

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

RECEIVED

JUN 26 2018

SC Court of Appeals

Molly M. Morphew

Appellant

v.

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

Respondents

APPELLANTS RESPONSE TO RESPONDENTS MOTION TO DISMISS
AND RETURN TO MOTION

Appellant Morphew (“Appellant” or “Morphew”) hereby responds to Respondents Motion to Dismiss its appeal and Return to Appellant’s Motion to Amend her Designation of Matter, and respectfully asks this Court to dismiss with prejudice the Respondents Motion to Dismiss for the reasons set forth below.

In its Motion to Dismiss and return to Appellant’s Motion to Amend Appellant’s Designation of Matter, Respondents claims or allegations are listed below, in which Appellant responds to each claim or allegation individually:

- 1) Respondents claim: *On April 27, 2018, the Appellant served her final initial brief, which was her brief in reply to the Respondents' initial brief. Pursuant to Rule 210, SCACR, her deadline to serve the Respondents' with the Record on Appeal was May 27, 2018, which fell on a Sunday, thus extending her deadline to May 28, 2018, pursuant to Rule 263, SCACR.*

Morphew disagrees. Pursuant Rule 263, SCACR, the due date was not on May 28th, but instead May 29th as May 28th was the Memorial Day holiday. Further, Morphew can show good cause why she was unable to serve the record on May 29th or until May 31st, as she was in the Emergency Room with her daughter for the majority of the day of May 29th and then could not leave her daughter unattended for the next 24-48 hours, but served the Record on Appeal to the Respondents as soon as possible, and only two days later on May 31, 2018. Respondents had full knowledge on May 29, 2018, of said good cause being shown by Appellant.

- 2) Respondents claim: *The Appellant was further required by Rule 210, SCACR, to provide this Court with proof of service of the Record on Appeal.*

Morphew agrees.

Morphew asserts a copy of proof of service was mailed to this court via USPS on May 31, 2018 (see Attachment A), but also certification of such service was included in the filing of the Record on Appeal on June 20, 2018.

- 3) Respondents claim: *The Appellant has failed to serve the Respondents with a copy of the Record of Appeal, as mandated by Rule 210, SCACR.*

Morphew disagrees.

Appellant served said record upon Respondent on 5/31/18 which tracking indicates said Record was delivered via USPS Express Mail to Attorney Steven L. Smith, P.O. Box 40578, N. Charleston, SC 29423-0578, on June 4, 2018 at 7:08am.

- 4) Respondents claim: *First, on May 24, 2018, four days prior to her deadline to serve the Respondents with the Record on Appeal, the Appellant wrote an email,...that she would not be including in the Record on Appeal... The items that the Appellant indicated that she would not include were a certain pleading and a transcript from a hearing that preceded one of the orders she has appealed in this appeal.*

Morphew agrees in part and disagrees in part.

First, it was five days prior, not four days, to its deadline to serve the Respondents with the Record on Appeal.

Second, Morphew agrees that she would not include were a certain pleading and a transcript from a hearing. The “pleading” the Respondents refer to in their objections in their Motion was agreed by both parties to be excluded from the Record on Appeal after the Appellant made clear to the Respondents that said pleading was withdrawn before review by the lower court. Therefore said filing is considered not have been presented to the lower court, which makes such pleading improper to include in the Record (pursuant Rule 210(c): *The Record shall not, however, include matter which was not presented to the lower court or tribunal*). Morphew contends this particular objection should not have been included in their Motion as it was not an issue at the time of filing its Motion, therefore should be considered irrelevant or improper. Its inclusion can only be assumed it was only to add more “fire” to

their attempt to make Morphew look “bad” in the eyes of this Court or failing the rules.

Finally, the “transcript” in which they refer to is from a hearing on an Order not directly on appeal. Morphew objects as she is unaware of any rule or requirement that states she is to order and obtain hearing transcripts to Orders not directly on appeal. It raises the question, as there were several hearings and a trial preceding the two (2) Orders on appeal, was the Appellant expected to order and obtain ALL of them or include them in their entirety in the Record “just in case” the Respondents feel they are necessary to this appeal and/or reference them in its Brief? If this were the case, it would prejudice the Appellant because such a ruling would be overbroad and burdensome, let alone very costly and time consuming. Additionally, it would clearly heighten the possibility of losing an appeal because an Appellant could overlook one of the many hearings or trials and fail to obtain the transcript. Even so, in this instance the Respondents only included this particular transcript once in its Brief, and just to support a fact “the Appellant was at that hearing”, which was a fact Morphew did not raise in its appeal, making such issue irrelevant to the appeal. Further, the entire transcript is not relevant to the appeal or even to the Respondents argument in which it references the “entire” transcript. By this reference it infers that the Respondents are directing this Court to review the entire transcript and decide what part or parts of those transcript(s) the Respondents are intending to use to support their argument(s) in its Brief. This violates the Rules as it is not on the Court to have to read an entire transcript or the right of the Appellate Court to make those determinations.

