

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

Case No:2016-CP-001239

RECEIVED

MAR 17 2017

SC Court of Appeals

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, et al., **Respondent(s)**

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

PLEASE TAKE NOTICE, APPELLANT, hereby responds and objects to the above referenced Motion To Dismiss The Appeal, Based On Appellant's Failure To Comply With The January 26, 2017 Order of this court. The motion to dismiss the appeal is premature based on the fact that there are several moving parts to this case which should be addressed.

The Appellant takes this very seriously and will respond to each and every issue raised in this motion on a point-by-point basis:

1. RESPONSE AND OBJECTION REGARDING THE FINAL BRIEFING.

Regarding the final brief, the appellant did submit amended documents to the court documents on February 27, 2017 in response to the January 26th 2017 order and after receiving the March 2nd 2017 order, however, after reviewing the last order, the appellant amended her previously submitted documents and resubmitted them on February 13th 2017, therefore correcting the titles of the documents and also in an attempt to adhere to all of the rules of the Court within the bodies of the documents. The difference in the number of pages is the amended proposed final reply brief does meet the requirements of Rule 211(b), which states that the final brief shall be identical to the briefs previously submitted under rule 208, except for the following: 211 (b)(1) 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. The inclusion of additional references in the table of authorities falls under this rule. The appellant has resubmitted and amended proposed final reply brief that is signed and the front cover of the brief is blue paper per Rule 267 (e).

As far as the statement by the respondents, that the appellant failed to serve a final reply brief, this is not a fact. The appellant served a final reply brief on December 22nd which appears in the court index on December 28th. In addition, the respondents filed an objection to the appellant's final brief served on December 29th 2016 and appearing in the record on January 3rd 2017.

Again, dismissal of this case is premature as the January 26 order required that the appellant shall serve a record on appeal that complies with Rule 210 of the SCRAP and file proof of service with the court.

2. REGARDING THE RECORD ON APPEAL

When the Appellate looked at rule 210(c), the first sentence states that 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. When the appellant looked at Rule 209, the first line states that at the time a party serves his briefs under rule 208, to include a reply brief, he shall also serve on all parties to the appeal a designation of matter to be included in the record on appeal, so, since the January 26th order did not make specific requests regarding the designation of matter, the appellant followed the fourth line of the order which says specifically, the record should include all matters designated by **both** parties for inclusion in the record on appeal, so this is why the appellant amended her designation of matter, in the attempt to conform to the order, and removed matters not presented to the lower court and not designated in the record on appeal.

In following the instructions of the March 2nd 2017 order clarifying that the exhibits that were stricken were the "Exhibits to Support Final Brief", when the only documents submitted to the court with that title are displayed in the court index on January 6, 2017. THE APPELLANT REMOVED ALL OF THESE EXHIBITS from all documents submitted to the court.

Regarding the record on Appeal, the matter included in the record was previously listed on the appellant designation of matter and the respondents designation of matter. Per the January 6th order, fourth sentence of the first paragraph specifically.

It is conceivable that any lay person could be misconstrued by this and confused by this especially since the January 26th Order did not specifically this, which why the March 2, 2017 order was issued to clarify.

The statement that the appellant did not submit mental health and medical records in the lower court or to counsel prior to the delivery of the proposed record on appeal is false. These documents were sent directly to the respondents on October 20th 2015 and are recorded in the Richland County Court of Common Pleas on this date. They were also submitted to the Respondents previously (See Transcript PG 6, Lines 1-25, PG 12 Lines 13-25. In the above references to the transcript, which the Respondent's requested the entire transcript in their initial designation of matter, and this issue was raised in the trial court, the respondent's attorney acknowledges the serious injuries sustained by the appellant and the respondents attorney also acknowledges the substantial damages and loss incurred by the appellant. Her statements are based on the medical records and medical history that they received prior to the hearing. Any additional records are simply to provide the continuation of care information.

The records from the Richland County Public index was extrinsic evidence presented upon first discovery when the respondents attorney stated that the final order signed and dated May 16th 2016 was a scrivener's error. These public index records indicate that the final order signed and dated May 16th 2016 was also entered into the Richland County Court of Common Pleas public index on May 16th 2016, which supports the very essence of this case, that the final judgement was signed and entered into the Richland County Public Index two days prior to the actual hearing date. The attachments to the record on appeal as exhibits 1,2 and 3 were in the original designation of matter. The other exhibit is simply a letter from Richland County chief Deputy Clerk, Virginia Belcher, to acknowledge that the documents which the respondents claim to have not received were, in fact, received by the court and included in the case file as well.

Regarding the records, the respondents failed to reference exhibit 5 which is relevant because

1. The respondents designation of matter included the entire transcript from the trial with no

exclusions and 2. These issues were brought up in the trial hearing see transcript PG. 8, lines 10-11, PG 9 Lines 24-25, PG 10 Lines 1-5 which confirm that notice of the claim was mailed to South Carolina Attorney General Alan Wilson, Governor Nikki Haley, Director Leroy Smith and Colonel Mike Oliver on September 27th 2014 within the two-year verify claim requirement referenced by the Judge in the transcript.

With regard to the statement that the summons complaint and answer have been jumbled together in the record on appeal, the appellant has never seen the respondents answer and would like to hereby request a copy of it.

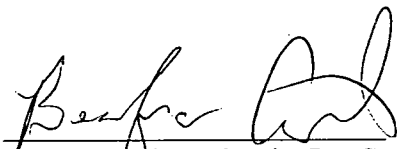
Again, the respondents designation of matter included the transcript of the trial hearing in its entirety without any pages being excluded. The respondents initials brief should be included.

Pertaining to the jury charges, the pro se appellant, being a late person, and in the earnest attempt to abide by the Court's Order, downloaded a form from the court website and has removed these jury charges in her amended documents which were submitted on March 13th 2017.

And finally, with regard to the relief sought, it is extremely premature to dismiss this case in its entirety as the appellant has attempted to comply to the orders of the court and is continuously amending documents, within the require timeframe in the effort to do so.

With that said, the appellant agrees to the final statement contained in the motion to dismiss and what the respondents attorney suggests that a motion to reform the record on appeal should be granted.

March 13, 2017


Biafra Monique Curtis, Pro Se
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**PROOF OF SERVICE OF RESPONSE AND OBJECTION TO MOTION TO DISMISS THE APPEAL,
BASED ON APPELLANT'S FAILURE TO COMPLY WITH THE JANUARY 26, 2017 ORDER OF THIS
COURT**

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PROOF OF SERVICE

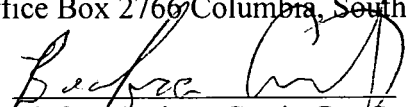
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I Certify That I Have Served The Response And Objection To Motion To Dismiss The Appeal, Based On Appellant's Failure To Comply With The January 26, 2017 Order Of This Court to The Respondent(S) By Depositing A Copy Of It In The United States Mail, Postage Prepaid, on March 13, 2017, Addressed To Norma Jett, Esquire And Allison D. Hood, Esquire Post Office Drawer 909 Bamberg, SC 29003, to Honorable Jenny Abbott Kitchings, Clerk South Carolina Court of Appeals PO BOX 11629 Columbia, SC 29211 and to Jeanette McBride Clerk of Court Richland County Court of Common Pleas Post Office Box 2766 Columbia, South Carolina 29202

March 13, 2017


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