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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM OCONEE COUNTY
CIRCUIT COURT

JAN 18 2018

SC Court of Appeals

CORDELL MADDOX, CIRCUIT COURT JUDGE

CASE NO.: 2012-CP-37-00902
APPELLATE CASE NO. 2017-000294

Alexander Pastene.....Appellant,

v.

Marion R. McMillan and Synergy Spine Center, P.A.....Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondents Marion R. McMillan and Synergy Spine Center, P.A. hereby moves for an order dismissing the appeal brought by Appellant Alexander Pastene. Appellant's Amended Brief fails to comply with Rule 208, SCACR. (Amended Brief attached as Exhibit "A"). Appellant has repeatedly failed to comply with the Appellate Court Rules. Accordingly, the court should dismiss Appellant's appeal pursuant to Rule 260(a), SCACR.

The Appellant's Amended Brief fails to satisfy the requirements of Rule 208, SCACR. Accordingly, the appeal should be dismissed pursuant to Rule 260, SCACR.

Rule 208(b)(1)(A) provides that the brief of appellant "shall" contain a "table of cases (alphabetically arranged), statutes, and authorities cited, with the references to the page of the brief

where they are cited.” In his Amended Brief, Appellant includes a Table of Authorities which randomly cites cases for various legal principles without references to the pages of the Amended Brief where they are cited. In fact, the cases contained in the Table of Authorities are not otherwise referenced at all in the Amended Brief. Appellant’s Table of Cases does not satisfy the requirements set forth in Rule 208.

Rule 208(b)(1)(B) provides that the brief of appellant “shall” contain a statement of each of the issues presented for review. “The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court.”

Appellant’s Statement of Issues on Appeal are broad general statements listing various problems Appellant has with Respondent McMillan and his dissatisfaction with the procedural history in this case. The appellate court should disregard Appellant’s Statement of Issues on Appeal as they do not satisfy the requirements set forth in Rule 208, SCACR.

Pursuant to Rule 208(b)(1)(C), the brief of appellant “shall” contain a statement of a case which “shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information:”

- The date of the commencement of the action or matter;
- The nature of the action or matter;
- The nature of the defense or the response;
- The action of the court, jury, master or administrative tribunal;
- The date(s) of trial or hearing;
- The motive of trial;
- The amount involved on appeal;
- The date and nature of the order, judgment or decision appeal from;
- The date of the service of the notice of appeal;

- The date and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in appeal; and
- Any changes made in the parties by the death, substitution or otherwise. (Rule 208(b)(1)(C)).

Appellant's Statement of the Case does not provide any of the information necessary for an understanding of the appeal. In fact, most of the Statement of the Case references the history between the parties prior to the initiation of any lawsuit. It is impossible to tell from the Statement of the Case that the current appeal involves only the propriety of the trial court's denial of Appellant's Motion for Relief from Default Judgment. Appellant's Statement of the Case does not satisfy the minimum requirements set forth in Rule 208, SCACR.

Pursuant to Rule 208(b)(1)(D), the "brief of appellant shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issues to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority."

In his Statement of Issues on Appeal, Appellant sets forth four issues and multiple sub-issues. The Argument section, however, is not divided into as many parts as there are issues to be argued. Instead, Appellant jumbles his various arguments into one section without specifically expressly addressing each of the framed issues on appeal. The Appellant fails to specifically argue his exceptions to the Order Denying Motion for Relief from Judgment¹ under an appropriately stated question. This appellate court should find Appellant's entire argument abandoned on appeal. See Rule 208(b)(1)(B)&(D); See e.g. *Infinger v. Edwards*, 268 S.C. 375, 234 S.E.2d 214, 215 n.4 (1977) ("error not specifically argued in the briefs under an appropriately stated question is deemed

¹ The only order on appeal is the Order Denying Motion for Relief from Judgment. (See Amended Notice of Appeal attached as Exhibit "B").