Even if such transcript was required to be obtained, Morphew was not aware of it, as she had ordered and obtained the two hearing transcripts in 2017 for the Orders directly on appeal. There has been no previous communication from either the Respondents or this Court

to Morpew that she had failed to order a transcript the Respondents allege is required. Therefore, it would be impossible for Morpew to include it in the Record or meet the filing of the Record in a timely manner because the hearing transcript the Respondents refer to is not in existence. Maybe even more critical is the fact the Respondents may have violated Rule 11 in their filing of their Brief by certifying the existence of a document that is in fact not in existence or invalid. Meaning, it is unlawful to certify or claim a document exists when you neither have it in your possession nor verified its existence before including it in a filing. For these reasons stated, Morpew asks this court to deny the inclusion of the March 27th hearing transcript in the Record and the Respondents Brief and Matter, and dismiss with prejudice its Motion to Dismiss.

5) Respondents claim: *In their Designation of Matter, the Respondents requested inclusion of three transcripts, in their entirety, from hearings held on March 27, 2017, May 12, 2017, and June 12, 2017. These hearings preceded and gave rise to the orders currently being appealed.*

Morpew agrees and disagrees.

Though Morpew agrees the Respondents requested inclusion of three transcripts, in their entirety, from hearings held on March 27, 2017, May 12, 2017, and June 12, 2017, she disagrees these three hearings preceded and gave rise to the orders currently being appealed.

The hearings and their coinciding Orders Respondents refer to are: 1) the March 27, 2017 hearing for the Order dated April 3, 2017, 2) the 59(e) Motion hearing on May 12, 2017 for the Order dated May 17, 2017, and the 3) June 12, 2017 hearing for the Order dated June 15, 2017. Morpew is directly appealing only two of those Orders, #2 & #3 (Attachment B).

Therefore there are only two Orders being directly appealed and only two hearing transcripts the Appellant was required to obtain.

As for the third hearing transcript (March 27th, 2017) the Respondents requested to be included in the Record, it does not exist, therefore cannot be included in the Record or their Brief and Matter. Further the March 27th hearing precedes the Order of April 3rd, which is not directly on appeal, and was not required by the Appellant to order and obtain.

- 6) Respondents claim: *As to one of the transcripts listed by the Respondents in their Designation of Matter, the Appellant stated, "if found proper, and you are requiring (any portion of) the March 27th hearing transcript to be included, then you will need to provide those pages to me by COB Friday, May 25, 2018, as I will be serving the Record within the week." (Id.). The Respondents' counsel responded less than three hours later, informing the Appellant that they, in the interest of compromise, were willing to forego inclusion of the discussed pleading but that inclusion of the transcripts was non-negotiable.*

Morphew was compiling the Record and assumed if the Respondents were referencing the document in their Brief then they must have possession of it, or how else could they know what it says or doesn't say to support their Brief filed? It appears the Respondents have referenced a document in its filed Brief that by doing so certifies its' validity and existence, but in actuality does not exist. Meaning, this is a blatant misrepresentation by Mr. Wheeler and the Respondents, and could be considered unlawful and a violation of Rule 11, filing false documents or misrepresentations.

Further Morphew also explained to the Respondents that only matter relevant to the

appeal is to be included in the Record, and all the pages of the transcript are not relevant, let alone all the pages from three transcripts, therefore it is not proper to include all the pages of the transcript(s) in the Record, especially if the only argument all 300+ pages are supporting is the fact Morphew attended all 3 hearings (see Respondents Brief, pg. 9, para. 1). An alternate solution would be to include the first two pages of the transcripts, as this would support the Respondents irrelevant argument that Morphew attended all 3 hearings.

7) Respondents claim: *Second, on the same day, May 24, 2018, ostensibly after receiving the above-discussed email response from Respondents' counsel, the Appellant served a copy of her Motion to Amend her Designation of Matter. (Ex. 2). The Respondents' received the Motion today and, to date, it is not posted on this Court's online case tracking portal.*

Morphew disagrees.

Online records indicate said Motion was filed on 5/31/18 (see Attachment C), with mailing to Respondents on Saturday, May 26.

8) Respondents claim: *Her Motion is filled with instances of her corrections of grammatical or title errors, as she admits is the purpose of the motion. Notably, under "Line 13," she attempts to eliminate inclusion of a complete transcript from one of the three hearings leading up to this appeal. In other words, she originally included in her Designation of Matter one of the transcript that the Respondents also included in their Designation of Matter.*

Morphew agrees in part and disagrees in part.

Yes, instances of her corrections of grammatical or title errors is part of the purpose of

its' Motion, but she also states in its Motion that it "*adds the applicable pages called out in the briefs, adds case numbers for reference or added clarity, or removes matter not relevant to the appeal.*" Because its Motion may be unnecessary to correct grammatical or reference errors, it appears by the Respondents statement the only contention with her Motion is that she is attempting to hide the fact she is removing a transcript from her Matter. Morphew is not hiding this fact as she clearly addresses its request to remove the entire transcript from its Matter in its Motion, stating that the complete transcript is irrelevant to the appeal (meaning, not ALL of the transcript is relevant to the appeal, and since she does not call out specifically any pages that are relevant, Line 13 should be removed from its Initial Brief Designation of Matter). Further, whether the Appellant references any document in its Briefs or includes or does not include matter in its Designation is irrelevant to the Respondents inclusion of any matter, even if it's the same document. Each party designates matter that is proper and relevant to the appeal, and to which it supports their arguments within their Brief(s). Meaning, Appellants Matter is independent of Respondents Matter, even if it's the same Matter. Therefore, just because Appellant initially had matter in its Designation that the Respond also includes in its Designation, does not drive the approval or denial of Appellant's request to "remove it from her Designation as improper". Respondents also fail to state how Morphew's Motion, or removal of matter from its Designation negatively affects or prejudices them in any way, making their argument without merit or irrelevant.

