

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Case No. 2013-CP-18-00074
Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and
Lorraine Ferro, Respondents

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JUN 21 2018
SC Court of Appeals

**RESPONDENTS STEPHEN DUDEK AND DOREEN CROSS' SECOND
MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS
APPEAL**

In addition to the reasons set forth in their Motion to Dismiss (Mot., June 1, 2018), Respondents Stephen Dudek and Doreen Cross ("Respondents") respectfully submit this Second Memorandum in Support of Their Motion.

Four days after filing their Motion to Dismiss, the Respondents received the Appellant's

proposed Record on Appeal. (Ex. 1).¹ The Record on Appeal contains only nine pages of transcript testimony from two hearings, held on May 12, 2017, and June 12, 2017, when the Respondents identified in their Designation of Matter the entirety of transcripts from hearings held on March 27, 2017, May 12, 2017, and June 12, 2017. (Ex. 1, p. 7, Index, p iii; Respondents' Designation of Matter). In addition, the Appellant indicates in her cover letter (1) that she has not included in the Record on Appeal entire transcripts from the above dates, as requested by the Respondents; (2) that she does not intend to include the transcripts; (3) that it is not her responsibility to include the transcripts; and (4) that she has not ordered the transcripts. (Ex. 1, pp. 2-4, letter, pp. 1-3). It is her responsibility to order the transcripts and compile the Record on Appeal, including the transcripts listed by the Respondents. Rules 207, 210, SCACR. It will now be impossible for the Appellant to comply with Rule 210(g) and certify that the Record on Appeal contains all material proposed by the Respondents. The Appellant's justification, without any motion to this Court, is that the Respondents' brief does not identify citations to the transcripts which would warrant the transcripts inclusion. (Id.). As the prevailing parties, the Respondents, pursuant to Rule 220, are entitled to request that this Court consider any grounds found in the Record on Appeal. Rule 220(c), SCACR; *Ion LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). Currently, the Record on Appeal is void of transcripts that the Respondents think are necessary for this Court to understand the sequence of events, and three separate days of arguments, that lead to the case once again being on appeal.

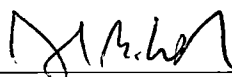
The Appellant indicated previously that she has not abided by and would not adhere to

¹ Exhibit 1 contains only the Appellant's cover letter and the Index from the Record on Appeal, as they are sufficient to show that the Appellant has not abided by the South Carolina Appellate Court Rules.

the South Carolina Appellate Court Rules. (Respondents' Mot. to Dismiss, Ex. 1). Now, by providing an incomplete Record on Appeal and stating bluntly that she will not provide items listed in the Respondents' Designation of Matter, she has reaffirmed her willful disobedience of the rules that govern her appeal. Moreover, as stated in the Respondents' Motion, her failure to abide by the rule dates back to the inception of this appeal, when she failed to notify this Court of her communications with the court reporter and when she failed to order transcripts from hearings giving rise to this appeal. Rule 207, SCACR. Effectively, this appeal, now a year old, is at the first stage (i.e., transcript ordering).

For these reasons, for the reasons set forth in the Respondents' Motion to Dismiss, and pursuant to Rules 207, 209, 210, 240, 260, and 263, SCACR, the Respondents would respectfully request this appeal be dismissed.

SMITH | CLOSSER, P.A.



Steven L. Smith (SC Bar No.: 05173)
Samuel M. Wheeler (SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220

Attorneys for Stephen Dudek and Doreen Cross

June 19, 2018

Other Parties of Record:

Molly M. Morphew
786 E. Butternut Rd.
Summerville, SC 29483
Appellant

Thomas M. Ferro
Lorraine B. Ferro
76 Elk Range Dr.
Snowmass, CO 81654
Respondents

Exhibit 1

JUN 05 2018

May 31, 2018

Steven L. Smith, Esquire
7455 Cross County Rd., Suite 1
Charleston, SC 29423

Re: **Appellate Case No. 2017-001393**

Stephen Dudek, Doreen Cross, Respondents v. Thomas Ferro, Lorraine Ferro,
Respondents

AND

Molly M. Morpew, Appellant, v. Stephen Dudek, Doreen Cross, Respondents

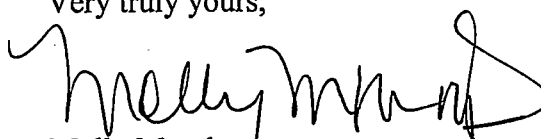
Thomas Ferro, Lorraine Ferro, who are not Respondents

Dear Mr. Smith:

Please find enclosed a copy of the Record on Appeal, pursuant Rule 209 and 210, for your review and reference in preparation of the final briefs.

If you have any questions or concerns, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morpew', with a large, stylized flourish at the end.

Molly Morpew, pro se

May 31, 2018 .

Samuel Wheeler, Esq.
7455 Cross County Rd., Suite 1
Charleston, SC 29423

Re: **Appellate Case No. 2017-001393**

Stephen Dudek, Doreen Cross, Respondents v. Thomas Ferro, Lorraine Ferro,
Respondents

AND

Molly M. Morphey, Appellant, v. Stephen Dudek, Doreen Cross, Respondents

Thomas Ferro, Lorraine Ferro, who are not Respondents

Good day, Mr. Wheeler,

I will not include the amended complaint in the Record per your agreement.

