Canzater and Cherie young, individually and in their Official Capacities.....Respondents

MOTION TO DISMISS THE APPEAL, BASED ON APPELLANT'S FAILURE TO COMPLY WITH THE JANUARY 26, 2017 ORDER OF THIS COURT

YOU WILL PLEASE TAKE NOTICE, RESPONDENTS, by and through their undersigned attorney, hereby request this Court dismiss this appeal, in its entirety.

REGARDING THE FINAL BRIEFING

On January 26, 2017, the Court ordered Appellant to reform the Record on Appeal and her final briefs, to conform to the South Carolina Rules of Appellate Procedure. On March 1, 2017, Respondents received a copy of a new proposed

Record on Appeal, and a new proposed Final Brief (not a proposed Final Reply Brief), both of which were in response to the Order of this Court, but neither of which comply with the South Carolina Rules of Appellate Procedure.

First, the proposed Final Brief contains pages of material that were not found within the initial brief. Rule 211(b) states: "The final brief(s) shall be identical to the brief(s) previously served under Rule 208," which exceptions made for replacing references to the record and correction of typographical errors.

The initial brief of Appellant contained seven and one-half pages of content. The February 27, 2017 brief contains eleven pages of content, and obviously fails to comply with Rule 211(b). The Table of Authorities in the initial brief contains references to two South Carolina cases. The Table of Authorities in the "final brief" contains eight references, six of which are to South Carolina cases. The brief further fails to comply with Rule 267(e), SCACR as it is unsigned, unbound, and is printed on white paper.

Appellant additionally failed to serve a Final Reply Brief, though an initial Reply brief was previously submitted.

Respondents request dismissal of this Appeal, in its entirety, based on this non-compliance with the South Carolina Rules of Appellate Procedure, and non-compliance with the January 26, 2017 Order .

REGARDING THE RECORD ON APPEAL:

Appellant was further Ordered to reform the Record on Appeal to conform with Rule 210, SCACR. Appellant has failed to do so, as the February 27, 2017 Record on Appeal contains a number of items that are improper, specifically:

1. Matter is included within the proposed Record that was not previously listed on a Designation of Matter. Appellant included a new Designation of Matter, dated February 27, 2017 within her submission. This is improper.

2. Appellant added unnumbered "Exhibits" attached to the back of the numbered Record on Appeal, including mental health and medical records for Appellant that were not produced to the lower court and were not produced to counsel for Respondents prior to the delivery of the proposed Record on Appeal. Specifically, an outpatient therapist provided a newly generated February 17, 2017 letter. This letter, along with the February 24, 2014 Clinical Assessment and the accompanying medical and mental health records, were served on counsel for the first time within the proposed Record on Appeal. These documents should be excluded.

3. Records from the Clerk of Court's Office in Richland County were not offered to the lower court as evidence. These records are attached to the Record on Appeal as Exhibits (1, 2, 3 and 4). A newly produced letter from Richard County Chief Deputy Clerk, dated February 22, 2017, was not in existence at the hearing on this matter, and must be excluded.

4. It appears that the Summons, Complaint and Answer have been jumbled together in the Record on Appeal, within the section beginning on ROA 7 and ending on ROA 32. Several pages of the Answer are included, interspersed among the pages of the Complaint, and other matter submitted by Appellant. The Answer, in its entirety, was designated within Respondents September 2, 2016 Designation of Matter, and should be included within the Record.

5. The Transcript of May 18th, 2016 was designated by Respondents within their September 2, 2016 Designation of Matter, and should be included in its entirety. Pages 3, 4, 7, and 16 were excluded, without justification.

6. Respondents' Initial Brief without proper references to the ROA, should not be included within the ROA. These pages, ROA pages 84-97, should be excluded.

7. Pages 98-104 contain what appear to be proposed Jury Charges. As this case was dismissed at summary judgment, no jury charges were submitted to the lower court. These Jury Charges are included in the Record on Appeal for the first time within the February 27, 2017 proposed Record on Appeal. These should be excluded.

RELIEF SOUGHT

Respondents request that the appeal be dismissed, in its entirety, as Appellant has failed to comply with the South Carolina Rules of Appellate Procedure and has failed to comply with the January 26, 2017 Order of this Court. Appellant has had numerous opportunities to perfect her appeal, and has declined to do so.

Rather than narrowing the issues that need to be address, Appellant is enlarging the volume of matter she is attempting to force into the Record on Appeal improperly.

Owing to her repeated disregard of the Rules of this Court, this matter has been repeatedly delayed, and much time expended by the undersigned to seek that Appellant simply comply with the rules. Respondents respectfully assert the appeal should be dismissed.

In the alternative, a Motion to Reform the Record on Appeal is being filed simultaneously.

March 2, 2017

Respectfully submitted,

By:


Norma A. T. Jett

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1916-1991

March 2, 2017

Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

Re: *Biafra Monique Curtis v. SCDPS, et al.*
Appellate Case Number: 2016-001239

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SC Court of Appeals

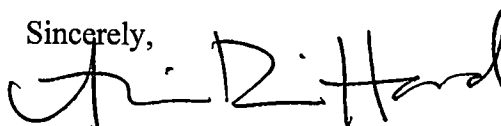
Dear Ms. Kitchings:

Please find enclosed an original and six copies, as well as a check for the filing fee, for **Motion to dismiss the Appeal, Based on Appellant's Failure to comply with the January 26, 2017 Order and Motion to Reform the Record on Appeal and For an Extension of Time to File Final Briefs Until the Record on Appeal can be Reformed.**

By copy of this letter, I am serving a copy of these items on Appellant as shown below, and by the attached certificate of service. Please file the original and return a clocked copy to me in the enclosed envelope.

Thank you for your assistance.

Sincerely,



Alison Dennis Hood

ADH
Enclosures

cc: Biafra Monique Curtis
Appellant
PO Box 21294
Hilton Head Island, SC 29925



Ness & Jett, LLC
PO Box 909
Bamberg, SC 29003

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