As for the Respondents including the entire transcript in their designation of matter, it was neither proper --as they did not call out any specific page or reference within the transcript-- nor required as its' entirety was not necessary to support their argument or all the pages of the transcripts are not relevant to the appeal. Further, the "entire" three transcripts,

including said transcript at issue here, are only called out once within their Brief to support their argument that “Morphew attended the hearing(s)”, an argument that was not raised by Morphew in her Brief nor is an issue on appeal. It should be noted that the transcripts for each Order on appeal is available for review up until one year after a remittitur is issued.

Morphew only filed a Motion to amend its Designation in order to comply with the Appellate Court Rules or to add consistency within the briefs.

- 9) Respondents claim: *Based on the Appellant's May 24, 2018, email and May 24, 2018, Motion, it is evident that the Appellant has not complied with numerous South Carolina Appellate Court Rules and that she has filed an unnecessary motion to afford herself additional time to comply with Rule 210, SCACR. The Appellant's May 24, 2018, demand that the Respondents supply her with a transcript by "COB Friday May 25, 2018" (i.e., less than one full day) is clear evidence that the Appellant has not complied with several rules.*

Morphew disagrees.

First, as already argued herein, Morphew has complied with the Rules, and if she failed any, it was not intentional or she has shown good cause for its failure. Further, Morphew argues the Respondents have either waived their right to object as untimely or have failed to show that any alleged non-compliance of the Rules by the Appellant prejudiced them in any way.

Second, as already argued herein, Morphew’s Motion to Amend its Designation of Matter did not stay or hold the appeal in abeyance, meaning Morphew was still required to meet the time constraints of its appeal while its Motion was pending. Additionally, its

Motion, even pending, does not affect the ability of this Court to review its Final Brief and the Record, regardless if its' Motion is approved or denied.

Finally, the Respondents claim the Appellant demanded that the Respondents supply her with a transcript by "COB Friday May 25, 2018" (i.e., less than one full day) AND that this is clear evidence that the Appellant has not complied with several rules. Morphew did not "demand", but instead requested or informed them that they will need to provide any pages of that transcript by COB Friday because she will be serving the Record within the week. Morphew sent the request at 6:20 am on Wednesday asking for those pages by 5pm (COB) on Friday. Contrary to the Respondents comment that it gave them "less than 1 full day", it was actually two full work days. Morphew did not feel like this was an unreasonable request as she, as any normal person would, assumed the Respondents had these pages in their possession or readily available since they referenced it in their Brief and designated it in their Matter which was filed over a month ago on April 23, 2018. This does not indicate that Morphew has failed any Appellate Rule in its request to the Respondents for matter only they've designated. Instead, its clear evidence that the Respondents have not complied or have violated Rule 11, making false or misrepresented claims in its filings or filing false or misrepresented documents. Further, it appears the Respondents are "grasping at straws" in filing their Motion to Dismiss as it is based on loose allegations that Appellant has substantially failed or not complied with the Appellate Court Rules, and have not demonstrated how any action or alleged failure by the Appellant has unlawfully or improperly effected the appeal process or the Respondents, therefore their Motion to Dismiss fails and should be dismissed with prejudice.

10) Respondents claim: *First, the Appellant has not complied with Rule 207, SCACR, as she never "contemporaneously furnish[ed] all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter." Rule 207, SCACR. Second, and even worse, it is apparent that she never ordered the transcripts in accordance with Rule 207, SCACR. Otherwise, she would not have requested that the Respondents provide her with a copy of one of the relevant transcripts. Third, it is the Appellant's responsibility to compile the Record on Appeal, including all items listed by the Respondents. Rule 210, SCACR. It is not the Appellant's place to make such demand of, and place such a deadline on, the Respondents. Compounding her errors, the Appellant demands that the Respondents provide the transcript in less than 48 hours, a task that is not only contrary to the rules but impossible to achieve, considering this Court provides Appellants ten days to order the transcript and sixty days for a reporter to provide a transcript. Rule 207, SCACR. The Appellant makes her demand so that she can stay within the deadlines of the deadlines of the South Carolina Appellate Court Rules.*

Morphew agrees in part and disagrees in part.

First, Morphew argues the Respondents have waived any right to argue Rule 207 as untimely. If they had contention with not being furnished with copies of all correspondence with the court reporter, then they should have brought this issue last year around July to October 2017 (during the transcript process) and not almost a year later and especially at this

junction of the appeal process, as all Initial Briefs, including their own, has been filed along with their Designations of Matter.

