

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000182

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SEP 06 2019
SC Court of Appeals

Donald Stanley and Sean Reiter,
Individually and as Class Representatives, Respondents,

v.

Southern States Police Benevolent Association, Inc., Appellant.

**RETURN TO RESPONDENTS' PETITION TO STRIKE
APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

I. INTRODUCTION

On August 28, 2019, Donald Stanley and Sean Reiter served a motion to strike matter included in the Initial Brief and Designation of Matter arguing that it was not presented to the trial court. In particular, their motion references the entire depositions of Stanley and Reiter. Their motion also alleges that the arguments on appeal regarding the five factors for class certification were not made before the trial court. The Respondents' motion was filed without consulting the Southern States Police Benevolent Association, and it is procedurally improper and factually incorrect.

II. DISCUSSION

A. The Depositions of Stanley and Reiter Were Presented to the Trial Court.

In the arguments regarding the motion for class certification, the PBA attached excerpts from Stanley and Reiter's depositions. These excerpts were attached as exhibits to the PBA's memorandum in opposition which was filed with the court and served upon Stanley and Reiter. In particular, excerpts include the following pages from Stanley's deposition: 74-76, 107-110, 124-125, and 131-138. In addition, the PBA attached excerpts from Reiter's deposition including pages 43, 45, 46, 56, 57, 63, 64, and 65. These excerpts were copied and attached to the memorandum. In addition, language from the depositions was quoted directly in the memorandum in opposition to class certification. Finally, the depositions and the excerpts were referred to in oral argument before Judge Miller.

In addition, the PBA filed a motion for reconsideration which included the entire deposition of Mr. Reiter and the entire deposition of Mr. Stanley. The motion for reconsideration extensively quotes from the entire deposition transcripts which were attached to the memorandum. The memorandum and the entire transcripts were filed with the Charleston County Clerk of Court and served upon lawyers for Stanley and Reiter. Lawyers for Stanley and Reiter made no objection whatsoever to the service of these depositions along with this motion or the arguments referencing the depositions in the motion.

In addition, Stanley and Reiter have not objected to including the motion for reconsideration in the Record on Appeal. The motion includes Stanley and Reiter's deposition transcripts.

B. Stanley and Reiter's Motion is Procedurally Improper.

Stanley and Reiter filed their motion pursuant to Rule 240 of the South Carolina Appellate Court Rules. The rule indicates at section 240(c)(3) that “[w]here the Record on Appeal or Appendix has not been filed, ... the parties shall file affidavits and other documents in support of their positions.” Stanley and Reiter have filed no documents with the Court from which the Court can review their motion. Stanley and Reiter have filed no affidavit with the Court from which the Court can review their position. Rule 240(g) indicates that “[f]ailure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion.” Stanley and Reiter did not comply with the rule as they have not provided any factual predicate from which the Court can consider their motion. As a result, this Court should deem their failure to comply with Rule 240 as an abandonment of their motion.

C. Stanley and Reiter's Motion Arguing That the PBA Did Not Raise All Issues Required for Class Certification Is Factually Incorrect.

The PBA filed an extensive memorandum in opposition to Stanley and Reiter's motion for certification. In this memorandum, the PBA addressed all factors required under Rule 23 of the South Carolina Rules of Civil Procedure for class certification. For instance, at page five of this memorandum, the PBA set forth all five requirements for class certification. On page six of this memorandum, the PBA discusses numerosity. On page seven, the PBA discusses commonality. On page 13 of the memorandum, the PBA discusses typicality, and on page 16, the PBA discusses adequacy of representation. On page 18 of the memorandum, the PBA discusses amount in controversy. As a result, all five requirements of Rule 23 of the South Carolina Rules of Civil Procedure were raised to

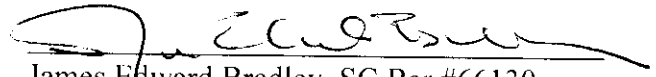
the trial court in writing as indicated by the memorandum submitted by the PBA in opposition to Stanley and Reiter's motion for class certification.

III. CONCLUSION

In general, arguments regarding error preservation and factual preservation from the record are addressed in substantive briefs. One common sense reason for this practice is that until the parties submit substantive briefs, the record has not been presented to the Court upon which the Court could rule one way or the other. In addition, Stanley and Reiter have not provided any facts whatsoever to support the positions in their motion seeking to strike portions of the PBA's brief and designation of matter to be included on appeal. Moreover, Stanley and Reiter have not indicated what particular facts or arguments they believe were not raised to the trial court. The PBA has proposed submitting the transcript of the argument before the trial court, its memorandum submitted to the trial court, and its motion to reconsider. These documents set forth the appropriate and proper factual predicate for the initial briefs submitted by the PBA, and Stanley and Reiter have not indicated in their motion what is lacking support in the record. As a result, the PBA asks that their motion be denied.

Respectfully submitted,

September 6, 2019



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Court of Appeals

Edward W. Miller, Circuit Court Judge

Case No. 2016-CP-10-04062

Donald Stanley and Sean Reiter,
Individually and as Class Representatives, Respondents,

v.

Southern States Police Benevolent Association, Inc., Appellant.

PROOF OF SERVICE

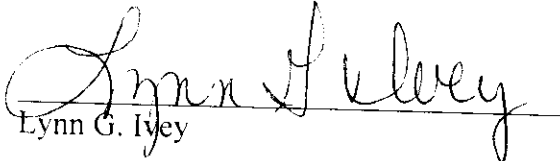
I, Lynn G. Ivey, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the **Appellant's Return to Respondents' Petition to Strike Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal** by depositing copies of same in the United State Mail, postage prepaid, on September 6, 2019, addressed to the attorneys of record as follows:

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Lynn G. Ivey

West Columbia, South Carolina
September 6, 2019

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1916-2019

September 6, 2019

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

Re: Donald Stanley and Sean Reiter, Individually and as Class Representatives
vs. Southern States Police Benevolent Association, Inc.
C/A No. 2016-CP-10-04062
Appellate Case No. 2019-000182

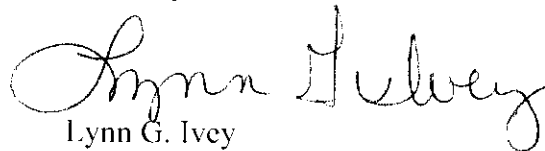
Dear Ms. Kitchings:

Enclosed for filing is the original and eleven copies of **Appellant's Return to Respondents' Petition to Strike Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal**. Please have the extra copies clocked in and returned to us via our courier.

By copy of this letter, I am serving counsel of record with the Appellant's Return to Respondents' Petition to Strike Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal as well.

Thank you for your consideration.

Sincerely,



Lynn G. Ivey
Assistant to James Edward Bradley

Enclosures

- cc: Ronald L. Richter, Jr., Esquire (via first class mail)
- Scott M. Mongillo, Esquire (via first class mail)
- Eric S. Bland, Esquire (via first class mail)
- Andrew J. Savage, III, Esquire (via first class mail)
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