

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED
MAY 01 2018
SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA, Respondents.

**RETURN TO THE MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
MOTION TO STRIKE APPELLANT'S FINAL BRIEF**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Appellants hereby respond to the Respondents' Motion to Dismiss the Appeal or to Strike Appellant's Final Brief. Respondents' motion mischaracterizes the directives contained in the Court's April 6, 2017 Order¹ and misconstrues Rule 211 (b), SCACR. Because Appellants complied with both, Respondents' motion should be denied.

The Order

The Court's Order filed April 6, 2017, relates to designated matters to be included in the Record on Appeal. Exhibit 1. The Order expressly directed Appellants: (1) to amend their

¹ Erroneously referenced as an April 16, 2017 Order on page 7, line 4, of Respondents' motion.

designation of matter to exclude certain material not formally presented to the trial court; and (2) to prepare the Record on Appeal accordingly. *Id.* Appellants complied with those directives. The most direct confirmation of Appellants' compliance comes from Respondents themselves. On page 4 of their Motion, the first paragraph and corresponding footnote 1 acknowledge and confirm that compliance.

Despite the Court's express mandate being limited to the two directives stated above, Respondents now urge a broadened interpretation of the scope of the Order's directives. Respondents argue that the Order also directs Appellants to delete from their Final Brief any citation to those initially referenced materials which were not ultimately included in the Record on Appeal. To the contrary, the subject Order contains no such directive. Exhibit 1.

Respondents' argument rests solely on the Order's introductory general language that the Respondents' motion was granted. It ignores the subsequent specific directives to Appellants set forth in the Order. Those did not address any issues regarding Final Briefs. It is axiomatic that when general references precede specific directives, the former must be construed with reference to the contextual specifics. There is thus no basis whatsoever for Respondents' accusation that "Appellants have seemingly defied this Court's April 16 (*sic*), 2017, Order." That accusation is frivolous.

Rule 211 (b), SCACR

As noted by Respondents in their motion on p. 5, I. 4-8, Rule 211(b), SCACR, requires that final briefs must be substantially identical to initial briefs. However, the Rule includes a mandate that references to original source materials in the initial briefs must be revised to cite where such source materials appear in the Record on Appeal. Appellants did that, to the extent

referenced materials were included in the Record on Appeal, and nothing in Respondents' motion contends otherwise.

The crux of Respondents' complaint rests on their construction of Rule 211(b). That construction would require that citations in a party's initial brief to materials ultimately excluded from the Record on Appeal must be deleted from its final brief. Yet the Rule does not say that. In fact Rule 211(b), SCACR strictly limits those allowable changes which a party may make in its final brief. Those allowable changes do not include the changes which Respondents argue should have been made. Other than the mandated changes of subsection (b)(1) and correction of obvious typographical errors and misspellings under subsection (b)(2), "[n]o other changes may be made." Rule 211 (b)(2), SCACR.

Appellants construe Rule 211(b) differently from Respondents. Appellants' final brief comports with the mandatory language of the Rule that changes not expressly required or allowed must not be made. Appellants' construction does not prejudice Respondents in any way. Matters not presented to the Circuit Court will not be given substantive consideration on appeal. *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). As applied to this case, such matters could not be given consideration because they were not included in the amended Record on Appeal.

Appellants verily believe that their final brief is in full compliance with both this Court's Order and Rule 211(b), SCACR. That belief is based on their construction of the Order and the Rule as set forth above. If that construction is correct, the Respondents' motion should be denied in all respects.

If the Court deems Appellants' construction of the Order and/or the statute to be incorrect, requiring deletion of Appellants' citations to matters excluded from the Record on Appeal,

Appellants will, of course, comply with the Court's Order. As Appellants acted in good faith, however, there should be no dismissal of the appeal or imposition of sanctions.

Conclusion

For the reasons stated, Appellants submit that Respondents' motion should be denied.

Respectfully submitted,

GRAHAM LAW FIRM, P.A.



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April 30, 2018

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

Respondents' motion to strike Appellants' designation of matter is granted. Within twenty days of this order, Appellants shall serve and file an amended designation of matter that includes only those documents that were presented to the circuit court. The following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record. Further, the amended designation of matter must specifically reference each document Appellant desires to be included in the record on appeal at this time. Nothing, however, prevents Appellants from moving to supplement their designation of matter after Respondents file their initial brief.

Respondents shall serve and file their initial brief and designation of matter within thirty days of service of Appellants' amended designation of matter.


FOR THE COURT

Exhibit 1

Columbia, South Carolina

cc:

Pedro Eduardo Krompecher, Esquire

Christian Stegmaier, Esquire

Meghan Hazelwood Hall, Esquire

John Layton Ruffin, Esquire

Edward L. Graham, Esquire

FILED

Apr. 16, 2017

The South Carolina Court of Appeals

APR 10 2017

Cassandra M. Myers, and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants,

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The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc; SCANA, Respondents.

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FOR THE COURT

Columbia, South Carolina

FILED

cc:

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Christian Stegmaier, Esquire

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John Layton Ruffin, Esquire

Edward L. Graham, Esquire

Apr. 16, 2017

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Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the Appellants' **Return to the Motion to Dismiss Appeal or, in the Alternative, Motion to Strike Appellant's Final Brief** in the above-referenced matter was served by electronic mail and by U.S. Mail, postage prepaid, on April 30, 2018 addressed to the following counsel of record:

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GRAHAM LAW

Shining a Light on Safety, Guiding the Way to Justice.

Edward L. Graham
Diane M. Rodriguez

April 30, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants, v. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA, Respondents.
Appellate Case No. 2016-002487

Dear Ms. Kitchings:

Enclosed for filing is one original and seven (7) copies of the Appellants' *Return To Respondents' Motion to Dismiss Appeal or, in the Alternative, Motion to Strike Appellant's Final Brief*. One original and one copy of the Proof of Service are also included. Please return the clocked copies using the enclosed prepaid envelope.

Thank you for your attention to this matter.

Very truly yours,

Edward L. Graham
Pedro Krompecher
ELG/bh

Enclosures

cc: Christian Stegmaier
Megan H. Hall
Kelsey Jan Brudvig

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MAY 01 2018

SC Court of Appeals

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