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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable, Circuit Court Judge

Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO MOTION TO STRIKE OR AMEND FINAL BRIEF OF RESPONDENT

Pursuant to Rules 211 and 240, SCACR, Appellants Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner and Madison LeCroy hereby reply to Respondent Joseph Abruzzo's Return in Opposition to their Motion to Strike or Amend Final Brief ("Return"). As the Supreme Court admonished in *Henning v. Kaye*, "the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules …" 307 S.C. 436, 415 S.E.2d 794 (1992).

Respondent's Return spends 11 pages explaining why the substantive changes made to his Final Brief should be allowed, but nowhere does he explain why he should not be ordered to amend his Final Brief in order to comply with Rule 211. While Respondent goes to great lengths to articulate that his Initial Brief contained allegedly "inadvertent" errors or omissions, he cannot transform the correction of those errors or omissions into "obvious typographical errors and misspellings," which are the only changes beyond references to the filed Record on Appeal that may be made in a final brief. Respondent provides no support whatsoever—because there is none—for his specious assertion that "Rule 211's plain text authorizing the correction of both typographical errors *and* misspellings" somehow means the wholesale "removal and/or insertion of words" also is authorized. In other words, Respondent argues that the terms "obvious typographical errors and misspellings" includes revising and correcting his brief to both insert and remove entire words and phrases in order to strengthen and/or clarify his arguments. Respondent's "removal and/or insertion of words" goes far beyond any reasonable or logical interpretation of the words "obvious typographical errors and misspellings."

When interpreting court rules, our courts apply "the same rules of construction used to interpret statues." *Fairchild v. S.C. DOT*, 398 S.C. 90, 107, 727 S.E.2d 407, 416 (2012). Accordingly, if the language in a rule "is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced." *Id.* at 107-108, 727 S.E.2d at 416. Pursuant to well-established precedent, the words of Rule 211, SCACR, "must be given their plain and ordinary meaning without resort to

subtle or forced construction to limit or expand the rule." *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004).

Respondent correctly quotes Rule 211(b), which provides that the "final brief(s) shall be **identical** to the brief(s) previously served under Rule 208," except that references to the record below "shall be revised to indicate where the material appears in the Record on Appeal," and allowing for correction of "**obvious typographical errors** and **misspellings** which were contained in the initial brief. **No other changes may be made**." Rule 211(b), SCACR (emphasis added). It is unclear what part of "identical" and "No other changes may be made," Respondent does not comprehend. Despite Respondent's creative attempts to re-define or expand the meaning of "identical," "obvious typographical errors and misspellings," and "No other changes may be made," those terms and phrases are plain, unambiguous and convey a clear meaning,[1] which does not include adding or removing substantive terms as he has done in his Final Brief.

While Respondent argues that his changes "amount to nothing more than the correction of obvious typographical mistakes," his changes are neither "obvious typographical errors" nor "misspellings." If they were, he would not require 11 pages to explain the rationale behind what are, in fact, substantive changes from his Initial Brief to his Final Brief. Clearly, if the changes Respondent has made in his Final Brief "are immaterial to the substance of this case," as he alleges, he should have no problem

[1] To the extent Respondent's footnote 3 is intended to equate "obvious typographical errors and misspellings" with "clerical errors" it must be rejected. Rule 211 does not refer to clerical errors and, consequently, the Black's Law Dictionary definition of an unrelated term is entirely irrelevant. Furthermore, the Black's Law Dictionary definition refers to "judicial reasoning or determination" and "clerical errors [such as] mistranscribing or omitting an obviously needed word." Respondent is not a court clerk or a member of the judiciary but, rather, is a litigant who is bound to follow this Court's Appellate Court Rules.

revising his Final Brief to be identical to his Initial Brief with the exceptions of inserting citations to the Record, and correcting obvious typographical errors and misspellings.

Fundamental fairness requires that an appellant be able to reply to a respondent's brief with the assurance that the respondent cannot substantively revise his final brief, including the choice to include or omit words and phrases, after the opportunity to address issues in an initial rely brief has passed. Respondent characterizes the words included in his Initial Brief that he deleted from his Final Brief as "redundant, illogical in the context of the argument, or otherwise do not belong." He characterizes the words he has inserted into his Final Brief that were not included in his Initial Brief as "obviously needed words inadvertently omitted" from his Initial Brief. (Return p. 3). What Respondent apparently concedes is that, at best, he did not proof his Initial Brief carefully and, after reading Appellants' Initial Reply Brief and realizing his first effort would benefit by substantive corrections, attempted in his Final Brief to correct those errors and omissions. These changes go far beyond obvious typographical errors or misspellings. Respondent could have moved to amend his Initial Brief before Appellants filed their Initial Reply Brief in order to correct these substantive errors, which would have allowed Appellants the opportunity to respond to those amendments. That would have been the proper avenue to make these substantive corrections; however, Respondent failed to do so.

