

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian Gibbons, Circuit Court Judge

JUN 30 2017

S.C. SUPREME COURT

Appellate Case No. 2017-000423
Case No. 2016-CP-29-1418

Jackie HarrisAppellant,

v.

Lancaster County Election Commission, Lancaster Municipal Election Commission, and Linda Blackmon-Brace Respondents.

**RESPONDENT LINDA BLACKMON-BRACE’S MOTION TO STRIKE
RESPONDENT LANCASTER COUNTY ELECTION COMMISSION’S
AMENDED INITIAL BRIEF**

Pursuant to Rule 240(a), SCACR, Respondent Linda Blackmon-Brace (Respondent) moves to strike the Amended Initial Brief filed on behalf of Respondent Lancaster County Election Commission (the Commission) on June 26, 2017, because the Commission improperly attempted to appeal the circuit court’s ruling by arguing for a reversal. As this Court already concluded, the Commission has no right to appeal the circuit court’s order because it is not an aggrieved party in this matter, and the Commission cannot cross-appeal because it never filed or served a notice of its intent to do so. For the reasons set forth below, as well as those set forth in this Court’s prior Order, the Court should grant Respondent’s Motion to Strike the Commission’s Amended Initial Brief and prevent the Commission from submitting any future filings in this matter.

BACKGROUND¹

On May 12, 2017, the Commission filed its first initial brief in which it asked this Court to reverse the Commission's own decision and remand the case for another hearing. Comm'n's First Initial Br. at 12. Respondent Linda Blackmon-Brace filed a Motion to Strike the Commission's improper filing on May 15, 2017. In support of its Return in Opposition of the Motion, the Commission submitted a one-page affidavit sworn out by the County Attorney in which he stated he was knowledgeable of the South Carolina Appellate Court Rules and expressed his opinion that he complied with the rules in filing the Commission's initial brief. This Court unanimously disagreed and issued an Order on June 16, 2017, granting Respondent Linda Blackmon-Brace's Motion to Strike. On June 26, 2017, the Commission filed an Amended Initial Brief. The Commission's disregard of this Court's Order—namely, by filing an almost indistinguishable brief suffering from the same defects as the first one—gave rise to the present Motion to Strike.

ARGUMENT

The Court should strike the Commission's improper June 26, 2017, filing because the Commission has again asked this Court to reverse the circuit court's ruling, despite acknowledging it (1) never filed and served a notice of appeal and (2) is not an aggrieved party in this matter.

Because the Commission admittedly never served a notice of its intent to cross-appeal the circuit court's decision, the Commission's Amended Initial Brief seeking a reversal of the circuit court's order is not properly before this Court. See Rule 203(c), SCACR, ("A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties."); Rule 260(a), SCACR ("Whenever it appears that an appellant or petitioner has failed to comply with the requirements

¹ For a more detailed factual and procedural background, Respondent Linda-Blackmon Brace would rely upon the Background section in her Motion to Strike the Commission's First Initial Brief. Additionally, Respondent would incorporate by reference all arguments raised in her first Motion to Strike, as well as those made in her Reply to the Commission's Return, as fully and effectually as if set forth herein verbatim.

of these Rules, the clerk shall issue an order of dismissal”). In its Order, this Court stated the Commission “may not raise the issue independently because it did not file a cross-appeal and concedes it could not file a cross-appeal because it was not an aggrieved party.” Order at 1; see also Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, . . . or decision may appeal.”); Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 301, 551 S.E.2d 588, 589–90 (Ct. App. 2001) (asserting that “[a] party cannot appeal from a decision which does not affect his or her interest”); Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) (holding the party “was not aggrieved by the judgment of the [circuit] court, but rather benefited thereby, and [was] without legal right to appeal therefrom”). Yet, here we are again.

In its Amended Initial Brief filed with this Court, the Commission raised the exact same arguments and asked the Court to “reverse the ruling of the [c]ircuit [c]ourt.” Comm’n’s Am. Initial Br. at 13. As a respondent, and a prevailing party, the only way to seek a reversal of the circuit court’s decision is by filing a cross-appeal. See Rule 203(c), SCACR. As the County Attorney admitted in his affidavit, he “made no effort to comply with Rule 203(c).” By definition, though, the Commission is appealing the circuit court’s order. Appeal, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining an “appeal” as “[a] proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court’s . . . decision to a higher court for review and possible reversal”). Because the Commission has not followed the proper procedure to file an appeal, its brief is not properly before the Court.

Further, the Commission cannot ask the Court to reverse for any ground appearing in the record. See Rule 208(b)(2), SCACR (providing that a “[r]espondent’s brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)[, SCACR].” (emphasis added)); I’On. LLC v. Town of Mount Pleasant, 338 S.C. 406, 421–

22, 526 S.E.2d 716, 724 (2000) (“An appellate court may not . . . reverse for any reason appearing in the record.”). As previously noted, the Commission never asked the circuit court to reverse its own decision, and this Court is not the appropriate forum in which to do so for the first time.

Our appellate rules do not allow a respondent to assume the position of the appellant whenever it so chooses. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (asserting that “the 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.”). As this Court observed in Henning, “[i]t is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Id. By filing the same defective brief, the Commission has wasted the time and resources of both this Court and Respondent. What the Commission has sought to accomplish in this case finds no support in the appellate court rules, or our case law, and is contrary to this Court’s Order. A review of the Commission’s Amended Initial Brief demonstrates it, again, is arguing on behalf of Jackie Harris and asking this Court to give her another opportunity to prove her case. The Commission’s second attempt to raise these arguments must fail for the same reasons set forth in the Court’s Order disallowing it the first time.

CONCLUSION

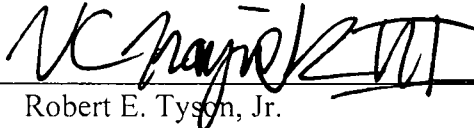
For the foregoing reasons, the Court should strike the Commission’s improper Amended Initial Brief and prevent it from filing any future briefs in this matter.² As explained in Respondent’s first Motion to Strike, and in this Court’s Order, the Commission never filed and served a notice of appeal and is not an aggrieved party. The Commission’s creative attempt to modify the issue does not change these facts, nor does it allow the Commission to get around the

² Given the Commission’s disregard of this Court’s previous Order addressing the same issue, Respondent Linda Blackmon-Brace requests that the Court award the costs she incurred as a result of filing two motions to strike and responding to the Commission’s frivolous filings. See Rule 269, SCACR.

Court's prior ruling. In addition to the relief requested above, Respondent would request that this Motion, as well as the case in general, be decided on an expedited basis.

Respectfully submitted,

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June 30, 2017

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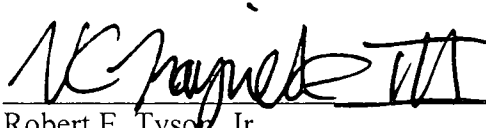
PROOF OF SERVICE

I, the undersigned of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Respondent Linda Blackmon-Brace, certify that I have served a copy of the Motion to Strike the Amended Initial Brief of Respondent Lancaster County Election Commission upon all parties by depositing a copy in the United States Mail, postage prepaid, on June 30, 2017, addressed as follows:

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A handwritten signature in black ink, appearing to read "Robert E. Tyson, Jr.", written over a horizontal line.

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June 30, 2017