

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

REPLY TO RETURN TO MOTION FOR PERMISSION NOT TO ORDER TRANSCRIPT

John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

RECEIVED
Sep 23 2020
SC Court of Appeals

On September 14, 2020, Appellant filed his Motion for Permission Not to Order Transcript (“Motion For Permission”). On September 23, 2020, Respondent filed its Return in Opposition (“Return”) to that Motion For Permission. Appellant now files this Reply to Respondent's Return.

In its Legal Standard paragraph on page 2 of its Return, Respondent states that Rule 210(c), SCACR requires that the Record on Appeal include all matter designated to be included by any party. However, this overlooks the fact that Rule 210(c) states that it is subject to Rule 209, SCACR, which states in subsection (b) that only relevant matter shall be included in the Record on Appeal. See Appellant's Motion For Permission, which is incorporated herein by reference, as to why Appellant believes that the transcript of the summary judgment hearing is not relevant to this appeal. Also see Appellant's Motion For Permission in regards to Respondent's argument that Rule 207(a), SCACR requires Appellant to order the full transcript of the hearing below.

In the Argument section of Respondent's Return, Respondent claims that Appellant is “unilaterally” choosing not to order a transcript of the summary judgment hearing, but this shows a lack of understanding of the meaning of the word “permission” in the title of Appellant's Motion to which Respondent is responding. Respondent makes similar arguments in its Motion to Dismiss the appeal, which are likewise without merit. If instead Respondent is suggesting that this court is without authority to determine whether or not the transcript is relevant to the pending appeal, then that argument is also without merit. Respondent appears to believe that its mere

insistence that certain matter be included in the Record on Appeal is sufficient to require the court and the parties to do so, but Appellant respectfully disagrees with this proposition.

If the transcript is not relevant to the pending appeal, then Rule 209(b) does not require the court to include it in the Record on Appeal. Respondent claims that it is relevant since otherwise we will not know what arguments were made in the lower court. Although those arguments might ordinarily be relevant in a typical appeal, Appellant believes that they are not relevant to this appeal, since it is undisputed that the trial court judge orally ruled in favor of Appellant at that hearing on his counterclaims. It was not until after the hearing (see Exhibit B to Motion For Permission) that the judge changed his mind and ruled against Appellant based on his newly announced conclusion of law that a pleading is a privileged document that cannot give rise to a cause of action for false representation. The arguments that were made that led to the court's oral ruling in favor of Appellant are not relevant, both because Appellant is not appealing that oral ruling and because he could not appeal it, since contrary to Respondent's legal assertion in its Return (p. 3, second full paragraph) that the oral ruling is relevant, circuit judges in South Carolina are only bound by written orders after those orders have been filed with the court and entered on the record, and judges are free to change their mind since those oral rulings do not bind them. *Corbin v. Kohler Co.*, 351 S.C. 613, 620-21, 571 S.E.2d 92 (Ct. App. 2002). It is also not relevant at this point what additional arguments Appellant wanted to make at the summary judgment hearing but did not need to do so due to the court's oral ruling in favor of his counterclaims. If this court rules in favor of Appellant in this appeal, then Appellant will have an opportunity to make those arguments at the trial of this case. If this court rules against Appellant

in this appeal, then the lower court has already ruled against Appellant's Rule 59(e) Motion asking for permission to make those arguments, so either way they are not relevant to this appeal.

It seems odd to Appellant that Respondent seems to know what arguments Appellant intends to make during this appeal, since Appellant hasn't yet even filed his initial brief, so it seems to Appellant that Respondent's comments on the issues that will be raised by Appellant during this appeal are mere speculation.

WHEREFORE, Appellant respectfully requests that the court take the following actions:

- A. Order that it is not necessary for Appellant to order the transcript of the summary judgment hearing in the court below,
- B. Find that the transcript of the summary judgment hearing is not a necessary part of the record on appeal,
- C. Grant Appellant at least 30 days from notice of entry of any order as a result of this Motion to file Appellant's initial brief, and
- D. For such other relief as may seem appropriate to the court.

Dated this September 23, 2020

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant

RECEIVED

Sep 23 2020

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of the above Reply to Return to Motion For Permission Not to Order Transcript on all parties of record by emailing it today to Respondent's attorneys of record Robert C. Osborne III at his email address of robertosborne@parkerpoe.com and Robert H. Jordan at his email address of robertjordan@parkerpoe.com.

Dated this September 23, 2020

/s/ John R. Cantrell, Jr.
John R. Cantrell, Jr., SC Bar # 10309
Cantrell Legal, PC
Post Office Box 1276
Goose Creek, SC 29445-1276
(843) 797-2454
lawyer@comcast.net
Attorney for Appellant