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Jun 24 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2020-001506

Tamika E. Howard,

Appellant.

v.

South Carolina Department of Employment
and Workforce, and United Cerebral Palsy
of South Carolina,

Respondents,

MOTION TO STRIKE AMENDED RECORD and DISMISS APPEAL

Respondent South Carolina Department of Employment and Workforce (Department), respectfully moves to strike Appellant Tamika E. Howard's (Appellant) Amended Record on Appeal and to dismiss Appellant's appeal due to her failure to comply with this Court's June 7, 2021, Order and the South Carolina Appellate Court Rules (SCACR) governing this appeal. The Department also requests this Court stay the time for filing its final brief pending the Court's ruling on this motion.

THE COURT SHOULD STRIKE APPELLANT'S AMENDED RECORD ON APPEAL (ROA) AND DISMISS THIS APPEAL BECAUSE APPELLANT DISREGARDED THIS COURT'S JUNE 7, 2021 ORDER BY FILING AN AMENDED ROA THAT IS INCOMPLETE AND DOES NOT CONTAIN THE ITEMS IN RESPONDENT'S DESIGNATION OF MATTER.

By Order issued June 7, 2021, this Court granted the Department's motion to strike Appellant's Record on Appeal. The Court ordered Appellant to file and serve an amended record which "shall not include the documents contained on pages 1 through 8

of the stricken record on appeal. **Further, the amended record on appeal must include all items listed in Respondent's designation of matter.**" (Emphasis added.) The Order specifically advised Appellant that "[f]ailure to comply with this order may result in the dismissal of this appeal." (*Exhibit A*).

On June 8, 2021, Appellant filed and served via email an "Amended Record on Appeal" that does not comply with this Court's June 7, 2021, Order. Appellant's amended record on appeal is again incomplete because it does not contain the materials listed in Respondent's designation of matter, which was explicitly ordered by this Court, and required by the SCACR governing this appeal.

Pursuant to Rule 210 (c), SCACR, Appellant is required to include in the Record on Appeal all matter designated in the Respondent's Designation of Matter. Appellant's "Certificate of Counsel" filed with her Amended Record on Appeal attests that "The undersigned hereby certifies that the Record on Appeal **contains all material proposed to be included by any of the parties and not any other material.**" This attestation is simply untrue. Respondent's Designation of Matter includes 5 items:

1. Order of Administrative Law Court dated November 5, 2020, affirming the decision of the Department's Appellate Panel.
2. Record on Appeal to ALC dated September 17, 2020 (No. 20-ALJ-22-0216-AP).
3. Brief of Appellant to ALC dated September 29, 2020.
4. Brief of Respondent Department to ALC dated October 19, 2020.
5. Reply Brief of Appellant to ALC dated October 23, 2020.

The Amended Record on Appeal that Appellant submitted contains Items 1 and 5 of Respondent's Designation of Matter, but both of these items were specific items already listed in Appellant's Designation of Matter. However, the Amended Record on Appeal does not contain Items 2, 3, and 4 of Respondent's Designation of Matter. Respondent designated these items, they are relevant to this appeal, and should be

included in the Record, as required by Rule 210(c), SCACR. Most notably, Item 2 is the Record on Appeal filed with the Administrative Law Court (ALC), which is the record of proceedings utilized for appellate review of this appeal by the ALC and now properly by this Court for review. Further, Respondent is unable to finalize its brief to this Court without a complete Record on Appeal that contains Item 2 of Respondent's Designation of Matter in order for Respondent to replace the citations in its initial brief to the Record on Appeal to this Court. Items 3 and 4 are the briefs filed by both parties to the ALC and are relevant to the appeal.

Accordingly, Respondent objects to, and moves to strike, Appellant's "Amended Record on Appeal" because Appellant failed to include Items 2, 3, and 4, of Respondent's Designation of Matter in the Record on Appeal, in violation of this Court's June 7, 2021, Order and Rule 210(c), SCACR. The "Amended Record on Appeal" is incomplete and inadequate for review, and Respondent cannot prepare its final brief.

Appellant filed an appeal to this Court, seeking reversal of the ALC Order and the Department's final decision. By virtue of her request for judicial review in this matter, Appellant has the burden of providing an adequate record on appeal. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (2012). Appellant has an obligation to advance her appeal in accordance with the statutory and procedural requirements of the Court. While Appellant has chosen to represent herself and may not be well versed in the rules of appellate procedure, she is not relieved of the duty to provide a proper Record on Appeal that complies with this court's orders and rules. *See State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). ("A pro se litigant who knowingly elects to represent

himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

This Court has graciously granted Appellant leniency with ample notice and opportunities to correct her deficiencies in this appeal to comply with fundamental appellate rules governing this matter, but Appellant is either unable or unwilling to do so. Appellant directly violated this Court’s June 7, 2021 Order, which specifically ordered Appellant to serve and file an amended record on appeal which “must include all items listed in Respondents’ designation of matter”. In its Order, this Court explicitly advised Appellant that “Failure to comply with this order may result in the dismissal of this appeal”. Accordingly, the Department moves to strike Appellant’s “Amended Record on Appeal” and to dismiss this appeal.

CONCLUSION

For the foregoing reasons, the Department respectfully moves that its motion be granted. Further, the Department requests all time limits and deadlines be held in abeyance pending the resolution of this motion.

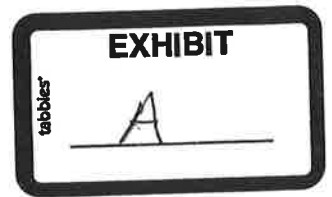
Respectfully submitted,



Sandra Grooms (S.C. Bar # 640)
S.C. Department of Employment and Workforce
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***Attorney for Respondent
S.C. Department of Employment and Workforce***

June 24, 2021.



The South Carolina Court of Appeals

Tamika E. Howard, Appellant,

v.

South Carolina Department of Employment and Workforce and United Cerebral Palsy of South Carolina, Respondents.

Appellate Case No. 2020-001506

ORDER

Respondents' motion to strike the record on appeal is granted. Within twenty days of this order Appellant shall serve and file an amended record on appeal. The amended record shall not include the documents contained on pages 1 through 8 of the stricken record on appeal. Further, the amended record on appeal must include all items listed in Respondents' designation of matter. Failure to comply with this order may result in the dismissal of this appeal.

FOR THE COURT

Columbia, South Carolina

FILED
Jun 07 2021

cc:

Tamika E. Howard
Sandra Bell Grooms, Esquire
United Cerebral Palsy of South Carolina

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE
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Tamika E. Howard,

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South Carolina Department of Employment and
Workforce and United Cerebral Palsy of South
Carolina,

Respondents.


PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Strike Amended Record and Dismiss Appeal on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on June 24, 2021, addressed to the parties at their addresses of record:

Tamika E. Howard
343 Wycombe Rd
Columbia SC 29212
Tamikah123456@gmail.com

United Cerebral Palsy of SC
PO Box 182366
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June 24, 2021



Kristi Chesley
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SC Court of Appeals

VIA EMAIL AND US MAIL

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

RE: Tamika Howard v. South Carolina Department of Employment and
Workforce and United Cerebral Palsy of South Carolina
Appellate Case No: 2020-001506

Dear Ms. Kitchings:

Enclosed is the Motion to Strike and Dismiss of the Respondent SC Department of Employment and Workforce, in the above referenced case. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for Respondent South Carolina
Department of Employment and Workforce