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FEB 12 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Trial Case No. 2019-CP-21-03521
Appellate Case No. 2020-000479

Edward Spears.....Appellant,

v.

Michael S. Hopewell.....Respondent.

**MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO
ORDER APPELLANT TO FILE A PROPER RECORD ON APPEAL;
AND MOTION FOR EXTENSION OF TIME TO FILE FINAL BRIEFS**

The Respondent, through his undersigned attorney, hereby moves the South Carolina Court of Appeals to dismiss the appeal, or in the alternative, to order the Appellant to file and provide to counsel a proper Record on Appeal pursuant to the rules of this court. If the appeal is not dismissed, the Respondent further moves the court to enter an order for extension of time to file Final Briefs in this matter. This motion is made pursuant to Rules 209, 210 and 211, SCACR.

MEMORANDUM AND CITATION OF AUTHORITIES

Respondent filed and served his Initial Brief and Designation of Matter to be Included in the Record on Appeal on October 8, 2020, therefore, pursuant to Rule 210,

SCACR, the Record on Appeal and Proof of Service of same were to be filed within thirty (30) days of that date. However, the Appellant was granted three extensions of time to file the Record on Appeal. With extensions, the final Record on Appeal was due to be filed by January 31, 2021.

The Record on Appeal received by Respondent was mailed on January 28, 2021, according to the postmark on the envelope in which it was received, however, the Appellant's Proof of Service stated that it was mailed on January 26, 2021.

In Respondent's Designation of Matter to be Included in the Record on Appeal, Respondent listed eight documents. One of the documents was omitted entirely from the Record on Appeal and from the Index that accompanied the Record on Appeal. The omitted item was number 4 in the Respondent's Designation of Matter to be included on the Record on Appeal – Amended Complaint dated November 21, 2019 in case number 2019CV2110105972.

In addition to omitting this necessary document from the Record on Appeal, many of the documents in the Record on Appeal contain handwriting and other notations, presumably made by the Appellant, some of which are of an argumentative nature.

It is further noted that the first eight items listed in the Appellant's Designation of Matter to be Included in the Record on Appeal are not included in the Record on Appeal, nor is his item 14 in the Appellant's Designation of Matter to be Included on the Record on Appeal. Though Respondent would argue that those omitted items from the Appellant's list are irrelevant and should not be included, their omission still violates Rule 210(c), SCACR, which states that the Record on Appeal shall include all matter designated to be included by any party under Rule 209.

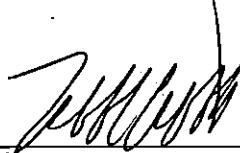
Respondent must also note that the Record on Appeal Respondent received does not contain a Certificate of Counsel as required by Rule 210(g), SCACR.

Because the Record on Appeal is not complete and is, in fact, missing documents and pages that are required for the proper completion of final briefs, Respondent requests that, if the case is not dismissed, the court stay the time to file Final Briefs until twenty (20) days after service of a proper and complete Record on Appeal.

CONCLUSION

The Respondent hereby requests that the appeal be dismissed. Despite receiving three extensions, Appellant failed to file and serve a proper Record on Appeal nor did he provide a Certificate of Counsel as required by Rule 210(g). In the alternative, if the case is not to be dismissed, Respondent requests that the court enter an order requiring Appellant to serve a proper and complete Record on Appeal, without handwriting on the documents (unless they are handwritten documents) within a designated time limit. In addition, if the case is not to be dismissed at this time, Respondent requests that all parties be granted an extension to file final briefs until twenty (20) days after a proper and complete Record on Appeal is served.

Respectfully submitted,



February 10, 2021

Michael C. Abbott
ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mabbott@amhattorneys.com
Attorney for Respondent

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Michael S. Hopewell.....Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss on Edward Spears, pro se Appellant, by depositing a copy of same in the United States Mail, postage prepaid, on February 10, 2021, addressed to 503 Roughfork Street, Florence, SC 29501.

February 10, 2021



Michael C. Abbott
ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0089 fax
mabbott@amhattorneys.com
Attorney for Respondent

Abbott, McKissick & Hopewell, LLC
Attorneys at Law

Michael C. Abbott
Robert D. McKissick
Michael S. Hopewell

P.O. Box 148
470 W. Evans St.
Florence, SC 29503
(843) 669-0089
(843) 669-0085 Fax
www.amhattorneys.com
mabbott@amhattorneys.com

February 10, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Re: Edward Spears
vs. Michael S. Hopewell
Appellate Case #2020-000479
Our File #2016008

SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following documents regarding the above referenced matter:

1. One original and seven (7) copies of the Motion to Dismiss;
2. Original and one (1) copy of Proof of Service; and
3. Our firm's check in the amount of \$50.00 to cover the filing fee.

I would appreciate you filing the original Proof of Service and Motion to Dismiss stamping as received the copy of same and returning a filed copy of each to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to let me know.

With kind regards, we are

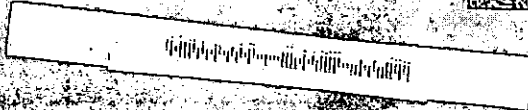
Very truly yours,



MICHAEL C. ABBOTT

MCA/kch
Enclosures
cc: Mr. Edward Spears

Michael C. Abbott, Esq.
Abbott, McKissick & Hopewell, LLC
Post Office Box 148
Florence, SC 29503



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