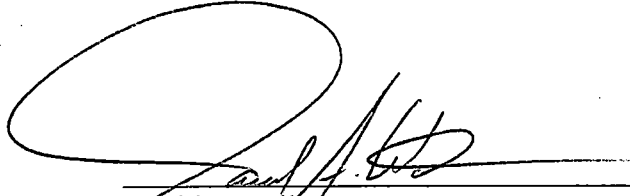
abandoned on appeal.”). The Argument in the Appellant’s Amended Brief fails to satisfy the requirements set forth in Rule 208, SCACR.

Pursuant to Rule 208(b)(1)(E), the brief of appellant shall contain a “short conclusion stating the precise relief requested.” Appellant’s Amended Brief contains a conclusion that fails to state the precise relief requested from the order being appealed which is only the Order Denying Plaintiff’s Motion for Relief from Judgment. Appellant’s conclusion fails to satisfy the requirements set forth in Rule 208, SCACR.

Pursuant to Rule 208(b)(4), the “brief shall contain references to the transcript, pleadings, orders, exhibits or other materials which may be properly included in the record on appeal to support the salient facts alleged.” Appellant’s Brief contains no references to materials which may be properly included in the record on appeal to support the facts relevant to the appeal from the Order Denying Plaintiff’s Motion for Relief from Judgment. His argument contains only references to documents related to an issue with South Carolina Attorney General’s Office which has no bearing whatsoever on the case at bar. In failing to reference material properly included in the Record on Appeal, Appellant’s Amended Brief fails to satisfy Rule 208, SCACR.

Furthermore, upon information and belief, the Court of Appeals has mailed Appellant no fewer than ten (10) Deficiency Letters (See Exhibit “C”). Appellant has repeatedly failed to comply with the Appellate Court Rules.

Based upon Appellant’s failure to comply with the South Carolina Appellate Court Rules, Respondents respectfully request that Appellant’s appeal be dismissed pursuant to Rule 260, SCACR.

A handwritten signature in black ink, appearing to read "David A. Wilson", is written over a horizontal line. The signature is stylized with a large, looping initial "D".

David A. Wilson
Wilson & Englehardt, LLC
200 Whitsett Street, Suite B
Greenville, South Carolina 29601
(864) 232-2329
ATTORNEY FOR RESPONDENTS

January 16, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge


Common Pleas Case No. 2012-CP-37-00902
Appellate Court Case No. 2017-000294

Alexander Pastene, Appellant,

v.

Marion R. McMillan and Synergy Spine Center, P.A., Respondents.

AMENDED INITIAL BRIEF



ALEXANDER PASTENE, Esq.
Appellant, appearing *pro se*
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Hilton Head Island, S.C. 29925
Tel 843-605-5266
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Date: November 17th, 2017

EXHIBIT

A

tabbies

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TABLE OF AUTHORITIES

Estate of Weeks, 329 S.C. 251 259, 495, S.E. 2d 454, 459, (Ct.App.1997). Abuse of discretion.

Melton v. Olenik, 664 S.E. 2d 487, 488 - 379 S.C., 45, Melton Respondent, Olenik AKA Chon Son Kim Appellant No. 4418 Ct. Appeals of SC Heard 4-16-2008, Decided 6-20, 2008.

RRR, Inc.m v. Tongas (SC App. 2008 378 SC 174, 662, SE 2d 438

South Carolina Supreme Court (2006) case # 26236, Disciplinary action vs. Kenneth Edwards, Respondent, where Respondent was suspended from his practice.

Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990).
“Before invoking this severe remedy [default] the trial court must first determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case”.

Balloon Plantation, 303 S.C. at 154, 399,S.E.2d See at 440. The sanction should be aimed at the specific misconduct of the party sanctioned.

Downey, 294 S.C. at 45, 362 S.E.2d at 318; Kershaw Co. Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990).“whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure”.

SCRCP Rules 37, 55, 60, et seq. The South Carolina Rules of Civil Procedure(SCRCP) are clear and comprehensive when it comes to Judgments by Default.

327 S.C. 538 (1997) 489 S.E.2d 679 Paul KARPPI, d/b/a P/C Technology, Respondent, v. Greenville Terrazzo Co., Inc. and Ogden Teck Inc., In 1997, the South Carolina Court of Appeals was explicit in deciding a case on the subject of default, it argued as follows:

"The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court" except if abuse of discretion exists.

Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App.1987). A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred,

Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App. 1985). The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion.

Clark, 284 S.C. at 570, 328 S.E.2d at 107. (Ct.App. 1985). An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law.

Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). Rule 37 SCRPC, expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion for a party's failure to respond to certain discovery requests,

Rule 37(b)(2)(C) & (d), SCRPC, however, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly.

Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

STATEMENT OF ISSUES ON APPEAL

1. Because, the Appellant timely Answered the Respondent's Counterclaim for Defamation denying every allegation and demanding strict proof:

- Was the Appellant in Default if he timely answered within statute, and his Answer shows the Magistrate Court Stamp marked "Received" ?
- Did the Respondent offer proof, show merit, or present any evidence in support of his Counterclaim for Default & Damages?
- If the Respondent gave the Sun City presentation & profited from the seminar —which was set up and prepared by the Appellant— based on what facts did the respondents claim defamation and default?
- If the Appellant was not in default because he Answered & Served on time, *ab initio*, then, are not all subsequent orders & proceeding moot or invalid?

2. Because, the Appellant timely Answered the Counterclaim and notified the Respondent and the Court:

- Did the Judge err or abuse his discretion by issuing Orders of Default & Damages against the Appellant based on false affidavits and no evidence whatsoever?
- Did the Respondent and his attorney take advantage of an overburdened judge who had been ill; had been presented with stacks of 200 motions to sign; and was handling a load of 5,200 cases, to mislead him to cause him to abuse his discretion and issue an Order of Default and assess false Damages against the Appellant.

3. Because, of inadvertences, mistakes, or misunderstandings between the Oconee County, Walhalla, and the Anderson County's, Clerks of Court, and the Appellant, did the Walhalla Clerk of Court mislead the Appellant when she contacted him by telephone, stating that he was NOT to appear at the scheduled hearing of April 12, 2016, as the Clerk of Court's Office had done previously, seemingly because it was going to be continued again? see the several times that the instant case had been continued, taken into advise, etc., over a period of four (4) years...

4. Because, the Appellant was erroneously ruled to be in Default, and assessed false Defamation, Damages, and Punitive, wasn't he negated his right to jury trial guaranteed by the South Carolina and United States Constitutions.

STATEMENT OF THE CASE

(History)

Above all, the Appellant wishes to include a Sequence of Events captioned: "Amended Addendum to Plaintiff's Motion Relief from Judgment under 55 & 60 SCRPC dated 12-2016", that is self explanatory.

The case at bar is about an Uncollected Debt for Marketing & Implementation services provided by the Appellant to the Respondent in 2008 and later again in 2014. Insomuch the defendant did not pay his debt, the Appellant chose to avoid a lengthy trial, cut his losses, and thus sought a speedy trial against the Respondent in Magistrate Court, Seneca. In response to the Appellant's Complaint at Magistrate, the Respondent filed a Motion to Dismiss, which was denied by Magistrate, so, to avoid paying his debt, he changed attorneys, removed the case from Magistrate to Common Pleas, and filed a Counterclaim for Defamation without evidence. Subsequently, he filed a false Motion for Default.

The Respondent and his attorney's Counterclaim for Defamation was unsupported and false, and their newfangled Motioned for Default was another means to avoid paying his debt. The Respondent, his attorney, and the presiding Judge abused discretion, procedure, and used false affidavits under oath to support a false defamation to distract from the argument on the merits (collection of an unpaid debt) which simple collection was miserably prolonged for the last about five (5) years. The conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of the appellant, thereby amounting to an error of law.

Appellant, Alexander Pastene (Pastene), was Respondent Dr. McMillan's patient, (McMillan) since about early 2008, and again in 2014, when Pastene needed a second lower back Endoscopic Facet Rhizotomy, which procedure was used by the Respondent to treat Pastene's lower back ailment.

