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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-1583  
Appellate Case No. 2019-000873

**RECEIVED**  
DEC 04 2019  
SC Court of Appeals

M.B. Hutson, Appellant,

v.

A. Paul Weissenstein, Respondent.

**MOTION TO DISMISS APPEAL**

Respondent A. Paul Weissenstein, by and through the undersigned counsel, hereby moves to dismiss the above-captioned appeal for Appellant Hutson’s failure to comply with the South Carolina Appellate Court Rules. This motion is brought pursuant to Rule 260, SCACR on the following grounds: (1) Appellant failed to order the transcript from the December 10, 2018 hearing before the Circuit Court on Respondent’s motion for summary judgment that is the subject of this appeal; (2) Appellant failed to comply with Rule 208(b)(1)(B) which requires a “Statement of Issues on Appeal” in Appellant’s Initial Brief; and (3) due to Appellant’s failure to comply with Appellate Rule 208(b)(1)(B), Appellant has waived review of any issues contained in the Circuit Court’s order granting

Respondent's motion for summary judgment and the order denying Appellant's purported motion to alter or amend.

## ARGUMENT

### **A. Appellant failed to comply with Appellate Rules 207 and 208**

Rule 260, SCACR provides that “[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 . . . .” Hutson has failed to comply with the requirements of the South Carolina Appellate Court Rules in at least two instances.

First, Rule 207, SCACR provides that “where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters-in-equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.”

Here, the hearing on Respondent's motion for summary judgment that is the subject of this appeal was held on December 10, 2018. Appellant did not provide proof that he requested or ordered the transcript of the December 10, 2018 hearing, and there is no evidence that Appellant made arrangements to order this transcript. As Appellant failed to order the transcript of the December 10, 2018 hearing within ten (10) days of the date of service of his notice of appeal, Appellant has failed to comply with the requirements of Rule 207 and the appeal should be dismissed.

Furthermore, Rule 208(b)(1)(B) requires that Appellant's Initial Brief contain a "statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."

Here, Appellant's Initial Brief does not include a Statement of Issues on Appeal. Therefore, Appellant has also failed to comply with Rule 208, SCACR and the appeal should be dismissed Pursuant to Rule 260, SCACR.

**B. Appellant failed to include a Statement of Issues on Appeal in his Initial Brief, and thus, has waived appellate review of the Circuit Court's orders.**

An issue is not preserved for appeal if appellant's brief does not conform to the requirements of SCACR Rule 208(b)(1)(B). *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (citing Rule 208(b)(1)(B), SCACR)("no point will be considered which is not set forth in the statement of issues on appeal.")

Here, Appellant's Initial Brief fails to include any statement of issues on appeal. Accordingly, Appellant has waived consideration of all points or issues contained in the Circuit Court's order granting summary judgment to Respondent and the order denying Appellant's purported motion to alter or amend.

**Conclusion**

For the reasons stated herein, Respondent respectfully request that this appeal be dismissed.

December 2, 2019

Respectfully submitted,



Steven R. Kropki (S.C. Bar # 101441)

David W. Overstreet (S.C. Bar# 16965)

Ryan M. Gunther (S.C. Bar# 104141)

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Attorneys for Respondent Paul A.

Weissenstein

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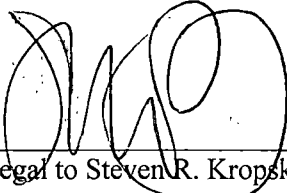
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**PROOF OF SERVICE**

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I certify that I have served Respondent's Motion to Dismiss Appeal on all parties to this appeal by depositing a copy in the United States Mail, postage prepaid, on December 2, 2019, addressed to *pro se* Appellant as follows:

M.B. Hutson, PRO SE  
Post Office Box 2755  
Orangeburg, South Carolina 29116-2755  
(803) 308-2714

  
\_\_\_\_\_  
Paralegal to Steven R. Kropski



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December 2, 2019

VIA U.S. MAIL

Jenny Abbott Kitchings, Clerk  
V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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Re: M.B. Hutson, Appellant v. A. Paul Weissenstein, Respondent  
Appellate Case No.: 2019-000873  
EO File No.: 120-0452

Dear Ms. Kitchings and Ms. Allen:

Enclosed please find one (1) original and six (6) copies of *Respondent A. Paul Weissenstein's Motion to Dismiss* along with a \$50 motion fee check and one (1) original and one (1) copy of *Respondent A. Paul Weissenstein's Initial Brief and Designation of Matter*. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



STEVEN R. KROPSKI

SRK/shb  
Enclosures

cc: M.B. Hutson (via U.S. Mail; PO Box 2755, Orangeburg, SC 29116)

