

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Oct 01 2020

APPEAL FROM CHARLESTON COUNTY

SC Court of Appeals

Roger M. Young and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001878

Alan NixAppellant,

v.

Churchill Park Homeowners Association, Inc. Churchill Park at Parkwest, Inc. Churchill Park,
Catherine Brown and David Brown Respondents.

**RESPONDENTS CHURCHILL PARK IMPROPERLY NAMED AS CHURCHILL
PARK HOMEOWNERS ASSOCIATION, INC. AND IMPROPERLY NAMED AS
CHURCHILL PARK AT PARKWEST, INC., DAVID BROWN, AND CATHERINE
BROWN'S JOINT MOTION TO DISMISS APPEAL FOR APPELLANT ALAN NIX'S
FAILURE TO COMPLY WITH RULE 208, SCACR**

Respondents Churchill Park improperly named as Churchill Park Homeowners Association, Inc. and improperly named as Churchill Park at Parkwest, Inc., David Brown, and Catherine Brown, pursuant to Rule 208(b) SCACR, respectfully submit this Joint Motion to Dismiss and move this Court for an order dismissing the appeal filed by Appellant for failure to comply with the Rules of this Court. In support of this Motion, Respondents state that Appellant Alan Nix has not complied with Rule 208, SCACR, to pursue an appeal. These Respondents also request the Court grant a stay of Respondents' deadline to file their Initial Briefs and

Designations of Matter until the Court has ruled on this Motion. Further, these Respondents state the following:

The South Carolina Appellate Court Rules lay out the instructions for what may be appealed, who may appeal, and what to include in an Initial Brief, among many other rules. SCACR 201, 208(b)(1)(A)-(F). Rule 201, SCACR, determines what is subject to appeal and who may appeal. SCACR 201(a)-(b). An appeal may be taken from a final judgment, appealable order, or decision. *Id.* at (a). Further, pursuant to SCACR 201(b), the party who may appeal is one who is aggrieved by the order, judgment, sentence, or decision. *Id.* Specifically under SCACR 208(b), in an appellant's Initial Brief, a Table of Contents and Cases; Statement of Issues on Appeal; Statement of the Case; Standard of Review; Argument; and Conclusion **shall** be included in the brief. *Id.*

Within the Statement of Issues on Appeal, "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". *Id.* at (b)(1)(B). The Statement of the Case "shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal". *Id.* at (b)(1)(C). Further, "if all the issues are governed by the same standard of appellate review, the Brief **shall** contain a section with the heading 'Standard of Review,' which **shall** concisely set forth the applicable standard of review with citations to relevant case law establishing the standard. If the same standard of review is not applicable to all of the issues, a separate section with a heading of 'Standard of Review' **shall** be included at the start of the argument on each issue with citations to relevant case law establishing this standard of review". *Id.* at (b)(1)(D)(emphasis added). In addition, "the brief **shall** be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed **shall** be set

forth in distinctive type, followed by discussion and citations of authority”. Id. at (b)(1)(E)(emphasis added).

ARGUMENT

Rule 208, SCACR, clearly states what is required by an appellant, either through counsel or self representation, in appealing an issue to this Court. Appellant did not comply with those requirements in filing his Initial Brief. First, in reviewing Appellant’s “Questions Presented” many of Appellant’s proposed questions are broad, generalized questions which are not appropriate, irrelevant, and should be disregarded by this Court. See Rule 208(b)(1)(B), SCACR; Brief of Petitioner, 5. Specifically Appellant’s Question Presented No. III, “what is the definition of/tangible attributes of a ‘reasonable attorney’ licensed to practice law in South Carolina?” is overly broad and generalized to include all attorneys in this state, but does not relate to the subject case or issues in it. Id. Questions Presented No. IV, “is Judge Murphy fit to be a judge in South Carolina?” and No. V., “is Judge Roger Young fit to be a judge in South Carolina?” are entirely broad and generalized to both Judge Murphy and Judge Young’s capacity to work in the judiciary system and do not relate to the underlying facts of Appellant’s case. Id.

These generic questions continue on through Appellant’s Questions Presented: Question Presented No. IX, “is it proper for the Clerk of Court to schedule motions on the Court Docket and provide at least ten days notice to the parties involved in the case via the communication methods required by the S.C. Rules of Civil Procedure?”, refers to an overly broad procedural question, without reference to any specific South Carolina Rule of Civil Procedure. Id. Appellant’s Question Presented No. X asks: “can a judge and their staff claim judicial privilege for actions taken in bad faith and before any judicial acts are taken properly”, and is similarly

broad, generalized, and without reference. Question Presented No. XI asks “should a judge rely on appearances when making decisions of fact when the ability to actually inquire of the parties is readily available to establish the facts with certainty?”, which is grossly generalized and broad in regards to any decision of any judge. Id. These broad, generalized, hypothetical questions continue for the duration of Appellant’s Questions Presented. Not a single question in Appellant’s list is directed specifically at the lower court’s final ruling or judgment.