Upon inquiring about Pastene's business background in 2008, McMillan retained Pastene (an MBA graduate with 25 years marketing experience) to expand his practice from Seneca to the Hilton Head Island, S.C. area, where Pastene resided, however, as

the first oral presentation was being set up by Pastene in 2008, McMillan discontinued the marketing & implementation agreement grounded on some cockamamie religious excuse, which may have been discriminatory.

Regardless, McMillan agreed to pay Pastene what he owed him for the marketing/implementation services rendered (see copy of email of March 2008 enclosed to the Initial Brief) —at that time Pastene had demanded about ninety (90) hours of marketing consulting and implementation work at a cost of \$100/hour plus a percentage (%) on every procedure generated from his effort, for an amount of well over \$9,000.00, but McMillan never paid Pastene. Notwithstanding, Pastene did not press for payment fearing that McMillan would refuse him future treatment for his lower back ailment, and drop him as a patient. (Note McMillan contradiction page 6, 18 thru 25).

As Pastene had anticipated, he required a second lower back endoscopic procedure on or about 2014, which he received, although on this occasion McMillan once again retained Pastene to expand his business to the Hilton Head area in the presence of one of his nurses, a one Ashley Hodges. See email exchange.

Accordingly, once again as done in 2008, Pastene effectuated Marketing & Implementation services for McMillan, and just as in 2008, although this time during the scheduling of the seminar at Sun City, South Carolina, McMillan again cut Pastene out, informed him that his wife would be taking over, and that Pastene was no longer needed, see email exchange. Pastene accepted the Respondent's decision but this time he demanded payment of all of the marketing and implementation services rendered. Following, McMillan proceeded to insult Pastene, negated any agreement between the parties or owing Pastene any money at all.

In fact, Defendant McMillan made a profit from the Seminar set up by Pastene at Sun City, see McMillan's own statements during his deposition of 4-12-2016, page 17, lines 8 through 17. Note that Respondent McMillan misled the court by evading to mention that he had made a profit from the Sun City Seminar, prepared by Pastene, see Transcript of April 12, 2016, Page 6, lines 18 through 25, and page 8, lines 3, through 8, wherein he negated owing Pastene any money, which seems unreasonable, especially, since this time McMillan seemed to have dropped his "religious" requirements altogether. Pastene believed that McMillan was going to pay Pastene, although ended up

deceiving Pastene once more time. See Pastene's Complaint before the S.C. Dept. of Labor, Licensing, & Regulation.

Despite having committed in writing to pay Pastene for marketing & implementation services rendered back in 2008, and subsequently in 2014, not only he did not pay what he owed, but proceeded to threaten him and effectuate false allegations of Medicaid fraud before the S.C. Attorney General (the SC Attorney General found no fraud, and the case was not pursued). See Attorney General email exchange dated March 31, 2008, and 2014, attached herewith under Exhibit 1. Transcript of April 12, 2016, Page 6, lines 18 through 25, Page 8, lines 9 through 15. Page 19, lines 12 through 22, Page 21, lines 15 through 25. Page 22, lines 1 through 22, under Exhibit 2.

ARGUMENTS

The case at bar —originally a debt collection— can be identified as a red herring case of manipulation of legal procedure by the Respondent and his attorney to avoid paying his debt and arguing the case on the merits. Moreover, McMillan and his attorney David Wilson, Counterclaimed for a Defamation that never existed, and was never supported by any evidence whatsoever; only built on falsehoods and hearsay. The Defendant used procedure to avoid arguing the case on the merits. See SC Supreme Court (2006) case # 26236, Disciplinary action vs. K. Edwards, Respondent, where Respondent was suspended from his practice.

As stated earlier, the instant case was initiated by the Appellant in Magistrate Court in an effort to expedite the collection of an unpaid debt from the Respondent, even if it meant cutting his losses, but, the Respondent misused procedure and the truth to have the case thrown out early on at Magistrate Court by filing a Motion to Dismiss that was denied by Magistrate Simmons.