Mischaracterizing these substantive changes as "obvious typographical errors or misspellings" is neither within the letter nor the spirit of this Court's Appellate Court Rules and cannot be allowed. By way of example, in *Sloan Constr. Co. v. S.C. Bd. of Health & Env't Control*, 285 S.C. 523, 331 S.E.2d 345 (1985), the appellant filed an

initial brief and respondent filed its brief. Then, appellant filed a reply brief and a "revised version of the first brief which cured many of the defects pointed out" by the respondent in its brief. This, the Supreme Court held, "was improper," explaining that the appellate rules do not allow such a revision, and concluding that "[t]he prejudice created by such a brief is obvious, and it will not be considered." 285 S.C. at 526, 331 S.E.2d at 347. The substantive changes made by Respondent in his Final Brief puts Appellants in the same position as the respondent in *Sloan*. At least one and likely most of the substantive changes made by Abruzzo in his Final Brief are in direct response to criticisms contained in Appellants' Reply Brief—and were made at a time when Appellants have no opportunity to respond. As noted above, this is fundamentally unfair and prejudicial.[2]

Appellants submit the following brief responses to Respondent's specific arguments in support of his substantive changes:[3]

1. As Respondent acknowledges, the word "ostensibly" denotes a position is arguable or debatable such that its removal indicates a stronger statement of

[2] Respondent suggests that Appellants are required to demonstrate how his substantive changes cause them prejudice. (Return p. 7). First, there is no requirement in Rule 211 that a party objecting to substantive changes in a final brief, in clear violation of this Court's Appellate Court Rules, demonstrate that they have been prejudiced by those changes. Second, as Appellants stated above, allowing Respondent to change and correct his brief at the final briefing stage is fundamentally unfair because they have no opportunity to respond to his now revised arguments. As the Supreme Court noted, "[t]he prejudice created by such a brief is obvious ..." *Sloan*, 285 S.C. at 526, 331 S.E.2d at 347.

[3] As Respondent acknowledges, Appellants took no issue with his removal of one instance of the repeated term "simply" in the same sentence on page 24 of his Final Brief. Appellants are not attempting to "nit-pick" Respondents' Brief but, instead, insist that, in all fairness, both parties be required to comply with this Court's Appellate Court Rules.

position. Strengthening a statement in order to bolster one's position is hardly an "obvious typographical error or misspelling" but, instead, is a substantive change.

2. Respondent acknowledges that the addition of the words "through arbitration" is intended to both clarify and strengthen his argument; again, hardly an "obvious typographical error or misspelling" but, instead, a substantive change.

3. Respondent acknowledges that the insertion of the words "parents" and "subsidiaries" on page 45 of Respondent's Final Brief is a "correction" of "an unintentional error," not merely an "obvious typographical error or misspelling." Regardless of Respondent's reasons for adding these terms, they are substantive changes prohibited by Rule 211.

4. Astoundingly, Respondent's counsel denies that his second change on page 45 was in response to footnote 22 of the Reply Brief of Appellants, because he "does not recall even reading footnote 22 of Appellants Reply Brief," essentially asserting in his defense that he did not bother to read the Reply Brief of Appellants carefully. The fact that Respondent's Initial Brief, as written and filed with this court, may "create confusion" because of his failure to state precisely what he meant is attributable to no one but him.[4] Allowing Respondent to make this substantive correction in his Final Brief unfairly renders footnote 22 in the Reply Brief of Appellants meaningless and creates further confusion.

[4] Indeed, "[w]ords are an attorney's most valuable and effective tools, and must be wielded with skill and care." *May Ship Repair Contr. Corp. v. Barge Columbia N.Y.*, 160 F. Supp. 2d 594, 601 (S.D. N.Y. 2001).

In short, Respondent has utterly failed to demonstrate why he should be allowed to circumvent the Appellate Court Rules, which every other party to an appeal is required to follow.[5]

Despite Respondent's lengthy argument attempting to somehow convince this Court that his changes are not substantive but, in fact, are "obvious typographical errors and misspellings," his position is nothing less than an invitation to this Court to drastically expand the language of Rule 211, SCACR, and engage in mediating whether a change is substantive and prejudicial or merely an inadvertent omission or error. Where, as is the case here, the applicable Appellate Court Rule is clear and unambiguous, there is no need or reason for this Court to embark down such a slippery slope that inevitably will consume judicial resources as well as unnecessarily extend the briefing process. Instead, parties should be cautioned to carefully make their case in their initial briefs and to comply with this Court's Appellate Court Rules. Respondent has provided no explanation or justification of why he should not be compelled to conform his Final Brief to Rule 211, SCACR. Respondent's substantive changes, which go far beyond obvious typographical errors or misspellings, are in direct violation of Rule 211, SCACR, and cannot stand.

[5] Contrary to Respondent's unfounded assertion otherwise, this Court routinely requires parties who attempt to make substantive changes to their final briefs to revise them to conform to Rule 211, SCACR. However, unless the violations rise to the level of warranting dismissal of an appeal, those procedural orders are rarely, if ever, published.

CONCLUSION

For the above-stated reasons, this Court either should strike the Final Brief of Respondent, dated March 1, 2021 or order Respondent to amend his Final Brief to comply with Rule 211, SCACR.

McANGUS GOUDELOCK & COURIE, L.L.C.

March 19, 2021

By:_____

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PROOF OF SERVICE

I certify that I have served Appellants' **Reply to Respondent's Return in Opposition to Motion to Strike or Amend Final Brief of Respondent** on Joseph Abruzzo, by emailing a copy of it to his attorney of record, as follows:

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March 19, 2021

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March 19, 2021

Via S.C. Courts E-Filing
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095

Dear Ms. Kitchings:

Enclosed please find Appellants' Reply to Respondent's Return in Opposition to Motion to Strike or Amend Final Brief of Respondent, along with the Proof of Service in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email)