In addition, there is nothing about Appellant’s Statement of the Case that is concise, as is required by Rule 208(b)(1)(C), SCACR. See Brief 7-11. He includes numerous references to pleadings and correspondence which were not included in his Designation and as such, are not appropriate for the Court’s consideration. For example, Appellant writes “On November 13, 2018, Caroline Leonard of the Charlesotn (sic) County Clerk of Court’s Office sent an email stating that she had just spoke with Judge Young about the motion filed...” See Brief, 9. Further, Appellant takes broad leeway in straying from the procedural history and any potential issues of law for this Court’s consideration and instead, takes another opportunity, as is evidenced in the pleadings he did include in his Designation as well as the transcripts Appellant included, to slander the South Carolina court system, attorneys, judges, and judicial staff through his writing.

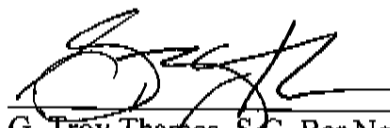
Most importantly, there is no Standard of Review whatsoever in Appellant’s Initial Brief. South Carolina case law is clear that relevant statutes, cases, or other authority for any rules Appellant deems appropriate and/or applicable must be included in his Initial Brief, otherwise he has abandoned the issues. See First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994); see also State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554 (Ct. App. 2011) (an issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority). Since Appellant has not included any Standard of Review, statutes,

case law, or other relevant authority to support any allegations in his Initial Brief, all possible issues have been abandoned by Appellant. There is nothing for this Court to consider upon appeal.

There is no distinction between a self-represented party and a party who retains counsel within the South Carolina court system. A *pro se* individual is held to the same standards and same rules in pursuing legal action, therefore this Appellant is held to the same rules regarding appeal as counsel for all Respondents. His disregard for the court's rules should not be entertained. He did not comply with the requirements to submit an Initial Brief. He did not present narrowed, specific questions for this Court's consideration. He did not provide a concise history of the case in his Statement of the Case and most importantly, he did not present a Standard of Review for any question and/or alleged issue for the Court's consideration of his appeal. Therefore, Appellant's Initial Brief must not be entertained by this Court.

For these reasons, Respondents respectfully request that these Respondents be granted a stay to file their Initial Briefs and Designations of Matter until this Court has ruled upon this Motion. Additionally, these Respondents respectfully request that Appellant's appeal be dismissed with prejudice and for such other and further relief as the court deems just and appropriate.

WILLSON JONES CARTER & BAXLEY, P.A.

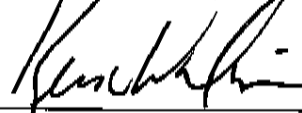


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[SIGNATURE CONTINUES ON SUBSEQUENT PAGE]

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NAMED AS CHURCHILL PARK
HOMEOWNERS ASSOCIATION, INC. AND
IMPROPERLY NAMED AS CHURCHILL
PARK AT PARKWEST, INC.**

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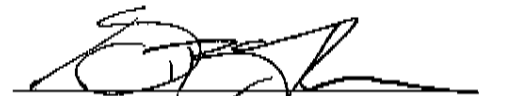
v.

Churchill Park Homeowners Association, Inc. Churchill Park at Parkwest, Inc. Churchill Park,
Catherine Brown and David Brown Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of ***Respondents Churchill Park improperly named as Churchill Park Homeowners Association, Inc. and improperly named as Churchill Park at Parkwest, Inc., David Brown, and Catherine Brown's Motion to Dismiss Appeal for Appellant Alan Nix's Failure to Comply with Rule 208, SCACR*** has been served upon the following counsel of record by mailing a copy of the same by United States Mail, addressed as shown below this 1 day of October, 2020.

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October 1, 2020

VIA US MAIL & FACSIMILE (803) 734-1839

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals


Re: Alan Nix vs. Churchill Park et al.
Appellate Case No.: 2019-001878
WJC&B File No.: 0375.00218

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents Churchill Park improperly named as Churchill Park Homeowners Association, Inc. and improperly named as Churchill Park at Parkwest, Inc., and David Brown, and Catherine Brown's Joint Motion to Dismiss Appeal for Appellant Alan Nix's Failure to comply with Rule 208, SCACR, in connection with the above-referenced matter. Also enclosed is a check for the required filing fee. Please return a filed copy to me in the enclosed stamped envelope. Please let me know if you have any questions or need any additional information.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


G. Troy Thames

GTT/slb
Enclosures

cc: via US Mail: Mr. Alan G. Nix
Kevin W. Mims, Esquire
The Honorable Alan Wilson