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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Dec 31 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

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 DAVID BROWN AND CATHERINE BROWN'S INITIAL BRIEF

G. Troy Thames, S.C. Bar No.: 69440
WILLSON JONES CARTER & BAXLEY, P.A.
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464
Telephone: (843) 284-0832
Facsimile: (843) 606-3300
E-mail: tthames@wjlaw.net

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

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STATEMENT OF THE ISSUE ON APPEAL

1. As the prior courts have already addressed, Appellant did not properly appeal the original magistrate court case.
2. Appellant did not comply with Rule 208(b), SCACR, and as such, has abandoned all issues on appeal and his Initial Brief should not be considered by this Court.
3. Appellant presents multiple allegations of misconduct within his Questions Presented and Argument against attorneys and judges, which are not supported by the Record.
4. Appellant is not an aggrieved party eligible to argue, protest, or object to the Substitution of Counsel.

STATEMENT OF THE CASE

Pursuant to Rule 208(b)(2), SCACR, these Respondents present their own Statement of the Case. This appeal arises from a dispute over a fence in 2014 first filed in Charleston County Magistrate Court. Primarily, the pertinent facts to this appeal revolve around the procedural history, timeline of motions filed by Appellant, and Orders. The original Complaint was filed by Appellant in Charleston County Magistrate Court on February 24, 2017 against Respondents Catherine and David Brown and the other named Respondents herein and was subsequently dismissed on April 18, 2017: “case dismissed with prejudice as to all above defendants except Defendant Dave Brown, individually. Case dismissed without prejudice as to Defendant Dave Brown with leave as Plaintiff to amend specific allegations. Amend Complaint within fourteen (14) days”. See Order, April 18, 2017. One year later, on April 18, 2018, Appellant filed a motion pursuant to Rule 60(b), SCRCR, to clarify the dismissal of April 18, 2017 and restore the matter to the active docket. See Motion to Clarify Order dated April 18, 2017, Amend Complaint, and Restore Case to Active Docket. Appellant’s motion was then denied on May 9, 2018 due to lack

of new evidence and lack of finding of fraud or misrepresentation by counsel involved in the matter – Kevin Mims, Esquire and Randall Stoney, Esquire. See Order, May 9, 2018. Appellant’s motion to reconsider was subsequently denied as well as Appellant’s motion to compel the court to clarify orders by Judge Turner, who issued a Return outlining the prior procedural history of the magistrate court case. See Return, July 9, 2018.

On June 28, 2018, Appellant then filed a Notice of Civil Appeal to Charleston County Common Pleas, which was assigned civil action number 2018-CP-10-3315. A consent Substitution of Counsel Order for these Respondents, David Brown and Catherine Brown, which substituted Joseph Kaiser, Esquire as counsel for these Respondents with G. Troy Thames, Esquire was executed by the circuit court on September 19, 2018. Appellant filed a motion to set aside and clarify the executed Substitution of Counsel Order regarding David Brown and Catherine Brown’s counsel. The court, specifically Judge Roger Young, denied Appellant’s motion, so Appellant filed another motion, “Motion to Set Aside, or in the Alternative, Amend Order dated 19 September 2018” on November 1, 2018. The Court issued a ruling on November 19, 2018, denying *pro se* Appellant’s motion. On November 21, 2018, Appellant then filed a “Motion to Set Aside and Clarify Order of 19 Sept 2018, Reconsider Order of 19 November 2018 and Continuance of Hearing Scheduled for 29 November 2018”, again in regards to the Order of Substitution. In addition, Appellant submitted a subpoena *duces tecum* request directed to Judge Young on November 30, 2018 for “any and all physical and electronically stored documents, including but not limited to, emails, electronic notes and archived documents pertaining to the orders filed in the above captioned case on 25 September 2018 and 19 November 2018”. After that, Appellant filed a “Motion for Judicial Recusal, Return Case to Judge McCoy’s Roster and Continue the Appeal Hearing until the Order Substituting Counsel is Properly Resolved” on December 4, 2018. The

Court then heard arguments on December 7, 2018, although Judge Young had already ruled and issued his opinion in regards to this *exact* subject matter. Judge Young denied the request to reconsider the Substitution of Counsel Order again on December 7, 2018.

Appellant's request for an appeal to circuit court of the original Magistrate Court matter was heard on August 28, 2019 and subsequently denied. The action was dismissed by Order on September 20, 2019 in which Judge Murphy granted Defendants' request for sanctions and imposed an Injunctive Order preventing the Charleston County Clerk of Court from filing any pleadings from *pro se* Plaintiff until or if he retains licensed counsel in this state. Appellant filed a Notice of Appeal on November 6, 2019 and then an Amended Notice of Appeal on December 16, 2019.

FIRST STANDARD OF REVIEW

In order to appeal a judgment from magistrate court in South Carolina, the party wishing to appeal shall serve and file a notice of appeal in circuit court within thirty days after receiving written notice of the magistrates court judgment. S.C. Magistrate Court Rule 18(a). Further, 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.

