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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

DEC 10 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.....Appellant

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 INITIAL BRIEF

Respondents David Brown and Catherine Brown, pursuant to Rule 208, SCACR, submit their reply to Petitioner's Initial Brief. In support of this Brief, these Respondents restate that

Appellant has not complied with Rule 208, SCACR, to pursue an appeal, as initially stated in their Motion to Dismiss. In further support of their Brief, these Respondents state the following:

STATEMENT OF THE CASE

Pursuant to S.C. App. Ct. R. 208(b)(2), these Respondents briefly present their own Statement of the Case. There are no facts to the underlying case. See Complaint. The Complaint is literally void of any factual or legal allegations. Id. Procedurally, this document was filed by Petitioners on January 4, 2019 in Charleston County Common Pleas. Id. These Respondents, among others, filed a Motion to Dismiss. The Honorable Deandra Jefferson presided over the hearing on September 26, 2019 and subsequently issued an Order Granting Defendant David Brown and Defendant Catherine Brown's Motion to Dismiss on October 17, 2019. This Order elaborated on the lack of facts in Petitioners' Complaint, stating that "Plaintiffs name seventeen (17) causes of action in their Complaint...Plaintiffs offer absolutely no facts to support any of their causes of action, and make no statements upon which the court's jurisdiction depends, other than that Plaintiff is a citizen of Charleston County". See Order, Oct. 17, 2019 at 2. Petitioner filed a Notice of Appeal on November 25, 2019, citing this case number but stating that the appeal involved Orders in other cases that Appellants are also currently appealing in this Court and are unrelated to the subject action.

FIRST STANDARD OF REVIEW

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).

FIRST ARGUMENT

- I. *Appellant’s 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.*

Despite Appellant’s efforts to distort and confuse the relevant issues in this 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 filed by Respondents Brown and Respondents McCabe, Trotter & Beverly, PC in this matter, and she issued orders granting both motions, which dismissed this case. See Order, Oct. 17, 2019. Appellant’s Designation of Matter suggests that there were seven orders issued in the underlying case, when, in fact, there were only two Orders issued by Judge Jefferson on October 17, 2019: (1) an Order granting Defendant Browns’ Motion to Dismiss and (2) an Order granting Defendants McCabe, Trotter & Beverly, PC’s Motion to Dismiss. None of Appellant’s other matters designated refer to anything related to the underlying matter and must not be included in the Designation of Matter. See Appellant’s Designation of Matter to be Included in the Record on Appeal. Appellant is in violation of Rules 209 and 210, SCACR and as a result, the irrelevant matters included in his Designation should be struck from this record as noncompliant with this Court’s Rules. 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 Appellant’s Designation, the only two Orders related to the underlying case are her two Orders, both issued on October 17, 2019.

II. Appellant 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. Appellant did not comply with those requirements in filing their Initial Brief. First, in reviewing Appellant's "Questions Presented" all 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, 5-7. 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 Appellant's Statement of the Case that is concise, as is required by Rule 208(b)(1)(C), SCACR. See Brief of Petitioner, 8-10. Appellant summarily references other cases that Appellant has filed in Charleston County Common Pleas and/or currently appealing to this Court. Specifically, Appellant lists the civil action numbers of other cases Appellant filed in Charleston Common Pleas and/or appealed to this Court, *ie* civil action nos. 2014-CP-10-05407 and 2017-CP-10-04031, none of which are relevant to the issues at hand in the underlying case See Brief at 8 and 9. Further, Rule 208(b)(1)(C) explains that the Statement "shall not contain contested matters" and Appellant grossly violates 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 Appellant, 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 Appellant's 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 Appellant deems 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).

SECOND STANDARD OF REVIEW

Pursuant to Rule 220(c), SCACR, “the appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal”. See Rule 220, SCACR.

SECOND ARGUMENT

IV. Pursuant to Rule 220(c), SCACR, the lower court’s dismissal should be affirmed.

The underlying case was dismissed because, on its face, Appellant’s Complaint was void of any basis to pursue any of the seventeen “causes of action” listed by headings only in the Complaint. See Complaint. Not one single fact to support any cause of action was alleged in the underlying Complaint by Appellant. *Id.* To survive a motion to dismiss, when considering the claims in the light most favorable to the plaintiff, the complaint must state a valid claim which entitles the plaintiff to relief. See Gentry v. Yonce, 522 S.E.2d 137, 139 (S.C. 1999). Judge Jefferson properly ruled,

[i]n reviewing Plaintiffs’ Complaint and in considering the oral arguments before the Court, the Court finds that the Complaint is factually and legally insufficient pursuant to Rules 8(a) and 12(b)(6), SCRCP, and S.C. Code Ann. § 15-36-100, and does not provide for relief under any theory of law. Plaintiffs’ Complaint also fails to state any fact establishing jurisdiction or venue under the law. Finally, Plaintiffs’ Complaint is frivolous on its face without facts to support any cause of action and/or relief upon which Plaintiffs Complaint may be granted. See Order, Oct. 17, 2019 at 4.

Any one of these findings are proper for dismissal, but the combination of errors, issues, and insufficiencies in both the underlying matter and Appellant's Initial Brief does not provide this Court any course of action other than a dismissal of this Appeal. This Court must affirm the lower court's decision.

CONCLUSION

Wherefore, these Respondents join in and further state any and all arguments by all other Respondents to this action, pursuant to Rule 208, SCACR.

Further, Appellant's Initial Brief does not satisfy any of the appellate rules for pursuing an appeal. There were no allegations in Appellant's underlying Complaint therefore there is nothing to appeal. Simply because a party is disgruntled with a ruling by the lower court does not allow for that party to disparage this court system and waste legal resources, exorbitant amounts of time, and the funds of numerous individuals on frivolous allegations and factually deficient pleadings. For these reasons, Respondents respectfully request that this Court disregard and dismiss Appellant's Initial Brief or in the alternative, affirm the lower court's dismissal of the same.

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Mt. Pleasant, South Carolina
December 8, 2020

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

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY

SC Court of Appeals

Deadra L. Jefferson and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001951

Alan G. Nix.....Appellants,

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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 Initial Brief** 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 8th day of December, 2020.

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December 8, 2020

VIA US MAIL & E-MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
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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 one copy of Respondents David Brown and Catherine Brown's Initial Brief and Designation of Matter in connection with the above-referenced matter. 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: Mr. Alan G. Nix
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