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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc., Respondent,

v.

William McFarland, Appellant.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO (1) STRIKE CERTAIN MATTER FROM RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, (2) REQUIRE RESPONDENT TO AMEND HIS INITIAL BRIEF TO OMIT REFERENCE TO SUCH MATTER, AND (3) EXTEND OR OTHERWISE HOLD IN ABEYANCE THE TIME FOR APPELLANT'S INITIAL REPLY BRIEF UNTIL RESPONDENT SERVES SUCH AN AMENDED INITIAL BRIEF

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Appellant, William McFarland, by and through his undersigned counsel, submits this reply to Respondent's return to the subject motion.

1. In the first section of his return, i.e., his "Objection to the Motion for a Further (Third) Extension,"[1] Respondent calls the subject motion a "request for a third extension [of time to file/serve Appellant's initial reply brief] under the guise of a motion to strike his designations[,] amount[ing] to yet another unnecessarily [sic] delay in this appeal," adding, "[a]s the Court's record will reflect, in addition to the numerous extensions requested by [Appellant] for his reply, [Appellant] previously filed six motions for extension of time to file and serve his initial brief and designations." (Return p. 2.)[2]

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[1] (Return pp. 1–2 (original italics and bold print omitted).)

[2] In a footnote, Respondent states as follows:

> In his Motion to Strike, Appellant states, "It was not until the undersigned counsel for Appellant began preparing Appellant's initial reply brief that he discovered [the "Disputed Matter"]." Mtn. Strike ¶ 4, April 1, 2021. Since this Motion was not filed prior to April 1st, Respondent can only conclude that Appellant had not reviewed Respondent's initial brief and designations until the eve of Appellant's reply deadline. Such a delay is not an "extraordinary circumstance" which might justify a further extension.

(Return p. 2 n.1.) As for Respondent's "conclu[sion] that Appellant had not reviewed Respondent's initial brief and designations until the eve of Appellant's reply deadline," this is correct. But Respondent's argument about this not constituting an "extraordinary circumstance" is beside the point. Putting aside the fact that, in the undersigned's experience at least, it is certainly out of the ordinary

This is not an "argument" against the subject motion but rather an "accusation" that Appellant's counsel does not have a good faith legal basis for moving to strike the Disputed Matter and only complains about it in an underhanded attempt to obtain an extension of time to prepare Appellant's initial reply brief. Of course, the undersigned categorically denies the charge, which, it should be noted, is founded on absolutely nothing more than the mere fact of his prior extension requests[3] and Respondent's eagerness to assume the very worst about his intentions. Indeed, the charge is illogical on its own terms. Clearly, the undersigned knows how to ask for an extension when more time is all he needs, and with sincere gratitude to the Court and opposing counsel, heretofore all those requests have been granted without objection. Why on Earth would he file a frivolous motion to strike the Disputed Matter when all he needed to do was file a motion asking for a very modest

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for there to be any dispute about designations of matter/the content of the record on appeal (indeed, as he prepares this reply, the undersigned cannot bring to mind any prior appeal in which he faced a situation like this), the question raised by the subject motion is not whether an "extraordinary circumstance" exists but whether Respondent's designation of matter includes matter (and, in turn, his brief includes references to matter) that is not properly a part of this appeal.

[3] In this regard, the undersigned submits that it is unfair for Respondent, while complaining of unnecessary delay, to point to the mere number of extension *requests* without mentioning how much extra time (in terms of days) was actually associated with them. By order filed November 13, 2020, the Court granted Appellant's second motion for an extension of time to file/serve Appellant's initial brief, extending the deadline to December 14, 2020. The net effect of all of Appellant's other extension requests was for the Initial Brief of Appellant to be filed/served 16 days later, on December 30, 2020.

extension of time? He would not, of course—not under any circumstance, but it is even more absurd to suggest that he would do so here to gain more time for an *optional* reply brief.[4]

Last but certainly not least, Respondent puts the cart before the horse. For some reason, Respondent chose to lead off his return with the charge that the undersigned has filed a frivolous motion without actually addressing the *merits* of the motion he accuses of being frivolous. When it comes to frivolousness, the proof is in the pudding. Far beyond simply denying the unwarranted charge against him, the undersigned submits it is self-evident from the substance of the subject motion that it is not frivolous but rather founded on a good faith legal basis.

2. It is not until the second section of his return, i.e., his "Objection to the Motion to Strike Designations,"[5] that Respondent actually addresses Appellant's argument on the merits.

As explained in the subject motion, *all* of the Disputed Matter *post-dates* the filing of the Last Order Appealed on August 28, 2020, and, for that matter, the appeal of that order on September 14, 2020, and was not even in existence, much less presented to the Master, at the time of any of the proceedings that resulted in any of

[4] The undersigned can assure the Court that he would sooner file no reply brief at all than file a frivolous motion to strike the Disputed Matters.

[5] (Return pp. 1–2 (original italics and bold print omitted).)

the Appealed Orders, and thus, having played no role in the issuance of the Appealed Orders, the Disputed Matter has no relevance to this appeal of those orders.

Respondent does not actually deny that all of the Disputed Matter post-dates the filing of the Last Order Appealed on August 28, 2020, and, for that matter, the appeal of that order on September 14, 2020, and was not even in existence, much less presented to the Master, at the time of any of the proceedings that resulted in any of the Appealed Orders. Yet, Respondent interprets the Appellate Court Rules to mean that the Disputed Matter still counts as being "presented to" the Master and "relevant to" this appeal even so—"even if," as he acknowledges, "they arguably may not be controlling on the precise legal issues presented on appeal, at least they 'throw light' on upon [sic] the questions involved in the appeal regarding Appellant's stubborn, protracted actions in wrongfully refusing to relinquish control of the HOA management and business records." (Return p. 4.)

Appellant submits that this language (that the Disputed Matter "arguably may not be controlling on the precise legal issues presented on appeal . . .") is as close to Respondent conceding his point as he could ever hope to get. Is Respondent not acknowledging here that the Disputed Matter had nothing to do with the Master's decision making with respect to the issuance of the Appealed Orders but that he (Respondent) nonetheless hopes to use it to Appellant's disadvantage by "thow[ing]

light" on Appellant's alleged "stubborn, protracted actions . . ." *after* the Appealed Orders were already on appeal?

As explained in the subject motion, Appellant does not believe Respondent's interpretation of the Appellate Court Rules is correct and believes the Court should (1) strike the Disputed Matter from Respondent's designation of matter to be included in the record on appeal, (2) require Respondent to amend his initial brief to omit reference to/discussion of such matter, and (3) extend or otherwise hold in abeyance the time for Appellant's initial reply brief until Respondent serves such an amended initial brief. But at a bare minimum, Appellant submits that there is at the least a genuine and good faith question about whether the Designated Matter should be included in the record on appeal/discussed in the parties' briefs, such that, even assuming, *arguendo*, the Designated Matter is properly included in the record on appeal/discussed in the parties' briefs, it is prudent for this question to be resolved now, in advance of the submission of Appellant's initial reply brief.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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