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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1105628

Ex Parte: Christine Bradley, Surviving Spouse,Appellant.

In re: Albert Bradley, Employee,

v.

Southern Industrial Constructors, Inc., Employer,
and Zurich American Insurance Company
c/o Zurich North America, Carrier, Respondents.

**MOTION TO STRIKE AND/OR CLARIFY APPELLANT'S
AMENDED DESIGNATION OF MATTER
AND/OR TO DISMISS APPEAL**

Pursuant to Rules 209, 210, 240 and 260, SCACR, Respondents Southern Industrial Constructors, Inc. and Zurich American Insurance Company c/o Zurich North America move this Court to strike and/or order Appellant to clarify certain portions of her Amended Designation of Matter to be Included in the Record on Appeal ("Amended Designation"), served February 17, 2020. As was the case with her prior Designation, served November 5, 2019, Appellant again has failed to clearly identify the specific materials she intends to designate and, in addition, her Amended Designation appears to include irrelevant materials and/or materials that were not presented to the Commission. Moreover, Claimant's Amended Designation fails to comply with this Court's February 7, 2020 Order. As a result, Respondents move in the alternative to dismiss the pending appeal for failure to comply with this Court's Rules and Order.

As Respondents have noted previously, according to the South Carolina Appellate Court Rules, the designation of matter “shall set forth *with specificity* those parts of the transcript, pleadings, orders, exhibits, or other materials which [a party] proposes to include in the record on appeal.” Rule 209(a), SCACR (emphasis added). In addition, Rule 209(b) provides that “[t]he Designation must *clearly* identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party *shall not* include any matter in his Designation *which is not relevant* to the appeal.” Rule 209(b), SCACR (emphasis added). Rule 210(c), SCACR, in turn, provides that “[t]he Record shall not ... include matter which was not presented to the lower court or tribunal.”

On February 7, 2020, this Court ordered Appellant to serve and file an amended Designation instructing that “[a]ll documents listed in Appellant’s amended designation of matter shall be identified by date, title, or otherwise.” Appellant’s Amended Designation does not comply with this Court’s Order but, instead, includes such vague designations as Designation No. 9, “Pay stubs from Southern Industrial Instructors [sic], Columbia, SC and Lee County, Bishopville, SC,” and Designation No. 12, “Pictures.” In addition, other designations, such as Designation Nos. 1, 2, 4, 5, and 6 simply designate “all records,” bills, or transcripts of all proceedings during a nearly six-year time period, from May 16, 2011 through either February 5, 2017 or, in the case of Designation No. 1,

through “present.” In addition, to the extent these vaguely identified materials are not relevant to the appeal, they may not be included in the Record on Appeal.¹

While Designation Nos. 7 and 8 are somewhat more limited in time (one extending from October 1, 2015 through February 5, 2017, and the second from March 17, 2016 through February 5, 2017), they still designate all “records and files” from two guardians over a span of time and are not limited to specifically identified documents or even in any way to the deceased, Albert Bradley. To the extent those records and files were submitted to the South Carolina Workers’ Compensation Commission in the matter below and are relevant to the appeal, they may be included in a Record on Appeal; however, to the extent any of those documents were not submitted to the Commission and/or are not relevant to the appeal of the Commission Decision awarding funeral and remaining compensation benefits to Appellant, they may not. In any event, those documents must be specifically identified as well.

Appellant’s Amended Designation purports to designate witnesses to appear before this Court. *See* Designation Nos. 10 and 11. There is no procedure for compelling witnesses to appear and testify before this Court, which serves in an appellate capacity only. In fact, this Court’s review is limited to the record below and must “not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR. As a result, Designation Nos. 10 and 11 should be stricken in their entirety.

¹ The July 28, 2018 Decision and Order of the Commission awarded the unpaid balance of compensation and benefits, as well as funeral expenses, to be paid to Appellant as Decedent Albert Bradley’s surviving spouse. (*See* Decision and Order of the Commission, attached to Appellant’s August 20 2018 Notice of Appeal). It is unclear how many of the items listed on the Amended Designation are relevant to any issue that legitimately can be raised in this appeal. Respondents have not contested they owe the amounts awarded by the Commission to Appellant and remain ready and willing to comply with the Commission Decision.

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.” Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). Where a party refuses to comply with this Court’s Appellate Court Rules and, moreover, fails to comply with an Order of this Court, the appeal can and should be dismissed. *See, e.g.,* Diamond v. Powell, 271 S.C. 183, 184, 246 S.E.2d 233, 234 (1978) (dismissing appeal due to appellant’s failure to comply with appellate court rules). This appeal initially was filed on August 20, 2018. Eighteen months later, initial briefing still has not been completed primarily due to Appellant’s repeated failure to comply with this Court’s Appellate Court Rules and, now, its February 7, 2020 Order. Patently, a *pro se* litigant “who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6 n.5, 9 (2003); Goodson v. American Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1998) (*pro se* litigants held to the same standard as attorneys). As a result of Appellant’s repeated failure to comply with this Court’s Rules and Orders, Respondents request this Court to dismiss Appellant’s appeal pursuant to Rule 260, SCACR.

CONCLUSION


For the reasons stated herein, Respondents move this Court to strike any material from Appellant’s Amended Designation that was not presented to the Commission, including but not limited to Designation Nos. 10 and 11 in their entirety, and to order Appellant to clarify her Amended Designation regarding items that are insufficiently

identified therein. In the alternative, Respondents move this Court to dismiss Appellant's appeal for failure to comply with this Court's Rules and its February 7, 2020 Order.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

February 21, 2020

A handwritten signature in black ink, appearing to read 'H. Hiser', is written over a horizontal line.

Helen F. Hiser, S.C. Bar No.: 76124
P.O. Box 650007
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(843) 576-2900

*Attorneys for Respondents Southern Industrial
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Carrier*

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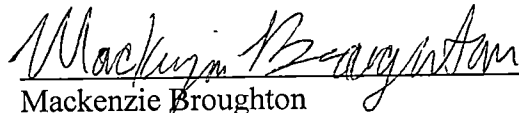
Southern Industrial Constructors, Inc., Employer,
and Zurich American Insurance Company

c/o Zurich North America, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 21st day of February 2020, I served the Respondents' **Motion to Strike and/or Clarify Appellant's Amended Designation of Matter and/or to Dismiss Appeal** on Christine Bradley by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Christine Bradley
475 Lower Lee School Rd.
Mayesville, South Carolina 29104



Mackenzie Broughton
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
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*Attorneys for Respondents Southern
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Zurich American Insurance Company c/o
Zurich North America, Carrier*



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
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February 21, 2020

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Albert Bradley v. Southern Industrial Constructors and Zurich American
Insurance Company c/o Zurich North America
Date of Accident: May 16, 2011
WCC File No.: 1105628
Our File No.: 20216.11055
Claim No.: 2800074691
Appeal No.: 2018-001535

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Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike and/or Amend Appellant's Amended Designation of Matter and/or to Dismiss Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the enclosed self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$50 for filing the motion.

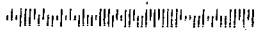
If you have any questions, please do not hesitate to contact me.

Yours truly,

Helen F. Hiser

Attachments

cc: Christine Bradley, *Pro Se*



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