

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 05 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra Jefferson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix
and the Estate of Norma J. Nix.....Appellants

v.

Churchill Park, Churchill Park HOA, Churchill Park Homeowners' Association, Inc., Churchill at Park West Association, Inc., Churchill Property Owners Association, Churchill Park Property Owners Association, Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Churchill Park @ Park West Association, Inc., Southern Community Services, LLC, Park West Development Corp., LPPM, Inc., McCabe, Trotter & Beverly, PC, Dobson Builders, Stephanie Trotter, Ryan McCabe, Jaime McSweeney, Larry Riddlehoover, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson, Builders, Inc., DR Horton, Inc., Brian Gardner, Venture Management of South Carolina, Inc., Dodds & Hennessey, LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Rogers, Townsend & Thomas, PC, Henry Munn, Charleston County (Christine Smith), Judge Mikell Scarborough, Sandlapper Reporting, LLC, William H. Sloan, Sloan Law Firm, Individual Agents, Assigns, Attorneys, Accountants, Employees, Officers, Directors, Independent Contractors, Investors, Successors, Predecessors, Insurers, Representatives, Parents, Sister and Affiliated Entities, Partners, Members of all Persons Who Might be Liable.....Respondents.

RESPONDENTS DAVID BROWN AND CATHERINE BROWN'S MOTION TO STRIKE APPELLANTS' DESIGNATION OF MATTER & DISMISS APPEAL FOR FAILURE TO COMPLY WITH RULE 208, SCACR AND TO STAY TIME FOR RESPONDENTS BROWN TO FILE INITIAL BRIEFS

Respondents David Brown and Catherine Brown, pursuant to Rule 208(b) SCACR, respectfully submit this Motion to Dismiss and move this Court for an order dismissing the appeal filed by Appellants for failure to comply with the Rules of this Court along with a stay of time for Respondents David and Catherine Brown's Initial Brief until this Motion is ruled upon by this Court. In support of this Motion, these Respondents state that Appellants have not complied with Rule 208, SCACR, to pursue an appeal. More importantly, Appellant Alan Nix has been and continues to engage in the unauthorized practice of law on behalf of Appellant Norma J. Nix and the Estate of Norma J. Nix, therefore Appellants' Initial Brief and Designation of Matter should not be entertained by this Court and should be dismissed. In further support of this Motion, these Respondents state the following:

First, the Designation of Matter "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". Rule 209, SCACR. A party shall not include any matter, which is not relevant to the appeal. *Id.* The Record on Appeal shall only contain matters which were presented to the lower court. Rule 210(c), SCACR. Therefore, matters related to other cases and actions are not permitted in the Record on Appeal. *Id.*

Additionally, 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 the other rules such as the Designation, referenced above. 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).

Finally, South Carolina courts recognize a party's ability to represent self, without legal counsel, in this court system. See S.C. Code Ann. § 40-5-80. South Carolina courts do not, however, condone or recognize the unauthorized practice of law. No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. Id. at § 40-5-310; see also Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705 (S.C. 2005) (holding that S.C. Code

Ann. § 40-5-310 prohibited the administratrix of an estate, who was not a lawyer, from representing the estate in an appeal).

ARGUMENT

I. Appellants' Designation of Matter should be struck as a whole for noncompliance with Rule 209, SCACR, but specifically documents from unrelated matters must be struck from consideration of this Court.

Although it is difficult to determine what is relevant to Appellants' appeal, there are only two final orders which may possibly be considered by this Court. The Honorable Deandra Jefferson presided over the motions to dismiss in this matter, and she issued orders regarding both. See Order, Oct. 17, 2019. Upon first glance at Appellants' Designation of Matter, it appears that there were seven orders issued in the underlying case; a hearing on August 28, 2019 related to the subject case; and several other correspondence by Appellant Alan Nix. See Appellants' Designation of Matter to be Included in the Record on Appeal. These documents are not properly included in this Designation. Appellants are in violation of Rules 209 and 210, SCACR and as a result, their Designation should be struck from this record as noncompliant. In the alternative, Judge Jefferson was the only circuit court judge to preside over this matter, and the only orders she issued related to two Motions to Dismiss. As such, if this Court must consider any document in Appellants' Designation, the only two Orders related to the underlying case are her two Orders, both issued on October 17, 2019.

II. Appellants did not comply with any of the requirements for submission of an Initial Brief, pursuant to Rule 208, SCACR.

Rule 208, SCACR, clearly states what is required by an appellant, either through counsel or self-representation, in appealing an issue to this Court. Appellants did not comply with those requirements in filing their Initial Brief. First, in reviewing Appellants' "Questions Presented" all of Appellants' 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, 5-7. Not a single Question Presented is narrowly tailored to address an issue of law within a final order or judgment of the circuit court in the underlying action. Id.

There is nothing about Appellants' Statement of the Case that is concise, as is required by Rule 208(b)(1)(C), SCACR. See Brief of Petitioner, 8-10. Appellants are summarily referencing other cases that Appellant Nix has filed in Charleston County Common Pleas and/or currently appealing to this Court. Specifically, Appellants list the civil action numbers of the other cases Appellant Nix has filed in Charleston Common Pleas and/or appealed to this Court, *ie* civil action nos. 2014-CP-10-05407 and 2017-CP-10-04031. See Brief at 8 and 9. Further, Rule 208(b)(1)(C) explains that the Statement "shall not contain contested matters" and Appellants grossly violate that condition by only writing about *contested* issues that do not relate at all to the subject matter of the underlying case. Id. In fact, there were no allegations whatsoever in the underlying Complaint by Appellants, so there are no allegations or facts to state in the appeal other than the date of filing, date of hearing on Respondents' Motion to Dismiss, and Judge Jefferson's Orders regarding the same.