Second, Morphew has ordered and received the appropriate hearing transcripts that correspond to the Orders directly on appeal, the Rule 59(e) Motion hearing/Order of May 17, 2017 and the Rule to Show Cause (Contempt)/Ejection/Attorney's Fees and Costs Hearing/Order of June 15, 2017. It is apparent that Morphew has those transcripts as she has referenced specifically page numbers from each, and submitted them in the Record on Appeal. Morphew would also like to note that the Respondents were in possession of at least one of the required transcripts and communications from the Court Reporter in 2017, as she had received it directly from the Respondents' attorney via USPS mail, loose and without the original envelope included. This indicates said transcript had been intercepted and opened, and that the attorney was well aware of its contents. Said original mailing was addressed to Morphew at her home in Summerville, SC.

Additionally, Morphew again, did not "demand" the March 27th hearing transcript pages, but instead "requested" them from the Respondent so she could complete the compilation of the Record in order to serve it by May 29th, and not because she allegedly failed to order the required transcripts per the Rule.

Third, Morphew again agrees that she is responsible for COMPILING the Record, but it should be made clear that compiling means to "collect (information) in order to produce something", not meaning full liability to produce all designated matter is placed on the Appellant, as the Respondents are attempting to do in this instance. The only Matter that the Appellant is responsible to produce is the hearing transcripts to the Order(s) directly on

appeal, and any matter in which the Appellant designates. Any matter the Respondents designate outside this scope is the responsibility of the Respondents to produce so the Appellant can compile the Record on Appeal. More critically, if the Respondents designate matter then they are certifying it exists and they have it in their possession, otherwise that would be a misrepresentation and/or unlawful filing on their part, which violates Rule 11. Additionally, and contrary to the Respondents claim, it IS the Appellants place to request from them their matter they've designated, for how else is she to obtain it? As for the deadline, it did not seem unfair to give the Respondents 48 hours to email the Appellant a copy of the pages they've designated for they should have, or are responsible for having any matter in which they have designated, in their possession and readily available. It is not the Respondants' place to demand Morphew responsible to obtain their matter, and matter in which Morphew was not responsible to obtain in the first place. This is not only contrary to the Rules but impossible to achieve, as she had previously communicated with the Respondents in its letter of May 31, 2018, that it takes up to ten days to order the transcript and up to sixty days for a reporter to provide a transcript. It was further communicated to the Respondents that if such demand was imposed on an Appellant than any Respondent could critically fail an Appellant's appeal by waiting until the Record is being compiled to request matter such as this. (Attachment D).

Morphew again argues, that it did not "demand" but requested their matter they designated in order to compile the Record. Instead, it appears the Respondents have violated Rule 11 but are attempting to project liability on the Appellant in Order to conceal their own deficiencies by filing its Motion to Dismiss.

11) Respondents claim: *Instead of addressing the supposed issue with the Respondents' inclusion in their Designation of Matter three transcript(s), which are necessary to this appeal, Morpew disagrees.*

Morpew disagrees.

Morpew had addressed the issue with the Respondents, in the email on May 24th and again in the letter accompanying the Record served on the Respondents on May 31, 2018 which they received at 7:08am on June 4, 2018. Morpew did not receive any response after they received the Record and said letter, only an email on June 21st, 2018, stating they filed a Motion to Dismiss on June 4, 2018. Morpew has yet to receive said Motion, but instead had to go online in order to view their Motion to file a Response.

Additionally, it's not the Respondents place to designate what hearing transcripts are necessary to this appeal, it is the Rules of this Court and Appellants place as it is driven by the Order(s) the Appellant has directed on appeal. Again, the Rules require only the hearing or trial transcript(s) on the Order(s) directly on appeal.

Again, in this appeal, inclusion of the "entire" transcript(s) in the Record is unnecessary, undue, improper and/or overly burdensome (as already stated herein). Further, the Respondents do not in their entire brief call reference to any of the transcripts, except in one instance, and to object to an issue that neither Morpew contends nor an issue on appeal, and their references are without specificity to where in those hundreds of pages of transcripts do they support their argument. (See Respondents Brief, pg. 8 para. 3)

What Morpew 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 Morphew 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; Initial br., p. 17).

Respondents are only guessing to what Morphew's issue on appeal is and attempt to argue a point that Morphew has not contended in her Brief(s) or on appeal, therefore 300+ pages (3 entire transcripts) referenced to support said irrelevant or moot issue or argument should not be included in the Record. Further, the entire transcript(s) are irrelevant to their brief and its specific argument, especially an argument not been raised by the Appellant in its appeal. At most they could have referenced in their Brief and included in the Record, the first two pages of the transcripts, which would have clearly proved their 'moot' point that Morphew attended all three hearings. Additionally, it would prejudice the Appellant to be required such a burden that serves no purpose to support an irrelevant or moot issue or argument within the Respondents Brief, especially since they've failed to call out where in the transcripts they found such support for their argument.

Further, it is not the position of the Respondents to decide what transcript or transcripts is "necessary" to this appeal. It's the Rules of this Court, which require only the hearing transcripts regarding the Order(s) directly on appeal, and in this instance, two transcripts corresponding to the two Orders on appeal.

