

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM DORCHESTER COUNTY
Deadra L. Jefferson, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

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NOV 26 2019

SC Court of Appeals

Case No.: 2016-CP-18-01706
Appellate Case No.: 2018-002185

Molly M. Morphew, Appellant

v.

Stephen Dudek, Doreen Cross, David Collins,
Allison Williams, First Federal, Michael Scarafile,
Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, and Woody Law Firm, Respondents

RESPONDENTS' SUPPLEMENT TO THEIR MOTION TO DISMISS

Respondents Stephen Dudek, Doreen Cross, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, and Woody Law Firm (herein collectively the "Respondents") respectfully supplement Respondents' Motion to Dismiss this appeal based on Appellant's continued failure to comply with the requirements of the South Carolina Appellate Court Rules, specifically Rule 208 thereof, and Orders of this Court dated October 15, 2019, May 30, 2019, March 22, 2019 (hereinafter, this Motion is referred to as the "Supplemental Motion").

PROCEDURAL HISTORY

On July 1, 2019, Respondents filed a Motion to Dismiss this appeal based on the repeated failures of Appellant to comply with the South Carolina Appellate Court Rules (the “Motion to Dismiss”). Specifically, and as noted therein, despite the clear and well-worn Appellate Court Rules and this Court’s repeated orders on the issue, Appellant failed on multiple occasions to file a compliant initial brief. Also pending at the time of Respondents’ Motion to Dismiss was Appellant’s Second Motion to Exceed Page Limits. Appellant’s Second Motion to Exceed included as an attachment a 229-page Initial Brief (hereinafter, the “Initial Brief”). Addressing these outstanding Motions but only deciding Appellant’s, this Court issued an order on October 15, 2019 stating,

Appellant’s second motion to exceed the page limitations set forth in Rule 208, SCACR is denied. Within thirty days of the date of this order, Appellant shall serve and file an amended initial brief that does not exceed fifty pages. Upon receipt, or the expiration of the thirty days, this court will consider Respondents’ motion to dismiss this appeal.

On or about November 18, 2019, Appellant filed her Initial Brief and Designation of Matter (hereinafter, the “Amended Initial Brief”).

ARGUMENT

Despite this Court’s repeated clear directive to Appellant to follow its Rules, Appellant has failed, again, to comply with the fifty-page limitations imposed by Rule and this Court’s Orders. In her Amended Initial Brief, Appellant repeatedly utilizes similar forms of the following language to incorporate by reference her previous, non-compliant, 229-page Initial Brief; “See Appellant’s 2nd Motion to Exceed Brief Page Limit, section labeled [] ... for laws, case references, additional or detailed argument as each Respondent as adjudicated in the separate Order(s) or conclusions, **and is repeated exactly herein.**” (See, Appellant’s Amended Initial

Brief, pg. 31-32 (emphasis added)(Other instances are found on pages 10, 12, 14, 16, 23, 26, 29, 30, 32, 34, 36, 38, 40, 41, 42, and 43)). All in all, Appellant incorporates 188 pages of her Initial Brief and purports to rely on the law, arguments, and conclusions set forth therein. In essence, rather than obeying this Court's order to **reduce** her Initial Brief from 229 pages to 50 pages, she has **lengthened** her initial brief to 238 pages¹. Despite this Court's explicit rejection of her 229 page Initial Brief, Appellant's Amended Initial Brief would require Respondents to respond to it anyway.

“[A]ppellate briefs may not incorporate other documents by reference.” *Albrechtsen v. Bd. Of Regents*, 309 F.3d 433, 436 (7th Cir. 2002) (citing, *Fleming v. County of Kane, State of Ill.*, 855 F.2d 496, 498 (7th Cir. 1988) (“[P]arties should not adopt briefs previously filed in support of motions at the district court level ... We strongly disapproved of this practice, which, because it resulted in a composite brief in excess of fifty pages, violated [The Federal Rules of Appellate Procedure.]”)); see also, *Desilva v. DiLeonardi*, 181 F.3d 865, 866 (7th Cir. 1999)(“Petitioners direct us to a document filed in the district court but we have not read it because adoption by reference amounts to a self-help increase in the length of the appellate brief.”); *Hiramanek v. Clark*, 2016 U.S. Dist. LEXIS 124303 *3-4 (N.D.Cal. 2016) (finding attempts to incorporate by reference material from other papers violates page limit requirements); *Ploof v. State*, 75 A.3d 811, 823 (Del. 2013)(“[I]ncorporating arguments by reference to an appendix allows parties to ignore clearly established page limitations, leading to unfocused, ineffective arguments.”)). By incorporating by reference nearly two hundred pages of her Amended Initial Brief, Appellant has again failed to comply with the South Carolina Appellate Court Rules and this Court's many orders.

