

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY  
CIRCUIT COURT

CORDELL MADDOX, CIRCUIT COURT JUDGE

**RECEIVED**

MAR 29 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 ON APPEAL,  
MOTION TO SUPPLEMENT THE RECORD ON APPEAL  
AND MOTION TO DISMISS**

Pursuant to Rules 210, 240 and 260, SCACR, the Respondents Marion R. McMillan and Synergy Spine Center, P.A. respectfully move to strike portions of the record on appeal, supplement the record on appeal and dismiss the appeal. The Record on Appeal prepared by Appellant Alexander Pastene includes matters not designated by either party, fails to include matters designated by Respondents and serves as yet another example of the Appellant not complying with the requirements of the South Carolina Appellate Court Rules.

The Record on Appeal prepared by Appellant contains the following matter which was not designated to be included in the record on appeal by either party:

- Order, Dismissing appeal, April 4, 2017, Clerk of Court
- Order Granting Petition to Reinstate of June 16<sup>th</sup>, 2017
- Order granting Appellant's Motion Hon. Judge Paul E. Short, Jr.
- Order denying Motion to Dismiss. February 28<sup>th</sup>, 2018
- Table of Authorities
- Appellant's Affidavit 06/27/2016
- Appellant's Letter to Hon. Alexander MacAulay, Resident Judge dated 05/17/2013
- Respondents Return dated August 6, 2013, to Appellant's Answer to Judge Maddox Request of Returned Envelope Containing his Response to Respondent's Counterclaim
- Copy of Returned Envelope by Easley Post Office marked: Return to Sender, Attempted, Not Known, Unable to Forward stamped, 26 Nov., 2012, 11/29/2012
- Appellant's Answer to Respondent's Return Opposing Motion in Response to Order of Dismissal by S.C. Ct Appeals Judge Maddox Signature clocked Jan 19, 2017
- Addendum to Appellant's (plaintiff's) Motion to Reconsider Order by Judge Maddox Clocked January 17, 2017
- Appellant's Answer to Respondents Return Opposing Motion in Response to Order of Dismissal by S.C. Court Appeals filed April 4, 2017, Rules 207 & 262 SCACR

The Record on Appeal prepared by the Appellant does not include the following matter designated by the Respondents to be included in the record on appeal:

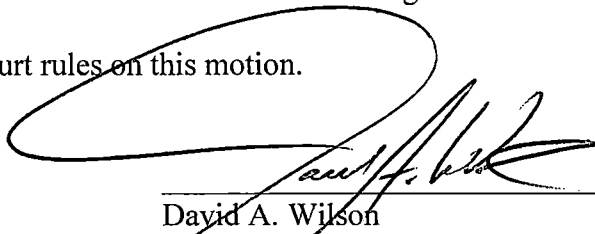
- Notice of Transfer of Case to Court of Common Pleas filed October 12, 2012
- Motion for Default Judgment filed April 22, 2013
- Motion for Reconsideration Order Clocked June 17, 2014 filed August 11, 2014
- Notice of Motion Scheduling dated March 10, 2016
- Return Receipt signed by Appellant on March 18, 2016

- Form 4 Judgment filed April 19, 2016
- Plaintiff's Motion to Vacate Judge Maddox Order 4-1-16 Reconsider, and Set Date for Trial by Jury filed April 29, 2016
- Default Judgment *Against Plaintiff Alexander Pastene* filed on June 13, 2016
- Plaintiff's Motion for Relief from Judgment under Rules 60 SCRPC & 55 SCRPC dated June 28, 2016
- Defendant's Return to Plaintiff's Motion Relief from Judgment under Rules 60 SCRPC & 55 SCRPC filed December 8, 2016
- Order Denying Plaintiff's Motion for Relief from Judgment filed January 17, 2017

As evidenced by the numerous filings with this court and the numerous letters of deficiency issued by this court, Appellant has consistently failed to comply with the requirements of the South Carolina Appellate Court Rules. Accordingly, the Respondents respectfully requests that this appeal be dismissed pursuant to Rule 260, SCACR.

Based upon the foregoing, Respondents Marion R. McMillan and Synergy Spine Center, P.A. respectfully move for an order requiring the Appellant to amend the record on appeal so that it includes all matter designated to be included by both parties and no other matter. In the alternative, Respondents request an order dismissing this appeal pursuant to Rule 260, SCACR.

Respondents also requests that the time limits for the filing of the final briefs of Respondents be held in abeyance until this court rules on this motion.



David A. Wilson  
The Law Offices of David A. Wilson, LLC  
200 Whitsett Street, Suite 100-B  
Greenville, South Carolina 29601  
(864) 232-2329  
ATTORNEY FOR RESPONDENTS

March 27, 2018

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IN THE COURT OF APPEALS

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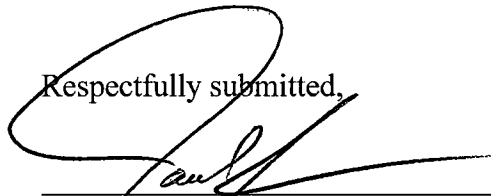
Marion R. McMillan and Synergy Spine Center, P.A.....Respondents.

**PROOF OF SERVICE**

I certify that I have served the Motion to Strike Portions of the Record on Appeal, Motion to Supplement the Record on Appeal and Motion to Dismiss on Appellant by depositing a copy to him in the United States Mail, Postage prepaid, on March 27, 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

March 27, 2018

ATTORNEY FOR RESPONDENTS



**WILSON & ENGLEBARDT, LLC**  
LITIGATION • APPEALS • DISPUTE RESOLUTION

David A. Wilson  
Eric K. Englehardt

dwilson@GreenvilleSCLaw.com  
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March 27, 2018

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

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**MAR 29 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 on Appeal, Motion to Supplement the Record on Appeal and Motion to Dismiss 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

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MAR 29 2018

SC Court of Appeals

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The Honorable Jenny A. Kitchings  
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South Carolina Court of Appeals  
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