FIRST ARGUMENT

I. As the prior courts have already addressed, Appellant did not properly appeal the original magistrate court case.

Procedurally this Appellant ran out of legitimate, legal options in 2017 for the underlying matter. The original case was dismissed with prejudice as to all parties except Respondent David Brown on April 18, 2017. See Order, April 18, 2017. As to Respondent David Brown, the matter was dismissed without prejudice for Appellant to amend his Complaint within fourteen (14) days

of April 18, 2017. Id. Appellant had until May 2, 2017 to amend his Complaint, pursuant to Judge Turner's Order. Id. To date, there is no record of Appellant ever amending his Complaint.

In order for Appellant to properly appeal the dismissal on April 18, 2017, the notice of appeal should have been filed within thirty days of the judgment, which was May 18, 2017. See S.C. Magistrate Court Rule 18(a). Appellant's Notice of Appeal was filed on June 28, 2018, which was 437 days from Judge Turner's Order issuing judgment in the case. As Respondents stated in the hearing in front of the Honorable Maite Murphy on August 28, 2019, and is reiterated here, "the defendants would rely upon the return of Judge Turner and the underlying record of the case in response to the appeal and ask that it be dismissed and the underlying rulings affirmed". Hr'g Tr. 28:11-14 Aug. 28, 2019; see also Return, July 9, 2018.

This appeal amounts to nothing more than the same harassment and frivolity of Appellant's numerous prior motions and correspondence from this Appellant. As stated on the record on August 28, 2019, "[appellant] has bombarded the court, the court officials, the attorneys with emails related those cases...and his pattern of conduct clearly shows an abuse of the process. His motions are made without good faith and they are nothing more than dilatory litigation packets". Id. at 20:11-19. This Court should affirm Judge Murphy's Order of September 20, 2019 denying the appeal and dismissing this action pursuant to Rule 220, SCACR.

SECOND STANDARD OF REVIEW

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*).

SECOND ARGUMENT

II. Appellant did not comply with Rule 208(b), SCACR, and as such, has abandoned all issues on appeal and his Initial Brief should not be considered by this Court.

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 cites no case law or legal authority, nor are his Questions Presented argued in order or with any specificity as required by

the aforementioned Rule, and therefore Appellant should be deemed to have abandoned all issues on appeal. In reviewing Appellant's "Questions Presented", 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, pg. 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 and 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. 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.

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 pursuant to SCACR 208(b)(1)(C). 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 pg. 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).

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.

THIRD STANDARD OF REVIEW
REGARDING ATTORNEY/JUDICIAL MISCONDUCT

Respondents reiterate and restate that Rule 208, SCACR, requires a party to provide a Standard of Review pertaining to the issues raised by that party in the Initial Brief. Further, it is established in South Carolina that when supporting law is not provided in the Initial Brief, appellate courts deem the argument abandoned by the same party. See First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994); State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554 (Ct. App. 2011).

THIRD ARGUMENT
REGARDING ATTORNEY/JUDICIAL MISCONDUCT

III. Appellant presents multiple allegations of misconduct within his Questions Presented and Argument against attorneys and judges, which are not supported by the Record.

Appellant makes gross allegations against both judges and attorneys involved in the numerous pleadings filed by Appellant without any evidence of the same. Within his Argument, Appellant states “all this order really represents is business as usual within the judiciary, one judge taking care of another judge instead of taking the required steps to report their highly questionable, and most likely actionable, improper pattern of conduct”. See Brief, 18. Ridiculous statements in his alleged Argument opine of “Judge Turner’s long term relationship with Ran’s father, clearly Judge Turner just couldn’t fulfill his legal and ethical obligations and hold Ran and Kevin Mims properly accountable”. Id. at 21.

Ignoring the fact that the allegations against counsel and judges are completely baseless and ludicrous, these allegations are not supported by any document or testimony in the Record nor is there any authority cited in support of the allegations. Therefore, there is nothing for this Court to consider in regards to Appellant’s Questions Presented Nos. II, IV, V, X, XI, XII, XIV, XV,

XVIII in regards to fraud, misconduct, or bad faith of judges and/or attorneys involved in these proceedings.

In the alternative, the lower court has already determined that, insofar as the allegations against Judge Young are concerned, Appellant failed to prove that Judge Young was unable to act impartially in this matter. See Order, Sept. 20, 2019. Judge Murphy specifically stated that “pursuant to Canon 3 of the Judicial Code of Conduct, judicial recusal is warranted in when a judge’s impartiality may reasonably be questioned. Plaintiff failed to provide an argument sufficient to establish a violation of Canon 3 of the Judicial Code of Conduct”. Id. On the basis of Rule 220(c), SCACR, this Court should affirm the ruling of the lower court on those same grounds.