In addition, there is no Standard of Review whatsoever in Appellants' Initial Brief, although required as part of any initial brief pursuant to the appellate court rules and "which shall concisely set forth the applicable standard of review with citations to relevant case law establishing the standard". Rule 208(b)(1)(D), SCACR. South Carolina case law is clear that relevant statutes, cases, or other authority for any rules Appellants deem appropriate and/or applicable must be included in their Initial Brief, otherwise they have 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).

III. Appellant Alan Nix is engaged in the unauthorized practice of law and should not be allowed to present any argument on behalf of Appellant Norma J. Nix or Appellant Estate of Norma J. Nix.

Further and most importantly, Appellant Nix cannot represent the other two Appellants in this matter – Norma J. Nix and the Estate of Norma J. Nix. Upon information and belief, this is, in fact, the same person, Appellant Alan Nix’s deceased wife. Also, upon information and belief, she passed prior to the filing of this action. Regardless, *pro se* Appellant Alan Nix cannot represent Appellants Norma J. Nix and Estate of Norma J. Nix. This constitutes the unauthorized practice of law in the state of South Carolina. See S.C. Code Ann. § 40-5-310. Alan Nix is not nor has he ever been licensed to practice law in the state of South Carolina (nor any other state, upon information and belief of these Respondents). This Court, along with all others in South Carolina, has the power to safeguard all parties’ rights, including the “prohibition against the unauthorized practice of law...to protect the public from incompetent, unethical, or irresponsible representations”. See Renaissance Enters., Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999). Alan Nix is engaging in just that and this Court must put a stop to these representations.

CONCLUSION

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 these Appellants are held to the same rules regarding appeal as counsel for all Respondents. Their disregard for the court’s rules should not be entertained. They did not comply with the requirements for the submission of an Initial Brief. They

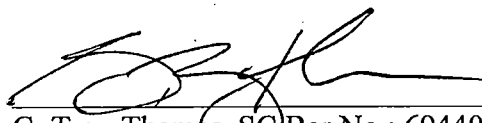
did not present narrowed, specific questions for this Court's consideration. They did not provide a concise history of the case in his Statement of the Case and most importantly, they did not present a Standard of Review for any question and/or alleged issue for the Court's consideration of his appeal. Therefore, Appellants' Initial Brief must not be entertained by this Court.

Additionally and specifically related to Appellants Norma J. Nix and Estate of Norma J. Nix, Appellant Alan Nix is engaged in the unauthorized practice of law by proceeding as counsel for all Appellants in this matter. This is a violation of both statute and case law precedent by the South Carolina Supreme Court. Appellant Alan Nix cannot be allowed to proceed in this appeal as counsel for all Appellants. He is not a licensed attorney authorized to practice law in this state.

Finally, these Respondents join in on the arguments by all other Respondents to this action, pursuant to Rule 208, SCACR.

For these reasons, Respondents respectfully requests that Appellants' 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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Mt. Pleasant, South Carolina
October 1, 2020

**ATTORNEY FOR RESPONDENTS
DAVID BROWN AND CATHERINE BROWN**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix, and the Estate of Norma J. NixAppellants,

v.

Churchill Park, Churchill Park Homeowner's Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Southern Community Services, LLC, Park West Master Association, Inc., LPPM, Inc., McCabe, Trotter & Beverly, PC, Larry Ridlehover, Stephanie Trotter, Ryan McCabe, Jamie McSweeney, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson Builders, Inc., D.R. Horton, Inc., Brian Gardner, Dodds & Hennessey LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Park West Development, Inc., Rogers, Townsend Thomas, PC, Henry Munn, Individually Directors, Officers, Agents, Attorneys, Accountants, Independent Contractors, Investors, Successors, Predecessors, Parents, Subsidiaries, Sister and Affiliated entities, Partners, and Members of all named EntitiesRespondents.

PROOF OF SERVICE

The undersigned certifies that a copy of ***Respondents David Brown and Catherine Brown's Motion to Strike Appellants' Designation of Matter and Dismiss Appeal for 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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***Attorney for Respondents Churchill Park,
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***Attorney for Respondents McCabe, Trotter
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October 1, 2020



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VIA US MAIL & FACSIMILE (803) 734-1839

The Honorable Jenny Abbott Kitchings
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OCT 05 2020

SC Court of Appeals

Re: Alan Nix vs. Catherine Brown & David Brown et al.
Appellate Case No.: 2019-001951
WJC&B File No.: 0375.00218

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents David Brown and Catherine Brown's Motion to Strike Appellants' Designation of Matter and Dismiss Appeal for Failure to Comply with Rule 208, SCACR, in connection with the above-referenced matter. Also enclosed is a check in the amount of \$50.00 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,

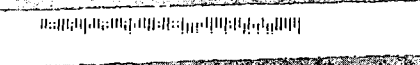
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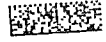
GTT/slb
Enclosures

cc: via US Mail: Mr. Alan G. Nix
Kevin W. Mims, Esquire
Andrew W. Countryman, Esquire



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