

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Sep 23 2020

SC Court of Appeals

The Honorable James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial CorporationRespondent,

v.

Roby A. Adams.....Appellant.

**RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S MOTION FOR
PERMISSION NOT TO ORDER TRANSCRIPT**

Robert H. Jordan (SC Bar No. 13612)
Robert C. Osborne III (SC Bar No. 101827)
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Telephone: 843.727.2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com

*Counsel for Respondent
1st Franklin Financial Corporation*

INTRODUCTION

Respondent 1st Franklin Financial Corporation (“1st Franklin”) hereby files this Return in Opposition to Appellant’s Motion for Permission Not to Order Transcript. For the reasons, set forth below and in 1st Franklin’s Motion to Dismiss Appeal,¹ Appellant Roby A. Adam’s (“Appellant”) motion should be denied, and this appeal should be dismissed if Appellant fails to order the transcript of the hearing on 1st Franklin’s motion for partial summary judgment in accordance with Rule 207(a), SCACR.

LEGAL STANDARD

“[T]he appellant has the burden of providing an adequate record on appeal.” *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 214, 723 S.E.2d 597, 608 (Ct. App. 2012). Pursuant to Rule 210(c), SCACR, “[t]he Record on Appeal shall include all matter designated to be included by *any party*.” (emphasis added). Rule 207(a), SCACR provides that “[u]nless the parties otherwise agree in writing, appellant *must* order a transcript of the entire proceedings below.” *See* Rule 207(a), SCACR (emphasis added). In appeals from the Master-In-Equity, “the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.” *Id.* “In the event the court reporter is not an employee of the Judicial Department, the fees to be charged shall be that agreed upon by the court reporter and the parties.” Rule 607(h)(2), SCACR.

ARGUMENT

South Carolina’s Appellate Court Rules are clear that a party may, in good faith, designate any matter from the underlying proceedings to be included in the Record on Appeal. *See* Rule 210(c), SCACR. Appellant argues that “[i]f Appellant does not believe that the transcript from the lower court is necessary for him to meet his burden on appeal, then he should be given

¹ 1st Franklin filed its Motion to Dismiss Appeal on September 11, 2020, arguing, among other things, that Appellant’s attempt to proceed without order the transcript from the hearing on 1st Franklin’s motion for partial summary judgment warranted dismissal of the appeal.

discretion not to have to order that transcript.” (Appellant’s Motion for Permission Not to Order Transcript at *3 -4). Appellant’s position is in direct conflict with the rules governing appeals. Pursuant to Rule 210(c), SCACR, “[t]he Record on Appeal shall include all matter designated to be included by *any party*.” (emphasis added). Rule 207(a), SCACR provides that “[u]nless the parties otherwise agree in writing, appellant *must* order a transcript of the entire proceedings below.” *See* Rule 207(a), SCACR (emphasis added). Appellant cannot unilaterally decide that the transcript is not relevant to this appeal.

1st Franklin has already set forth its arguments as to why the transcript from the hearing on 1st Franklin’s Motion for Partial Summary Judgment is necessary for a complete Record on Appeal in its Motion to Dismiss Appeal. 1st Franklin incorporates those arguments as if set forth herein. In summary, the transcript is necessary to establish what arguments were raised and ruled upon before the Master-in-Equity. Additionally, Appellant argues that he was denied the opportunity to raise certain arguments at the hearing. 1st Franklin refutes this claim. The transcript from the hearing will demonstrate that Appellant had a full and fair opportunity to present his argument to the lower court. Without the transcript, this Court will have no basis to determine whether evaluate this contention of error.

Because Appellant also argues that the Master-in-Equity erred in changing his ruling following the hearing on 1st Franklin’s motion for partial summary judgment, the parties’ arguments in support of the rulings Appellant seeks to appeal are certainly relevant. The Court’s oral ruling at the hearing is also relevant. 1st Franklin cannot be precluded from citing to relevant portions of the transcript because Appellant has unilaterally decided that the transcript is irrelevant. 1st Franklin reasonably believes the transcript is relevant and necessary for the Record on Appeal. Nothing more is required under this Court’s rules.

Appellant’s argument that Rule 208(a)(1), SCACR demonstrates that the Appellant may dictate when a transcript is necessary for the Record on Appeal is without merit. Rule 208(a)(1), SCACR states “[w]ithin thirty (30) days after receiving the transcript *or, if no transcript is ordered,* within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal...” Appellant argues the language “or, if no transcript is ordered” demonstrates that he need not order the transcript. 1st Franklin does not dispute that there may be cases where there is no underlying transcript or where the parties agree that the issues no appeal do not require a transcript to be included in the Record on Appeal. This is not one of those situations. Rule 208(a)(1), SCACR cannot be construed as allowing the Appellant to dictate whether the transcript is relevant and should be included in the Record on Appeal.

CONCLUSION

For these reasons and those set forth in 1st Franklin’s Motion to Dismiss Appeal, 1st Franklin request that Appellant’s Motion for Permission Not to Order Transcript be denied, and that the appeal be dismissed for Appellant’s failure to order the transcript.

Respectfully Submitted,

s/ Robert C. Osborne III
Robert H. Jordan, Esq. (SC Bar #13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar #101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, South Carolina 29401
Phone: 843-727-2650
Fax: 843-727-2680

Attorneys for 1st Franklin Financial Corporation

September 23, 2020
Charleston, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that on September 23, 2020, s/he has caused a copy of **Respondent’s Return in Opposition to Appellant’s Motion for Permission Not to Order Transcript** to be served upon all parties of record via e-mail addressed as follows:

John R. Cantrell, Jr., Esq.
CANTRELL LEGAL, PC
Post Office Box 1276
Goose Creek, SC 29445
lawyer@comcast.net

s/ Robert C. Osborne III
Robert C. Osborne III, Esq.
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401



Robert C. Osborne III
Associate
Telephone: 843.727.2662
Direct Fax: 843.727.2680
robertosborne@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, D.C.

September 23, 2020

Via Email Only
ctappfilings@sccourts.org

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

RECEIVED
Sep 23 2020
SC Court of Appeals

Re: **1st Franklin Financial Corporation v. Roby A. Adams**
Appellate Case No. 2020-001127

Dear Ms. Kitchings:

Attached for filing via email only please find an original *Respondent's Return in Opposition to Appellant's Motion for Permission Not to Order Transcript* and *Proof of Service* in this matter.

Thank you, and with kind regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robt C. Osborne III'.

Robert C. Osborne III

RCO:ksn
Attachments

cc (via email, w/ att.): John R. Cantrell, Jr.

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