As to the transcripts, I disagree with your assessment. I'm appealing the May 17th Order set forth on the 59(e) Motion, and the June 14th Order on the Contempt/Ejectment Motion, therefore I'm only obligated to order those hearing transcripts, which I did, satisfying the appellant's transcript requirement for this appeal. Further I'm only required to submit in the record only the pages called out specifically in our briefs, not an entire transcript or transcripts, unless it's the entire transcript itself that is at issue on appeal (meaning, only whole pages of the transcript, unlike "orders, judgments, decisions or pleadings" which require including the entire "order, judgment, decision or pleading. (See Rule 210)). This is especially true if your claim in your reply is not an issue I've raised on appeal.

I did review your brief and found no particular reference or argument relevant to the appeal in which you call out that would require the entire three transcripts to be submitted in the Record. Specifically, the only claim (which appears to be speculation), in which your brief calls out [any transcript] is "*What Morphey appears to complaining of is a lack of notice of hearings that led to the Closing Order and Contempt Order. There were three separate hearings, on March 27, 2017, May 12, 2017, and June 12, 2017, and Morphey attended all of these hearings, so notice must not have been an issue. (Tr. March 27, 2017; Tr. May 12, 2017; Tr.*

June 12, 2017)” and is not applicable to the appeal as I did not raise issue about the lack of notice of the three hearings.

Further, if you call out any additional hearing [transcript] on an Order not specifically on appeal or that I’ve not already designated in my matter, then you are responsible for obtaining that matter. I’m only responsible for ordering the transcript(s) directly relating to the Order(s) I’ve appealed, and compiling and submitting the record. Compiling means “produce (something, especially a list, report, or book) by assembling information collected from other sources” (such as yourself) but does not mean I’m responsible for obtaining and paying for transcripts (or any matter) in which is only called out in your brief. If you reference a transcript in your brief, then its assumed you have personal knowledge of the contents of that matter, not that it still has to be ‘ordered’ so it can be included in the Record. Additionally, demanding I’m responsible for transcripts not directly on appeal would prejudice me, as I have already satisfied the [two hearing] transcript requirement on which those Orders I’ve appealed. Since it can take up to 60 days to obtain a transcript, once ordered, this again would [fatally] prejudice me, as such a rule would be a means to enable any respondent to critically disable an appellant’s appeal (i.e., ability to meet the time constraints of an appeal). And that is why the rules are in place for obtaining and recording the “ordering and receiving” [of the required] transcript(s)] with the appellate court.

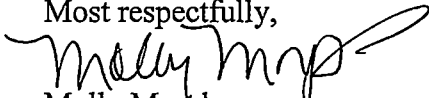
If the Appellate Court feels the briefs, and the portions/pages of those transcripts called out specifically in our briefs, fail to allow them to make an informed decision and that it would be necessary to see this progression or the Lower Court’s rationale with the submission of the full transcripts, then they will let us know (see Rule 212: *The appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration. It may likewise require a report of the trial or hearing, or of any matter relative thereto, to be made by the trial judge or administrative tribunal. These matters shall become part of the Record on Appeal.*)

Moreover, your argument fails, as my appeal is not just “based on the errors committed by the Lower Court in between remittitur by the Court of Appeals and the Lower Court holding me in contempt for failing to vacate my home,” but instead includes the errors in the Lower Courts

ruling for Specific Performance based on fraud and/or fraud on the court, and specifically asks for the prior Order be rendered void and reversed, or as an alternate, void and vacated with this case remanded back for re-trial. Therefore, if the record submission is to be based on your assessment to include trial and hearing transcripts during the time period of 'error', then in this instance ALL trial and hearing transcripts would be required as my appeal includes issues during the time frame prior to trial to the contempt charge.

I feel I'm being prejudiced with undue liability that could cause my appeal to fail. If you feel differently, then we can let the appellate court make that decision. So, contained herein is the Record on Appeal as designated relevant pursuant Rule 209 and 210. If you feel any matter needs to added or removed, then feel free to appeal to the appellate court for a ruling.

Most respectfully,



Molly Morphew, pro se

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THE STATE OF SOUTH CAROLINA
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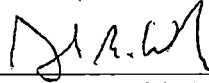
CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I served Respondents' Second Memorandum in Support of Their Motion to Dismiss by United States Mail, postage prepaid, on the following:

Molly M. Morpew
786 E. Butternut Rd.
Summerville, SC 29483
Appellant

Thomas M. Ferro
Lorraine B. Ferro
76 Elk Range Dr.
Snowmass, CO 81654
Respondents

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Attorneys for Stephen Dudek and Doreen Cross

June 19, 2018

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June 19, 2018

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Clerk, South Carolina Court of Appeals
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Columbia, SC 29211

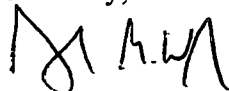
RE: Molly M. Morpew, Appellant v. Stephen Dudek, et al., Respondents
Case No. 2013-CP-18-00074
Appellate Case No. 2017-001393
S|C File No. 17-232

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents' Second Memorandum in Support of Their Motion to Dismiss, filed on June 1, 2018, in the above appeal. Also enclosed is the Certificate of Service. Lastly, enclosed is an additional copy of the Memorandum and Certificate of Service, which I respectfully request that you return, clocked-in, in the envelope provided.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Samuel M. Wheeler

cc: Molly M. Morpew
Thomas M. Ferro
Lorraine B. Ferro

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