

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
CIRCUIT COURT

CORDELL MADDOX, CIRCUIT COURT JUDGE

RECEIVED
FEB 08 2018
SC Court of Appeals

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.

**MOTION TO STRIKE PORTIONS
OF THE RECORD**

Pursuant to Rules 209 and 240, SCACR, Respondents Marion R. McMillan and Synergy Spine Center, P.A. hereby move to strike from the record on appeal certain documents designated by Appellant Alexander Pastene. Appellant designated matter which was either not presented to the lower court or not relevant to the appeal. Appellant also referenced documents in his initial briefs which were not listed in his Amended Designation of Matter to be Included in the Record on Appeal.

The following documents should be stricken from the Record on Appeal pursuant to Rules 209(b) & 210(c), SCACR, because they were not presented to the lower court:

- “Telephone records of calls from Walhalla Clerk of Court Ms. Whitfield, Ms. Hightower”¹
- “Telephone records of call on the morning of April 12, 2016”¹

¹ Upon information and belief, Appellant has never provided these documents to Respondents or their attorney.

- “Affidavit of Witnesses”¹
- “Letter from Appellant to Ms. Pam Davis, Easley Post Office, in ref. to Respondent’s former address in Easley, lack of forwarding address, lack of Moving Out Notice”¹

Appellant referenced the following documents in his Amended Initial Brief or Initial Reply Brief but did not list them in his Designation of Matter to be Included in the Record on Appeal pursuant to Rule 209(a), SCACR:

- “Copy of email of March 2008 enclosed to the Initial Brief” (Amended Initial Brief p. 7).
- “Email exchange” (Amended Initial Brief p. 7).
- “Pastene’s Complaint before the S.C. Dept. Labor, Licensing, & Regulation” (Amended Initial Brief p. 8).
- “Attorney General email exchange dated March 31, 2008, and 2014” (Amended Initial Brief p. 8).
- “Copy of Phone record from Walhalla to the Appellant on the morning of April 12, 2016” (Amended Initial Brief p. 10).
- “Copy of Respondent’s 2012 official stationery, with highlighted in yellow address” (Reply Brief p. 2).
- “Exh. #81312” (Reply Brief p. 3).
- “Exh. 5x” (Reply Brief p. 5).
- “Exhibit #53112” (Attached to Reply Brief p. 6).

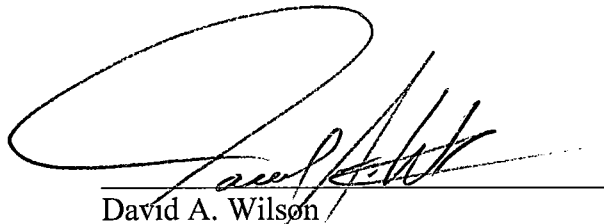
The proper way to designate a document to be included in the Record on Appeal is by complying with Rule 209, SCACR. It is not permissible for Appellant to fail to list the above documents in his Designation of Matter but then try to include them in the record indirectly by referencing them in his briefs or attaching them to the briefs.

The issue on appeal is solely whether the trial court abused its discretion to refusing to relieve Appellant of a judgment entered against him after a damages hearing for which Appellant received notice but elected not to attend. In addition to either not being presented to the lower court or not being properly designated to be included in the record on appeal, the following matters should be stricken because they are not relevant to the appeal. See Rule 209(b), SCACR.

- “Affidavit of Witnesses”

- “Copy of email of March 2008 enclosed in the Initial Brief” (Amended Initial Brief p. 7).
- “Email exchange” (Amended Initial Brief p. 7).
- “Pastene’s Complaint before the S.C. Dept. Labor, Licensing, & Regulation” (Amended Initial Brief p. 8).
- “Attorney General email exchange dated March 31, 2008, and 2014” (Amended Initial Brief p. 8).
- “Exh. #81312” (Reply Brief p. 3).
- “Exh. 5x” (Reply Brief p. 5).
- “Exhibit #53112” (Attached to Reply Brief p. 6).

Based upon the foregoing, Respondents Marion R. McMillan and Synergy Spine Center, P.A. respectfully request that the above-referenced documents and matter be stricken from the record on appeal.



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

February 6, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
CIRCUIT COURT

CORDELL MADDOX, CIRCUIT COURT JUDGE

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

RECEIVED
FEB 08 2018
SC Court of Appeals

Alexander Pastene.....Appellant,

v.

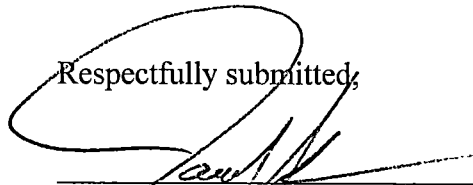
Marion R. McMillan and Synergy Spine Center, P.A.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Strike Portions of the Record on Appellant by depositing a copy to him in the United States Mail, Postage prepaid, on February 6, 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

February 6, 2018

ATTORNEY FOR RESPONDENTS



WILSON & ENGLEBARDT, LLC
LITIGATION • APPEALS • DISPUTE RESOLUTION

David A. Wilson
Eric K. Englehardt

dwilson@GreenvilleSCLaw.com
eric@GreenvilleSCLaw.com

February 6, 2018

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

RECEIVED
FEB 08 2018
SC Court of Appeals

**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 Respondents' Motion to Strike Portions of the Record 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/cb
Enclosures

cc: Marion R. McMillan
Alexander Pastene

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

RECEIVED

FEB 08 2018

SC Court of Appeals



The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629

\$1.840
US POSTAGE
FIRST-CLASS
FROM 29601
FEB 06 2018
stamps
.com



06250813531215