FOURTH STANDARD OF REVIEW
REGARDING SUBSTITUTION OF COUNSEL

Pursuant to Rule 201, SCRAC, “only a party aggrieved by an order, judgment, sentence or decision may appeal”. Rule 201(b). An aggrieved party is one who obtains a judgment or decree that “operates on his or her rights of property or bears directly on his or her interest”. Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (holding that a party cannot appeal a decision that does not affect his or her interest, however erroneous and prejudicial it may be to another’s interests or rights). An aggrieved party “refers to a substantial grievance, a denial of some personal or property right, or the imposition on a bar of a burden or obligation”. Id. “...[O]ne who is injured in a legal sense; one who has suffered an injury to person or property” is aggrieved. Id. The South Carolina Supreme Court could not find evidence within the record that proved the appellant was “aggrieved” because, if the Court reversed the judgment of the lower court, it would not cause any benefit or improvement in the appellant’s position. See Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (S.C. 1970).

FOURTH ARGUMENT
REGARDING SUBSTITUTION OF COUNSEL

IV. Appellant is not an aggrieved party eligible to argue, protest, or object to the Substitution of Counsel.

A majority of Appellant's Initial Brief references the Substitution of Counsel Order executed by Chief Administrative Judge of the Ninth Circuit, the Honorable Roger Young. See Substitution of Counsel, Sept. 19, 2018. This Substitution of Counsel was not for Appellant Alan Nix. This Substitution of Counsel was on behalf of Respondents David Brown and Defendant Catherine Brown. Id. In the hearing held on December 7, 2018 in front of the Honorable Roger M. Young, Appellant's dissatisfaction and frivolous motion regarding Respondents David Brown and Catherine Brown's substitution of counsel was addressed by the undersigned:

I'm now the attorney of record for Mr. Brown, and, quite honestly, I think the motion, or the objection by Mr. Nix to that order, is frivolous and is a waste of the Court's time. It's cost my client time for me to come down here and spend resources responding to a motion that he has actually no standing to object to, and furthermore, to the extent anyone wants to know why my clients have chosen different counsel, that's protected by the attorney-client privilege.... Hr'g Tr. 9:1-10, Dec. 7, 2018.

On its face, the Substitution of Counsel Order does not reference Appellant in the body of the Order. Substitution of Counsel, Sept. 19, 2018. The Substitution of Counsel does not operate on Appellant Alan Nix's rights of property or bear directly on his interest. Id.; see also Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301. As Judge Young stated in the December 7, 2018 hearing.

well, [Troy Thames] is an officer of the court, duly licensed by the state of South Carolina to practice law, and that carries certain responsibilities with it. So, again, he and the other side both represented to the Court that their clients consented, and, again, more than 60 days have passed and no client has come forward and said, We don't want these folks. Hr'g Tr. 16:10-16, Dec. 7, 2018.

To date, neither Respondent David Brown nor Respondent Catherine Brown has ever notified the court of an issue with the Substitution of Counsel. Appellant had no standing to argue this in 2018 and over two years later, that has not changed. The Substitution of Counsel does not relate to Appellant, it relates to Respondents who have never raised concern over the order.

Therefore, by the record, the Substitution of Counsel Order, and Judge Young's subsequent Order denying Appellant's Motion to Reconsider/Clarify the Substitution of Counsel Order, Appellant Alan Nix is not and cannot be an "aggrieved" party to the substitution. The Substitution of Counsel does not affect Alan Nix's rights or interests in any way. There would be no benefit or improvement to Alan Nix's position, whatever that may be, by a reversal or remand of the Substitution of Counsel. Respondent David Brown and Respondent Catherine Brown are the only parties who may be aggrieved by the Substitution of Counsel pursuant to Rule 201, SCRAC; therefore, this appeal should be dismissed on the basis that none of Appellant's claims bear directly on his interests. Appellant is not an aggrieved party under the Rule.

In the alternative, Judge Young's Order, Dec. 7, 2018, should be affirmed, pursuant to Rule 220(c), SCACR, upon the grounds stated in the same: "no client has represented to the Court their disagreement to the substitution of counsel". See Rule 220(c), SCACR; Order, Dec., 7, 2018. This Court may affirm any decision based on any ground within the Record on Appeal, and Judge Young has already decided that, regardless of whether Appellant has standing to question the Substitution of Counsel, this Court should affirm the lower court's Order, Dec. 7, 2018.

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. 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.

Finally, Appellant is not an aggrieved party under the law to the basis for his appeal. Appellant failed to comply with the timeline, as clearly set forth in the rules, to make an appeal, which has already been ruled upon by Judge Murphy. 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.

WILLSON JONES CARTER & BAXLEY, P.A.



G. Troy Thames, S.C. Bar No.: 69440
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464
Telephone: (843) 284-0832
Facsimile: (843) 606-3300
E-mail: tthames@wjlaw.net

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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 email and by mailing a copy of the same to Pro Se Appellant by United States Mail, addressed as shown below this 31 day of December, 2020.

Alan G. Nix
1401 Densmore Circle
Mount Pleasant, SC 29466
Pro Se Appellant

Kevin W. Mims, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
***Attorney for Respondents Churchill Park,
Churchill Park at Park West, Inc., and
Churchill Park Homeowners Association, Inc.***



G. Troy Thames, S.C. Bar No.: 69440
Willson, Jones, Carter & Baxley, P.A.
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464
(843) 284-0832

***Attorney for Respondents David Brown and
Catherine Brown***

December 31, 2020