12) Respondents Claim: *The Appellant filed a Motion to Amend her own Designation of Matter. The motion contains no substance. She readily admits that "[t]his amendment does not add matter, only corrects grammatical or title*

errors, adds the applicable page called out in the briefs, adds case numbers for reference or added clarity, or removes matter not relevant to the appeal." As to adding clarity or specificity, this is an unnecessary step.

Morphew agrees in part and disagrees in part.

Morphew could have stated more clearly what she meant by "clarity" by asserting "consistency", meaning Appellant referenced Orders, Pleadings, Motions, etc. within its Brief(s) in one format, while the Respondents referenced the same in another format. Morphew felt it necessary to provide consistency in its Matter to this Court, therefore Morphew agrees she did file a Motion to amend its Designation of Matter to be consistent with the Respondents to ensure consistency and clarity of the Record. Even if not necessary or does not contain any substance, its Motion neither altered its Final Briefs or effected the Respondents Final Brief, nor did amending its Matter effect the Record on Appeal. Further, said Motion did not stay the appeal or the time constraints in which the Appellant is to meet, therefore its Motion has not prevented this Court the ability to review this case, nor has it prejudiced the Respondents, whether denied or approved.

Morphew strongly disagrees with the Respondents statement "*As to adding clarity or specificity, this is an unnecessary step.*" She asserts that "specificity" is most absolutely a necessary step in the Designation of Matter, as it is called out clearly in Rule 209(a): "At the same time a party serves his initial brief(s) under Rule 208...a Designation of Matter to be Included in the Record on Appeal *which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.*" Therefore some of its Motion has substance, as the Designation requires

specificity. Morpew now raises issue that the Respondents have failed to comply with Rule 209 as their Designation fails to comply with the Rules as they have not called out with specificity within.

13) Responds state: *Upon service of the Record on Appeal on the Respondents, it would be their role to examine the Record on Appeal and ensure that the items she and they have listed in their respective Designations of Matter were included in the Record on Appeal. The Appellant could simply add the clarity or edit the grammatical errors in the table of contents in the Record on Appeal, as long as the substance of the Record on Appeal is inclusive of all items listed in both Designations of Matter. As to removing items from the Designation of Matter, the time for filing Designations of Matter has passed.*

Morpew agrees in part and disagrees in part.

Morpew agrees that the role of the Respondent is to examine the Record on Appeal upon receipt and ensure that the items she and they have listed in their respective Designations of Matter were included in the Record on Appeal, but does not see where this statement is relevant as the Respondents or Morpew make no issue as to their role. Instead Morpew would like to point out that though they had received the Record on June 4th, 2018 at 7:08am, Morpew received no response or communications until June 21st via email when Morpew was informed a Motion to Dismiss had been filed. Morpew has yet to receive their Motion, but has instead viewed said Motion on this Courts web site in order to respond.

As for the time for filing Designations of Matter passing, Morpew contends it did file its Designation(s) of Matter within the time limits. Its Motion is to amend it, and there

appears to be no rule that states Designation of Matter cannot be amended. Therefore, the Respondents argument that the time for filing the Designation(s) is passed is moot or irrelevant.

14) Respondents claim: *Furthermore, the Respondents indicated in their May 24, 2018, email that one pleading could be omitted but transcripts from three hearings could not be omitted. This motion is nothing more than an attempt to buy time with this Court.*

Morphew disagrees.

As already argued herein, Morphew again argues it filed its Motion with the good intentions to comply with the rules, provide consistency with format, or correct grammatical errors. Though the Respondents fail to state how Appellant is “buying time” with the filing of its Motion, Appellant can clearly demonstrate that its Motion does afford her any additional time with the court, as she is well aware a Motion to amend does not stay the process or any of the Appellate Court Rules, including time to serve and file its Final Brief(s) and the Record on Appeal. Instead, it was the Respondent’s Motion to Dismiss filed on June 4, 2017, that has held this appeal in abeyance and stayed the time limits.

Rule 240(b): Stay of Time Limits. *Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.*

Moreover, Morphew has filed its Final Brief(s) and Record per Rule 210, SCACR, which

clearly demonstrates she was not using its Motion to Amend to buy her any time with this Court. Moreover, the amendments to the Appellants Designation(s) do not prejudice the Respondents nor prevent this Court from reviewing its Briefs, as no verbiage was changed within its Briefs, only the format of some references and a removal of a transcript because the complete or entire transcript was not relevant to the appeal and/or Appellant made no particular reference to pages within the transcript to support any argument or issue, therefore has requested the entire transcript be removed from its Matter in order to comply with the rules.

15) Respondents claim: *The time to serve Designations of Matter and the Record on Appeal has expired. The Appellant is attempting to use an untimely motion under Rule 209, SCACR, to afford herself more time to comply with Rule 210, SCACR, to which she has not adhered.*

Morphew objects to the Respondents raising issue to its service of its Designation of Matter at this point in the appeal process, as they did not raise said issue at service of the Appellant's Brief/Designation of Matter in December 2017 or its Reply Brief/Designation of Matter in April 2018. It's been 7 months since service of the Appellants Brief and Designation and over 2 months since service of the Appellants Reply Brief and Designation, therefore Appellant asserts Respondents have waived its right to raise this issue in their Motion to Dismiss. Even so, Morphew has met the time constraints of said service pursuant Rule 210, SCACR, or by this Courts direction.