Unsatisfied with Magistrates' denial, the Respondent shrewdly used a back-door effort, changed attorneys, removed the case from Magistrate to Common Pleas, and Countersued based on an unsupported Defamation that never existed, built the case as it went along, including claiming a Default against the Appellant that, too, had never existed, for, the Appellant had timely answered the Countersuit by serving the

Respondent and the Court his Answer within one (1) week of the Respondents' Summons & Countersuit, wherein the Appellant denied every allegation and demanded strict proof according to statute. As of today's date the Respondents have not submitted any proof, except a false Affidavit by the Respondent's attorney, under oath, falsely stating that, the Appellant's Answer had been served out of time.

The Respondent's attorney argued that he specifically demanded the Answer to be made to his "Greenville" address, although, unwittingly the Appellant Answered to his "Easley" address as printed in his official stationary, and thus complied with statute.

Moreover, the Respondent's attorney stated that he moved, but neither crossed out his Easley address as printed in his stationary, nor filed a forwarding address with the USPS-Easley, nor notified the USPS that he was moving out.

The Appellant believes that despite the Respondent's attorney written note about Answering to his Greenville address, he may have intentionally mislead the Appellant by inducing him to Answer to an invalid address (Easley) printed on his stationary.

Bottom line: the Appellant complied with statute by timely Answering, denying the Respondent's allegations, and demanding strict proof; and by serving the court and the Respondent to his address listed in his stationary in Easley.

Meanwhile, the Respondent's attorney never crossed out the Easley address from his stationary, did not leave a forwarding address, or advised the USPS he was moving. Also, he never proved or showed any evidence of anything alleged in his Countersuit.

Notwithstanding, after several fruitless hearings that the Appellant was compelled to attend from Hilton Head Island to Walhalla; back and forth —about 8 hours driving time back and forth— the Court of Common Pleas erred by issuing a judgement for Defamation, Default, Damages, and Punitive, in the Appellants absence. Note that, the Clerk of Court had confused the Appellant by telling him to not attend to the scheduled hearing of April 12, 2016, which he unintentionally missed, that it would be continued as had been done before.

Moreover, Appellant wishes to include his letter to Judge Maddox dated September 2, 2015, describing the Respondent's claim for defamation.

Again, should be noted that, the Respondent's attorney printed two addresses in his stationary to communicate with the Appellant; one address showed an Easley

address (nearest to Seneca: the Respondent's address) and a Greenville address, many miles away. The Respondent's attorney never removed or crossed out the Easley address from his stationary, and failed to advise the Easley Post Office that he would be moving out, or sought to leave a forwarding address at Easley; his error; not the Appellant's. The Appellant complied with Statute, see Rule 5 SCACR, (b) (1) Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint. It was in the Appellant's interest to not be in default.

As regards, the Appellant's non-appearance at the April 12, 2016, hearing before Judge Cordell Maddox, IT WAS A MISTAKE, OK? At the last minute the Walhalla's Clerk of Court's Office made a telephone call to the Appellant stating that the hearing had not been continued, and that he was to attend that day, in the afternoon, which was impossible, because the Appellant was over four (4) hours away from Walhalla, on Hilton Head Island. See copy of Phone record from Walhalla to the Appellant on the morning of April 12, 2016. In accordance, see Rules 55 & 60, (a, b, et seq) SCACR. Appellant should be relieved from judgment due to clerical mistake, and impossibility to attend due to distance, lack of time, and delay or postponement of notification, which could've been effectuated the day before.

CONCLUSION

Not only the Appellant timely filed his Answer and Served the Court and the Respondent —he responded within six (6) days from the day of the Respondent's Answer and Counterclaim— according to statute, but the Appellant denied their allegations and demanded strict proof, while the Respondents never proved any of their allegations. The Appellant respectfully pleads with this Honorable Appellate Court that all proceedings, including judgments for Defamation, Default, Damages, and Punitive, subsequent to the Appellant's timely Answer and Service to the Court, and Defendant be considered moot, retroactive, vacated, and remanded.