¹ 50 pages of her Initial Brief plus the 188 pages incorporated into the same.

In addition, Appellant's Amended Initial Brief contains nine pages presenting sections captioned Issues on Appeal, Facts and Procedural History, and the Standard of Review which are not included in her fifty pages. These substantive pages are enumerated by Roman numerals and precede the fifty pages of her Amended Initial Brief enumerated by Arabic numerals. "[P]arties should not try to circumvent the fifty-page limit by using Roman numerals for such sections of the brief as questions presented, or statement of the case. The rules limit to 50 the number of pages allowed ... which means *total* pages after the table of contents, not just pages with Arabic numerals." *Fleming v. County of Kane*, 855 F.2d 496, 498 (7th Cir. 1988)(emphasis in original). In fact, in addition to the 188 pages adopted above, Appellant incorporates by reference into these Roman enumerated pages five additional pages of her Initial Brief "For detailed Facts and Procedural History." (See, Appellant's Initial Brief, pg. xii). This additional attempt to circumvent the rules of this Court supports Respondents' Motion to Dismiss.

As stated in Respondents' Motion to Dismiss, South Carolina Appellate Court Rule 260 states, "[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260, SCACR. In addition, South Carolina Appellate Court Rule 208 states, "Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court **shall** sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260." Rule 208, SCACR (emphasis added). Rule 208 also imposes the fifty page limitation on initial briefs Appellant seeks to avoid. Rule 208(b)(5), SCACR.

Respondents respectfully request that this Court dismiss Appellant's appeal for all the reasons stated in their original Motion to Dismiss and for those reasons stated herein. Appellant

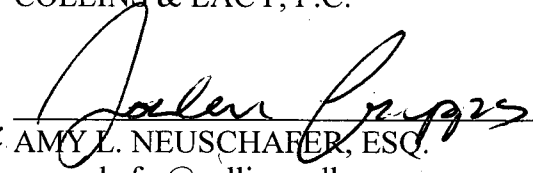
has repeatedly failed to comply with the time and page limitations imposed by the South Carolina Appellate Court Rules and this Court's orders as detailed above. Appellant's most recent end run around the Rules and this Court's directives is further evidence of the same.

CONCLUSION

For all of these reasons and those stated in its original Motion to Dismiss, the Respondents respectfully request that the Court dismiss this appeal.

[Signatures to Follow]

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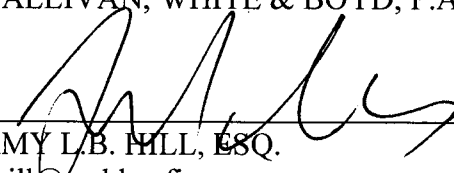
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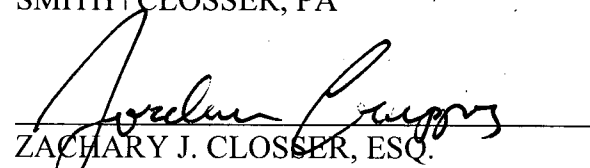
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November 26, 2019

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Charleston, South Carolina
November 26, 2019

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
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PROOF OF SERVICE

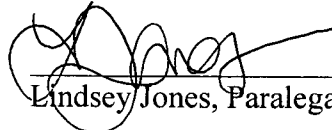
I certify that on November 26, 2019, I served copies of Respondents' Supplement to their Motion to Dismiss by United States mail, postage prepaid, addressed to:

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Lindsey Jones, Paralegal

November 26, 2019

VIA HAND DELIVERY

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

Re: *Molly Morpew v. Stephen Dudek, et al.*
Appellate Case No.: 2018-002185

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and two (2) copies of Respondents' Supplement to their Motion to Dismiss in the above matter.

Please file the original and return a clocked copy to our courier.

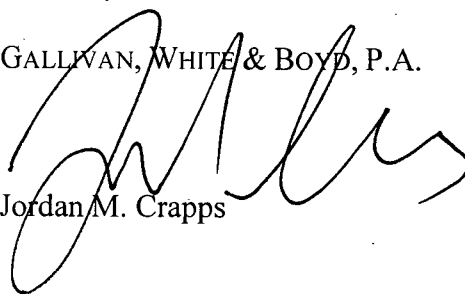
By copy of this letter and attached Proof of Service, we are hereby serving all counsel of record with a copy of same.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jordan M. Crapps



JMC/ljj
Enclosures

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SC Court of Appeals

cc: Molly M. Morpew, *Pro Se* Appellant (via U.S. mail)
Steven L. Smith, Esquire (via U.S. mail)
Amy L. Neuschafer, Esquire (via U.S. mail)
David Collins, Esquire (via U.S. mail)