

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No.: 18-ALJ-22-0211-AP

Appellate Case No. 2018-001685

Cynthia G. Aldaqqaq, Appellant,

v.

South Carolina Department of Employment
and Workforce & IQOR Holdings US, LLC, Respondents.

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JUN 06 2019
SC Court of Appeals

Motion to Strike Record on Appeal

Respondent South Carolina Department of Employment and Workforce (the Department) moves this Court to strike the record on appeal served and filed by Appellant because the record contains multiple fatal defects. Specifically, Appellant's record (1) fails to contain documents designated by the Department, (2) contains documents the parties neither included in their designation of matter nor presented to the Administrative Law Court (ALC), (3) contains multiple sticky notes with Appellant's handwritten annotations and commentary, (4) contains many unnecessary documents pertaining to various motions and filings with this Court, (5) fails to individually number the pages, and (6) is not securely fastened on the left margin. Due to the number of defects and the seriousness of some of them, the Department moves this Court to strike the record and require Appellant to file a record on appeal curing these defects and in

compliance with the Court's rules, rather than order Appellant to file a supplemental record on appeal. Also, the Department requests the Court hold all timelines in abeyance pending the Court's ruling on this motion.

When a party serves its initial brief, the party must also serve a designation of matter under Rule 209, SCACR, which sets forth the documents and materials the party would like included in the record on appeal. Pursuant to Rule 210(c), SCACR, the record on appeal "shall include all matter designated to be included by any party under Rule 209." "The [r]ecord shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c).

Each page in the record on appeal "shall be numbered consecutively beginning with the index." *Id.* Also, where a portion of a decision is included in the record, the entire decision "shall" be included. *Id.* Furthermore, the record on appeal "shall comply with the requirements of Rule 267[, SCACR]." *Id.* Under Rule 267(d), SCACR, "[i]f more than two sheets are used, they shall be securely fastened on the left margin," and "[i]f staples or clasps are used to bind the volumes, the spines of the volumes shall be bound with heavy tape."

Here, Appellant's record on appeal contains many defects. First, the record omits several documents, in part or in whole, designated by the Department. The Department filed and served its designation of matter on March 13, 2019. Specifically, the Department designated the decision from the Department's Appellate Panel (the Panel), but the record does not contain the Panel's decision.¹ Oddly, Appellant included the first page of the Panel's decision, which is the notice of mailing of the Panel decision, but the record omits the actual decision, which is three additional pages.

¹ Appellant's designation of matter also designated the Panel decision in paragraph one.

Also, in paragraph three, the Department designated the motion to dismiss the Department filed with the ALC, "including all exhibits." Appellant included the motion to dismiss in the record but omitted the exhibits. Next, in paragraphs six through eight in the Department's designation of matter, the Department designated the petition for rehearing Appellant filed with the ALC, the notice of appeal Appellant filed with the ALC, and the appeal Appellant filed with the Panel. Appellant's record on appeal omitted all three of these documents in their entirety.

Thus, Appellant's record on appeal omitted several documents, in part or in whole, which the Department included in its designation of matter. These omissions violate Rule 210(c), and the Department requests the Court strike Appellant's record on appeal and order her to file a new record on appeal including all documents designated by the Department. *See* Rule 210(c) (explaining the record on appeal "shall include all matter designated to be included by any party under Rule 209"); *id.* (noting when a portion of a decision is to be included in the record, the entire decision "shall" be included in the record).

Second, Appellant's record on appeal contains multiple documents that neither party included in their designation of matter nor presented to the ALC. Within the record on appeal, Appellant properly includes the Department's motion to dismiss filed with the ALC on July 6, 2018. As part of this motion, Appellant includes a copy of the envelope the Department used to serve the motion on Appellant. Appellant also includes a copy of the envelope the Department used to serve its response to Appellant's motion for rehearing. Finally, Appellant includes a copy of a return envelope.² Appellant erred by including copies of these envelopes in the record on

² Because the pages of the record are not individually numbered, to assist the Court in locating these envelopes within Appellant's record on appeal, the Department notes the envelopes are located in numbers seven, eight, and nine of Appellant's index to the record.

appeal because she did not designate them in her designation of matter. Perhaps more importantly, Appellant never presented these envelopes to the ALC. If these envelopes were somehow relevant to her case, Appellant could have presented these envelopes to the ALC as part of the motion for rehearing she filed with the ALC. However, she did not present them to the ALC or make any arguments related in any way to the envelopes. Because Appellant failed to include the envelopes in her designation of matter and she did not present them to the ALC, Appellant erred by including them in the record on appeal. *See* Rule 210(c) (noting the record on appeal "shall include all matter designated to be included by any party under Rule 209"); *id.* ("The [r]ecord shall not, however, include matter which was not presented to the lower court or tribunal."). Thus, the Department requests the Court strike Appellant's record on appeal and order her to file a record that includes only documents and matter within the parties' designations of matter and that was presented to the ALC.