The Plaintiff knows of no law, statute, or jurisprudence that states or imply that, a Plaintiff is in default if:

- He timely Answered and Served a Defendant's Answer & Counterclaim, by filing them with the proper Clerk of Court, and serving copies addressed to one of the two addresses printed in the Defendant's attorney official stationery;
- Neither one of the two addresses printed in the Defendant's attorney official stationery was crossed out or marked invalid;
- The Defendant's attorney moved out from one of the two addresses printed in his official Stationery without leaving forwarding address or notifying the USPS that he was moving out, making it impossible for the Plaintiff to know he was not reachable.
- An address typed in the Defendant's Counterclaim superseded any or all of the Defendant's attorney addresses printed in his official stationery.

Wherefore, the Appellant pleads with this Honorable Appellate Court that it reverses and remands to Common Pleas; finds that all proceedings subsequent to his timely Answer & Service of September 12, 2012, to Respondent's Counterclaim are found to be moot, and invalid; that it orders discovery to take place; and a jury trial be held on the merits (collection of a debt), so, that justice can be made between the parties. That, the Appellant is granted his right to a trial before a jury of his peers in accordance to the South Carolina and United States Constitutions.

Respectfully Submitted,

On Hilton Head Island, South Carolina,
On this 17th day of November, 2017



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THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

RECEIVED

FEB 27 2017

SC Court of Appeals

Case No. 2017-000294

Alexander Pastene

Appellant,

v.


Marion R. McMillan and Synergy Spine Center, P.A.

Respondents.

NOTICE OF APPEAL

Alexander Pastene appeals the Order of the Honorable Cordell J. Maddox, dated January 17th, 2017. Appellant received written notice of entry of this Order on January 26th, 2017.

February 14th, 2017


ALEXANDER PASTENE, Esq.
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EXHIBIT

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 21, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

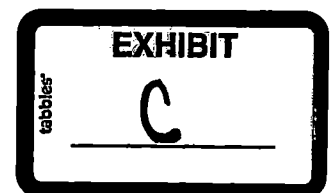
Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- Pursuant to Rule 203, SCACR, the notice of appeal must contain the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.
- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it must read as follows:

Alexander Pastene, Appellant,

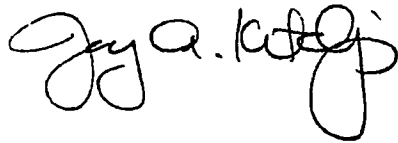
v.

Marion R. McMillan and Synergy Spine Center, P.A., Respondents.



- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. K. J." with a stylized flourish at the end.

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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February 28, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your correspondence regarding the transcript, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- A copy of this document was not provided to the Office of Court Administration as required by the SCACR. The address for Court Administration is 1220 Senate Street, Suite 201, Columbia, SC 29201.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 13, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your motion to reinstate, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The required filing fee has not been submitted. The correct filing fee is \$25.00.
- The accompanying document regarding ordering the transcript was not signed. No proof of service of that document was provided.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 18, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Counsel:

Upon reviewing your amendment to the motion to reinstate, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- A proof of service has not been provided for the amendment to the motion to reinstate and accompanying documents. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Receipts are not an acceptable substitute for the required proof of service.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 03, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your documents received April 24, 2017, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered and remittitur will be sent.

- A proof of service of the documents enumerated on your letter has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- A proof of service of the amended motion to reinstate filed on April 14, 2017 has not been provided as previously requested by this court.
- The motion fee received May 1, 2017, will be applied towards your motion to reinstate; however, you must cure these deficiencies before your motion can be considered.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchings".

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

August 23, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected upon the filing of the record on appeal and final briefs:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it should appear as follows:

Alexander Pastene, Appellant,

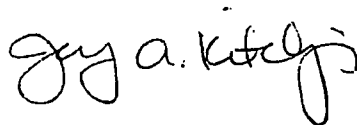
v.

Marion R. McMillan and Synergy Spine Center, P.A., Respondents.

- The document has not been signed as required by Rule 267(b), SCACR.

- Pursuant to Rule 267(a), only the information of the party filing the initial brief may appear on the initial brief.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay A. Kite". The signature is written in a cursive style with a large, looped initial "J".