As to the service of the Record on Appeal, as already argued herein, Morphew was only two days delayed in its service, but has good cause in its delay. Morphew argues the

Respondents had full knowledge of Morphew's Emergency Room visit with her daughter (via email on May 29th) 6 days before it filed its Motion to Dismiss but still raises issue as if Morphew is intentionally failing to adhere by the Rules. Additionally, Morphew was three days early serving its Final Brief, therefore has not delayed or intentionally delayed the Appeal Process as alleged by Respondents. Adhering to the Rule is further supported by the Appellants timely filing of its Final Brief and the Record on Appeal, knowing full well the time to file final Briefs are not stayed by a Motion to Amend. Rather, she has either met the time constraints or exceeded them. Further, Respondents have failed to demonstrate how this alleged failure has prejudiced them, therefore making their argument without merit.

As to the Respondents allegation that the "*Appellant is attempting to use an untimely motion under Rule 209, SCACR, to afford herself more time to comply with Rule 210, SCACR, to which she has not adhered*", Morphew strongly disagrees. If the Motion was untimely then the Appellant Court would not have accepted it. Further its Motion to Amend was not brought under Rule 209, SCACR, as no Rule was called out in her Motion. If any Rule her Motion is to be brought under it would be Rule 240, SCACR, Motions and Petitions Generally. Again, there is no rule stating Designation of Matter cannot be amended, and its Motion does not stay the appeal or the time constraints within the Appellate Court Rules.

Morphew asserts she has adhered to Rule 210 or, if in one instance only slightly failed to meet a time constraint, she has shown good cause for missing the deadline by 2 days, therefore this Court should not dismiss her appeal.

16) Respondents allege: *In this appeal, the Appellant has also failed to comply with Rule 207. She did not notify the parties and this Court of her communications*

with the court reporter, and she apparently never ordered at least one of the transcripts relevant to this appeal. Her failure to adhere to the rules dates back to the inception of this appeal.

Morphew argues the Respondents have waived all rights to raise issue with Rule 207, as their argument is untimely. There have been many filings since the start of this combined appeal starting in June of 2017, including a previous Motion to Dismiss by the Respondents. More importantly all initial Briefs and Designations, including the Respondents' Brief and Designation, have been filed, and all without any previous objection of Rule 207. It wasn't until the Appellant was compiling the Record on Appeal and asked the Respondents to provide a transcript they referenced from a hearing on an Order not directly on appeal that Rule 207 became an issue for them. Meaning, the Respondents have had at least 11 months to raise issue with Rule 207, but have failed to do so. Instead, the Respondents have referenced documents they did not have in their possession or have not confirmed even existed, and now attempt to place full liability on the Appellant in order to dismiss her appeal and/or cover up their own deficiencies. Even if their objection is considered timely, Morphew was not aware it was an issue as all Initial Briefs/Reply Brief and Designation(s) of Matter have been filed for over 2 months or the time has expired to submit Initial Briefs and Designation(s). Moreover, the time to order and receive any applicable transcripts has expired, and by at least 9 months, without any communications from either the Respondents or this Court regarding Rule 207. If the Respondents failed to receive any communications from the court reporter, then they should have raised it when it was appropriate or almost a year ago.

Morphew again notes that the Respondents were in possession of at least one of the required transcripts and communications from the Court Reporter in 2017, as she had received it directly from the Respondents' attorney via USPS mail, loose and without the original envelope included. This indicates said transcript had been intercepted and opened, and that the attorney was well aware of its contents. Said original mailing was addressed to Morphew at her home in Summerville, SC.

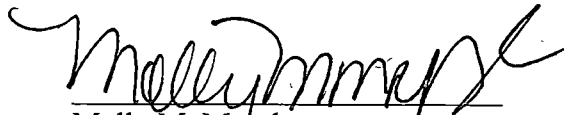
CONCLUSION

Appellant has clearly demonstrated she has not failed, continually failed or intentionally failed to meet any of the Appellate Court Rules as alleged by the Respondents, but instead has strived to meet all time constraints per its Rules in this appeal. Further, any failures alleged by the Respondents have no merit or are untimely or they have waived their rights to raise issue at this juncture of the appeal. Moreover, allowing Appellant's appeal to be dismissed for the reasons Respondents have brought within its Motion to Dismiss would be improper as they have not shown clear and convincing evidence of substantial failures or alleged extensive failures on Appellant's part, nor have they demonstrated that Appellant's alleged failures or Motion to Amend its Matter prejudices them in any way. Instead, it's the Respondents that have failed to comply with Rule 209, and more critically, have violated Rule 11.

In actuality it appears that the Respondents Motion to Dismiss was filed an attempt to find any issue against the Appellant they can, no matter how minor, by searching back to the start of this appeal a year ago in order to convince this Court to dismiss the Appellant's appeal or cover up their own failings, unlawfulness or deficiencies.