Third, Appellant erred by including, in multiple locations within the record, sticky notes with Appellant's handwritten annotations and commentary. In the version of the record Appellant served on the Department, located within numbers seven and eight of Appellant's index, Appellant included sticky notes with handwritten annotations. Also, in the version of the record Appellant filed with this Court,³ located within number nine, Appellant included a sticky note. Appellant's inclusion of these sticky notes in the record on appeal was improper because she did not present them to the ALC. *See id.* ("The [r]ecord shall not, however, include matter which was not presented to the lower court or tribunal."). Further, Appellant erred by failing to file with the Court and serve the Department with identical versions of the record on appeal. *See id.* (requiring Appellant to serve and file "copies" of the record on appeal, which indicates

³ The Department reviewed the record on appeal Appellant filed with the Court via the Court's online case management system, C-Track.

Appellant should serve and file identical versions of the record on appeal). Accordingly, the Department requests the Court strike Appellant's record on appeal and order her to file a record on appeal that omits any sticky notes, or any other materials, not presented to the ALC. Also, the Department requests the Court instruct Appellant to file with the Court and serve the Department with identical versions of the record on appeal.

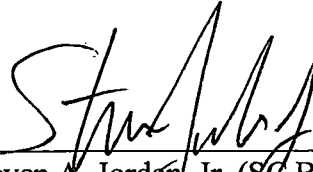
Fourth, Appellant erred by including in the record on appeal many unnecessary documents pertaining to various motions and filings with this Court. Appellant included in the record on appeal this Court's order granting her motion to proceed in forma pauperis, this Court's order extending Appellant's time to file her initial brief and designation of matter, this Court's order extending Appellant's time to serve the record on appeal, and the Department's return to a motion Appellant filed with this Court. Although including these documents in the record on appeal does not necessarily prejudice the Department, they are unnecessary, and neither party included them in their designation of matter. Also, omitting them would allow for more efficient review of the appeal. Thus, if the Court grants this motion on one or more of the other reasons for striking the record and requires Appellant to file a new record on appeal, the Department requests the Court order Appellant not to include the various motions and filings with this Court.

Finally, Appellant erred by failing to individually number the pages in the record and by failing to securely fasten them on the left margin. Appellant failed to individually number the pages in the record, and this failure prevents both parties from properly referencing the record in the final briefs pursuant to Rule 211(b)(1), SCACR. Further, the various documents within the record are each secured by only a paperclip and are not fastened on the left margin. These failures violate the appellate court rules and prevent the orderly and efficient review of this appeal. *See* Rule 210(c) ("Each page of the [r]ecord on [a]ppeal shall be numbered

consecutively beginning with the index."); Rule 267(d) ("If more than two sheets are used, they shall be securely fastened on the left margin."); *Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992) ("Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State."). Therefore, the Department requests this Court strike Appellant's record on appeal and order her to submit a new record with individually numbered pages and securely fastened on the left margin.

Based on the foregoing, the Department moves this Court to strike the record on appeal served and filed by Appellant because the record contains multiple fatal defects. Specifically, Appellant's record (1) fails to contain documents designated by the Department, (2) contains documents the parties neither included in their designation of matter nor presented to the ALC, (3) contains multiple sticky notes with handwritten annotations and instructions, (4) contains many unnecessary documents pertaining to various motions and filings with this Court, (5) fails to individually number the pages, and (6) is not securely fastened on the left margin. Due to the number of defects and the seriousness of some of them, the Department moves this Court to strike the record and require Appellant to file a record on appeal remedying these defects and in compliance with the Court's rules, rather than order Appellant to file a supplemental record on appeal. Also, the Department requests the Court hold all timelines in abeyance pending the Court's ruling on this motion.

Respectfully Submitted,



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June 5, 2019

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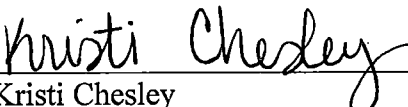
PROOF OF SERVICE

I certify that I have served the Motion to Strike Record on Appeal of the Respondent DEW on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 2019, addressed to the parties at their addresses of record:

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June 5, 2019


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June 5, 2018

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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RE: Cynthia G. Aldaqqaq v. South Carolina Department of
Employment and Workforce and IQOR Holdings US LLC
Appellate Case No: 18-001685

Dear Ms. Kitchings:

Enclosed are the original and six copies of the Motion to Strike Record on Appeal of Respondent South Carolina Department of Employment and Workforce. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

Kristi Chesley

Kristi Chesley
Administrative Legal Assistant for
Steven A. Jordan
Attorney for Respondent South Carolina
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