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 07, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your correspondence received September 5, 2017, regarding ordering of an additional transcript in this case, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- A copy of this document was not provided to the Office of Court Administration as required by the SCACR. The address for Court Administration is 1220 Senate Street, Suite 201, Columbia, SC 29201.
- You must provide a copy of the letter ordering the additional transcript.
- You must file a motion to order the transcript out of time.
- Should you find it necessary to amend your initial brief and designation of matter as you have indicated, you will need to file a motion to allow you to amend the initial brief and designation of matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 19, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your motion to order the transcript out of time, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The motion is not dated.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 19, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your letter from the court reporter and receipt of payment, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter:

- A copy of this document was not provided to the Office of Court Administration as required by the SCACR. The address for Court Administration is 1220 Senate Street, Suite 201, Columbia, SC 29201.
- A proof of service of transcript documents to opposing counsel has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 03, 2017

Alexander Pastene
Post Office Box 22298
Hilton Head Island SC 29925

Re: Alexander Pastene v. Marion R. McMillan
Appellate Case No. 2017-000294

Dear Counsel:

Upon reviewing your proof of service dated September 25, 2017, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected on all subsequent filings with this Court:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it is reversed and must instead read as follows:

Alexander Pastene, Appellant,

v.

Marion R. McMillan and Synergy Spine Center, P.A., Respondents.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Alan Wilson, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
CIRCUIT COURT

CORDELL MADDOX, CIRCUIT COURT JUDGE

RECEIVED

JAN 18 2018

SC Court of Appeals

CASE NO.: 2012CP-37-00902
APPELLATE CASE NO. 2017-000294

Alexander Pastene.....Appellant,

v.

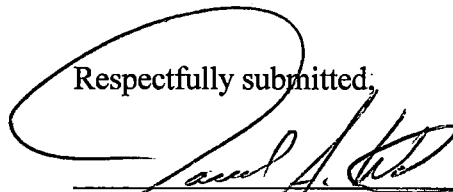
Marion R. McMillan and Synergy Spine Center, P.A.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion for to Dismiss Appeal on Appellant by depositing a copy to him in the United States Mail, Postage prepaid, on January 16, 2018 addressed as follows:

Alexander Pastene
P.O. Box 22298
Hilton Head Island, SC 29925

Respectfully submitted,



David A. Wilson
Wilson & Englehardt, LLC
200 Whitsett Street, Suite B
Greenville, South Carolina 29601
(864) 232-2329

January 16, 2018

ATTORNEY FOR RESPONDENTS



WILSON & ENGLEBARDT, LLC
LITIGATION • APPEALS • DISPUTE RESOLUTION

David A. Wilson
Eric K. Englehardt

dwilson@GreenvilleSCLaw.com
eric@GreenvilleSCLaw.com

January 16, 2018

RECEIVED
JAN 18 2018
SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Alexander Pastene, Appellant v. Marion R. McMillan and Synergy Spine Center, P.A., Respondents
Appellate Case No.: 2017-000294

Dear Ms. Kitchings:

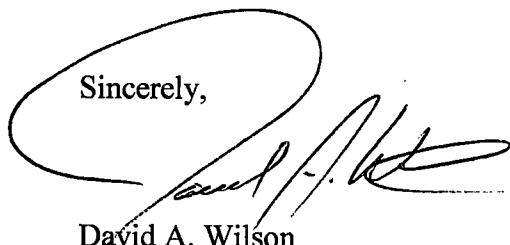
Enclosed please find the original and seven (7) copies of Respondent's Motion to Dismiss Appeal in the above-referenced case along with the proof of service upon Appellant.

Also, enclosed is our firm's check in the amount of \$25.00 as the required filing fee for this request. Please return the filed copies to me in the enclosed self-addressed stamped envelope.

If you have any questions or concerns, please feel free to contact me.

Thank you for your assistance.

Sincerely,



David A. Wilson

DAW/ccb
Enclosures



cc: Marion R. McMillan
Alexander Pastene

Wilson & Englehardt, LLC
200 Whitsett Street, Suite 100B
Greenville, SC 29601

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JAN 18 2019

SC Court of Appeals

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