Due to the reasons stated herein, Appellant respectfully asks this Court to dismiss Respondents' Motion to Dismiss with prejudice. Further, if this court finds the Respondents have violated Rule 11, award sanctions against the Respondents, as this Court finds appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Molly M. Mophew', written over a horizontal line.

Molly M. Mophew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843) 514-7299

June 23, 2018

ATTACHMENT A

May 31, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

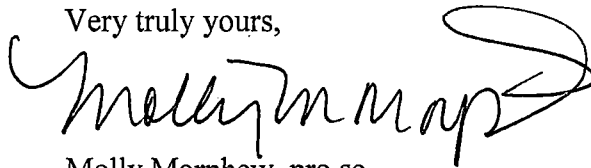
Re: Appellate Case No. 2017-001393
Molly M. Morphew v. Stephen Dudek, Doreen Cross, Thomas Ferro, Lorraine Ferro

Dear Ms. Kitchings:

Please find enclosed the Appellant's Certificate of Service upon serving the Record on Appeal to the Respondents.

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

Very truly yours,

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

Molly Morphew, pro se
786 E Butternut Rd
Summerville, SC 29483
843-514-7299

Cc: Steven L. Smith, Esq.
Thomas and Lorraine Ferro

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross

Respondents,

v.

Thomas Ferro M. Ferro and Lorraine B. Ferro

Respondents,

And

Molly M. Morphew,

Appellant,

v.

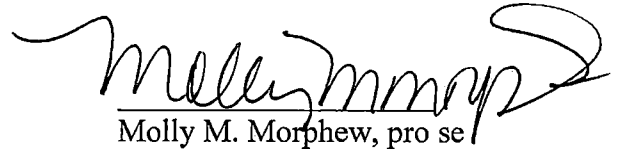
Stephen Dudek, Doreen Cross,
Thomas Ferro and Lorraine Ferro

Respondents.

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on May 31, 2018, served counsel below with a copy of the Record on Appeal, pursuant Rule 209 and 210, for its review and reference in preparation of its final brief by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents

A handwritten signature in black ink, appearing to read "Molly M. Morphew". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843) 514-7299

May 31, 2018

ATTACHMENT B

RECEIVED

AUG 24 2017

SC Court of Appeals

August 9, 2017

The Honorable Jenny Abbott Kitchings
1015 Sumter Street
Columbia, South Carolina 29201

RE: Molly Morphew vs. Stephen Dudek, Doreen Cross, Thomas M. Ferro and Lorraine B.

Ferro

Case No.: 2013-CP-18-0183

Dear Ms. Kitchings:

I have filed 2 separate appeals but both are in reference to the same lower court case, case # 2013-CP-18000183, one being an appeal on a 59(e) Motion Order, and the other on contempt of said Order.

Because they are directly related to each the other, and both are in reference to the same case and issue, I would respectfully ask this court if it would combine said appeals, as it seems this path would save time, redundancy, costs and court resources. Additionally, it would offer more clarity as one directly correlates to the other.

If you need me to provide additional information or have any questions, please feel free to contact me at 843-514-7299 or morphew926@gmail.com.

Thank you for your consideration and I look forward to your response.

Most respectfully,



Molly Morphew, pro se
1605 Central Ave. Ste 6/347
Summerville, SC 29483
843-514-7299

Cc: Steven Smith, Esquire
Thomas and Lorraine Ferro, pro se

ATTACHMENT C

South Carolina Appellate Case Management System

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...

Cases
Case Search
Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2017-001393

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	Stephen Dudek v. Thomas Ferro (Morphew)(2) View Full Title	Case Status:	Held in Abeyance
Consolidated:	2017-001393*, 2017-001528		
Filed Date:	06/19/2017	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Dorchester (2013CP1800074)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Molly M. Morphew	N	Self Represented
Respondent	Doreen Cross	N	Steven L. Smith Samuel Melvil Wheeler
Respondent	Stephen Dudek	N	Steven L. Smith Samuel Melvil Wheeler
Respondent	Lorraine Ferro	N	Self Represented
Respondent	Thomas Ferro	N	Self Represented

Views

Display:

