

ORIGINAL

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
The Honorable G. Edward Welmaker, Circuit Court Judge
Case No. 2012-CP-23-0003**

APPEAL NO. 2012-212715

Lyman R. Rea, Marc Rea, Melissa Ray
and William Rea and Millicent Landauer..... Plaintiffs,

Of Whom Lyman R. Rea is,..... Appellant.

v.

Greenville County Detention Center..... Respondent.

RESPONDENT 'S FINAL BRIEF

Lyman R. Rea
c/o HC 77, Box 681 BB
Pittsburg, MO 65724
Pro Se Appellant

Christopher R. Antley, Esq.
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, SC 29603
864-242-4050

crantley@devlinparkinson.com

Attorney for Respondent
Greenville County Detention Center

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STATEMENT OF THE ISSUES ON APPEAL

- I. Should the Court of Appeals affirm the trial court's dismissal of the Appellant's case for failure to prosecute when the Appellant has failed to raise any arguments addressing the merits of the trial court's dismissal?
- II. Should the Court of Appeals affirm the trial court's order dismissing the Appellant's lawsuit when the Appellant failed to preserve any of the issues raised in his brief for appellate review?

STATEMENT OF THE CASE

Lyman Russell Rea, the Appellant, filed this lawsuit on behalf of himself and Marc Rea, Melissa Rea, William Rea, and Millicent Lindauer, alleging that the Greenville County Detention Center (“GCDC”) subjected him to cruel and unusual punishment by placing him in unconstitutional conditions of confinement, violated his First Amendment rights by taking his Bible, and falsely imprisoned him. **R. pp.5-6.** The Complaint also included charges of false arrest and violation of the Appellant’s Miranda rights. **R. pp.5-6.** Though five Plaintiffs are included in the caption, only Lyman Russell Rea, who filed the action *pro se*, signed the Complaint. **R. pp.5-6.** However, he never served it.

After becoming aware that an un-served Summons and Complaint naming GCDC as a Defendant had been filed with the Greenville County Clerk of Court, GCDC filed a motion to dismiss, citing insufficiency of service of process and lack of personal jurisdiction over GCDC. **R. p.8.** The trial court held a hearing on this motion, but the Appellant, who had been sent notice to the addresses on file with the Clerk of Court, failed to appear. **R. pp.10-19; 23-25.** Because the Appellant never appeared, the trial court entered an order on July 3, 2012, dismissing the Appellant’s case for failure to prosecute. **R. pp.2-3.** The Appellant filed a Notice of Appeal dated July 23, 2012, but the Appellant provided no indication of when he actually filed the Notice of Appeal. **R. p.28.**

FACTS

On June 18, 2012, the Greenville County Court of Common Pleas held a hearing on the Respondent’s motion to dismiss. **R. pp.10-19.** Although the Appellant notified him of the hearing, the Appellant opted not to attend or otherwise oppose the motion.

R. pp.23-25; R. pp.10-19. The Appellant's decision not to attend the hearing and oppose the motion prompted the trial judge to dismiss the case for failure to prosecute pursuant to South Carolina Rule of Civil Procedure 41(b). **R. pp.2-3.**

ARGUMENTS

- I. This Court should affirm the trial court's dismissal of the Appellant's lawsuit against GCDC because the Appellant has raised no arguments addressing the trial court's grounds for dismissal and, therefore, has abandoned his appeal of the dismissal.**

While the Appellant has appealed the trial court's order dismissing his case for lack of prosecution, the Appellant's Final Brief makes no mention of the trial court's dismissal order and includes no arguments challenging the legal basis for the dismissal. Instead, the Plaintiff uses his Final Brief as a forum for recounting what he claims are the substantive facts and for listing conclusory statements concerning his "rights." Because the Appellant has failed to include any arguments in his Final Brief challenging the basis of the trial court's order of dismissal, the Appellant has abandoned any challenge to the trial court's order. See, e.g., Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in their brief is deemed abandoned and will not be considered by the appellate court.").

- II. This Court should affirm the trial court's dismissal of the Appellant's lawsuit against GCDC because the Appellant has failed to preserve any of the issues raised in his brief for appellate review.**

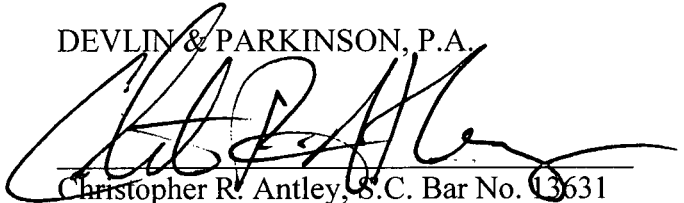
For an appellate court to consider an issue raised in an appellate brief, the Appellant must have preserved the issue for appellate review. "[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the

trial judge to be preserved for appellate review.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The Appellant has presented none of the issues listed in his Final Brief to the trial judge. The Appellant has, therefore, failed to preserve these issues for appellate review, and this Court should refuse to consider them.

CONCLUSION

For the reasons argued in the Respondent’s Final Brief and for any other reason appearing in the Record on Appeal, this Court should affirm the trial court’s decision to grant Respondent’s Motion to Dismiss.

DEVLIN & PARKINSON, P.A.



Christopher R. Antley, S.C. Bar No. 13631

P.O. Box 10387

Greenville, SC 29603

(864) 242-4050

(864) 242-4277-Facsimile

e-mail: crantley@devlinparkinson.com

Attorney for Respondent Greenville County
Detention Center

Date: February 15, 2013
Greenville, South Carolina

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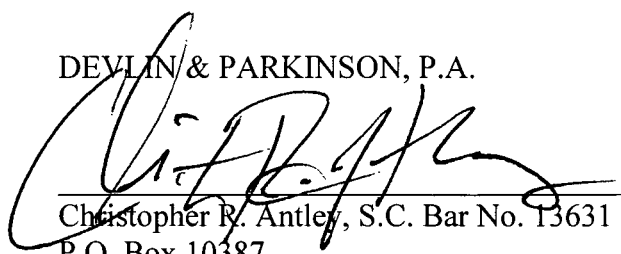
Greenville County Detention Center..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

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Christopher R. Antley, S.C. Bar No. 13631
P.O. Box 10387

Greenville, SC 29603

(864) 242-4050

(864) 242-4277-Facsimile

e-mail: crantley@devlinparkinson.com

Attorney for Respondent Greenville County
Detention Center

Date: February 15, 2013
Greenville, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2013, I served the following with a copy of Respondent's Final Brief by depositing same in the United States Mail, postage prepaid and properly addressed as follows:

Lyman Russell Rea
c/o HC 77 Box 681 BB
Pittsburg, MO 65724

Pro se Appellant



Joyce Gibson
Legal Assistant to Christopher R. Antley
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, SC 29603