

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller, Judge of Circuit Court

Civil Action No. 2019-CP-23-01501
Appellate Case No. 2020-000506

RECEIVED
May 21 2020
SC Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents,

MOTION TO EXCLUDE CONTENT FROM THE RECORD ON APPEAL

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Appellant (*Pro Se*)

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Attorneys for Respondents
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Respondents' "Designation of Matter" desires to include an Exhibit in the "Record On Appeal" (ROA) which was "... not presented to the lower court ..." in violation of Rule 210(c), SCACR (excerpted to relevant part):

RULE 210 RECORD ON APPEAL

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. ...".

The Supreme Court of South Carolina attested in 1997 and 1998:

It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997); as *Wilder Corp. v. Wilke*, 330 S.C. 71 (1998), 497 S.E.2d 731

Rule 210(c) is confirmed by other cases:

... appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9 (2004), 602 S.E.2d 772

Thus, under the standard appellate court rules, it would be improper for this Court to consider whether section 20-7-1572(2) may be employed to terminate Mother's parental rights. See Rule 210(c), SCACR ("The Record [on Appeal] shall not . . . include matter which was not presented to the lower court or tribunal."). *Aunt and Uncle v. Mother and Father*, No. 2008-UP-210 (S.C. App. 3/31/2008) (S.C. App. 2008)

Consequently, Appellant respectfully requests a stay of deadline date for filing the ROA, pending disposition of this "Motion to Exclude". Appellant contends that Respondents, contrary to claim in their proposed "Designation of Matter" certifying: "... that this designation contains no matter which is irrelevant to this appeal.", designated substantial matter which is irrelevant to Appellant's "Appeal

of Summary Judgment”. Appellant accedes, however, that matter found in the “Public Index” would arguably not be subject to exclusion, regardless of its irrelevancy relative to Summary Judgment.

On page 10 of “Brief of Respondents” is seen:

Here, the Appellant made no such motion and/or objection to the proposed Order to the Court. The lower court gave the Appellant an opportunity to do so, and Appellant declined. (See email as Exhibit).

which cites: “... Exhibit)” to be included in the ROA. This Exhibit (excerpted as Figure 1) must be excluded, since it was never before the Court, nor is it found in the “Public Index”. This desired Exhibit can not be brought as new evidence on Appeal.

Inspection of this Exhibit shows it was sent to an administrative aid, the Law Clerk (Grace Barringer) for Judge Edward Miller, but it was not sent to the Judge, nor to the Court. Thus, it was not presented to the lower court, and cannot be considered as part of the “Designation of Matter” for inclusion in the ROA.

Appellant prays for an Order **GRANTING** this Motion to preclude abuse of Rule 210(c), SCACR, and also prays for specification of a new deadline date for filing of a ROA, after disposition of this Motion.

Dated this 20th day of May, 2020.



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FIGURE 1 (as excerpted to relevant part)

[Respondents' "Designation of Matter" :

3. Email correspondence between Raymond Wedlake and Court dated March 11, 2020"]

From: "Ray Wedlake" <wedlakera@mail.com>
To: emillerlc@sccourts.org
Cc: mmurphy@clarksonwalsh.com, larmstrong@clarksonwalsh.com
Subject: RE: Proposed Order for 2019-CP-23-01501 - Summary Judgment
Date: Wed, 11 Mar 2020 21:59:34

Dear Ms. Barringer:

----- Original Message -----

Sent: Wednesday, March 11, 2020 at 9:49 AM
From: "Miller, Edward W. Law Clerk (Grace Barringer)" <emillerlc@sccourts.org>
To: "wedlakera@mail.com" <wedlakera@mail.com>
Cc: ...
Subject: 2019-CP-23-01501; Wedlake v. Bashor

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CERTIFICATE OF SERVICE

It is hereby certified that copies of **“Motion to Exclude Content from the Record on Appeal”** an was served upon the following:

James P. Walsh (SC Bar #15180)
Michael J. Murphy (SC Bar #103084)
Clarkson, Walsh & Coulter, P.A.
PO Box 6728
Greenville, South Carolina 29606
Attorneys for Respondents

via US Priority Mail, Tracking Number: 9505 5103 7347 0142 1470 39

on May 21 2020.

Raymond A. Wedlake

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