Event Information

Filed Date	Event Information	Doc
06/20/2018	Final Brief - Reply of Appellant	1111
06/20/2018	Final Brief - Appellant	1111
06/20/2018	Record - Record on Appeal Filed	1111
06/04/2018	Motion - Return to motion to amend appellant's designation of matter and initial briefs	1111
06/04/2018	Motion - Dismiss	1111
05/31/2018	Motion - Other Motion to amend appellants designation of matter and initial briefs	1111
05/04/2018	Designation of Matter - Designation of Matter Filed with appellant's reply brief	1111
05/01/2018	Initial Brief - Reply of Appellant Morphew	1111
04/23/2018	Designation of Matter - Designation of Matter Filed by Respondents	1111
04/23/2018	Initial Brief - Respondent	1111
03/22/2018	Non-Dispositional Decision - Order denying motion to dismiss and denying motion to dissolve (setting next step in the appeal)	1111
03/12/2018	Correspondence - Incoming (Address Change) email for Appellant Morphew	1111
02/06/2018	Motion - Other Motion To Dissolve Respondents Motion to Dismiss Appeal	1111
01/18/2018	Deficiency - Correction regarding motion	1111
01/11/2018	Deficiency - Deficiency Letter Sent regarding the motion to hold in abeyance	1111
01/11/2018	Deficiency - Deficiency Letter Sent regarding the motion to dismiss	1111
01/10/2018	Motion - Hold in Abeyance	1111
01/10/2018	Motion - Dismiss	1111
12/05/2017	Designation of Matter - Designation of Matter Filed by Appellant	1111
12/05/2017	Initial Brief - Appellant	1111
11/21/2017	Correspondence - Incoming (Address Change) for Appellant	1111
11/07/2017	Non-Dispositional Decision - Order granting the motion to consolidate (and setting time for the next step in the appeal)	1111

ATTACHMENT D

May 31, 2018

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

Re: Appellate Case No. 20-7-001393
Stephen Dudek, Doreen Cross, Respondents v. Thomas Ferro, Lorraine Ferro,
Respondents
AND
Molly M. Morphew, 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 Morphew 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 Morphew 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 it’s 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.*)

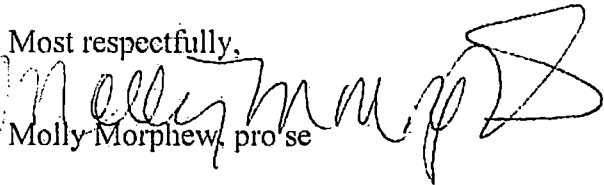
Moreover, your argument fails, as my appeal is not just “based on the errors committed by the Lower Court in between remittitur by the Court of Appeals and the Lower Court holding me in contempt for failing to vacate my home,” but instead includes the errors in the Lower Courts

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 Morpheu, pro se

A handwritten signature in black ink, appearing to read 'Molly Morpheu', with a large, stylized flourish extending to the right.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

RECEIVED

JUN 26 2018

SC Court of Appeals

Molly M. Morphew

Appellant

v.

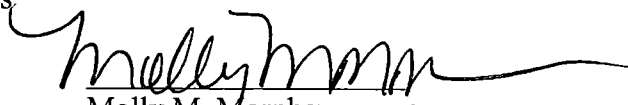
Stephen Dudek, and Doreen Cross,
Thomas Ferro, Lorraine Ferro

Respondents

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellants Response to Respondents Motion to Dismiss and Return to Motion by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents


Molly M. Morphew, pro se

June 25, 2018

CC: Thomas and Lorraine Ferro

June 23, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED

JUN 26 2018

SC Court of Appeals

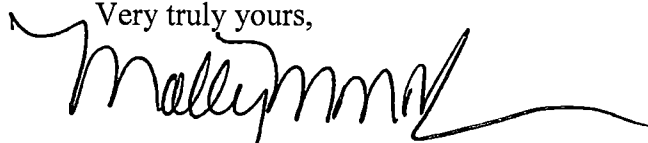
Re: Appellate Case No. 2017-001393
Molly M. Morpew v. Stephen Dudek, Doreen Cross, Thomas Ferro, Lorraine Ferro

Dear Ms. Kitchings:

Please find enclosed the Appellant's Response to Respondents Motion to Dismiss and Return to Motion, to be recorded and filed.

Also enclosed is a said copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morpew', with a long horizontal flourish extending to the right.

Molly Morpew, pro se

Cc: Steven L. Smith, Esq.
Thomas and Lorraine Ferro

ORIGIN ID: CHSA (843) 574-0697
MOLLY MORPHEW

786 E BUTTERNUT RD

SUMMERVILLE, SC 29483
UNITED STATES US

SHIP DATE: 25 JUN 18
ACTWGT: 0.50 LB
CAD: 104726038/INET3980

BILL SENDER

TO HONORABLE JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1015 SUMTER STREET

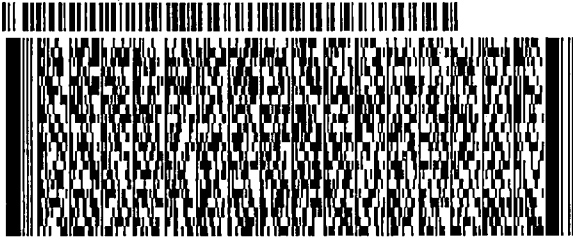
552-0263DF/DCA5

COLUMBIA SC 29211

(803) 734-1890
INV:
PC:

REF: RPS MOTION TO DISMISS

DEPT:



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Express



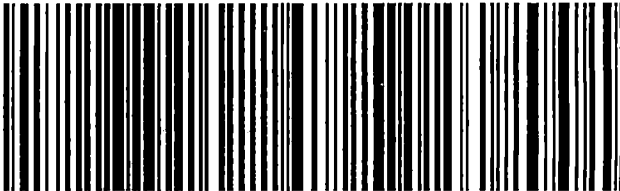
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JUN 26 2018

SC Court of Appeals

