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**Jul 15 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
First Judicial Circuit

Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2019-001065  
Dorchester County Case Nos. 2019-CP-18-0677 and 2017-CP-18-1816

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In Re: The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal Representative in the Last  
Will of Doris Duane Colucci .....Appellant,

v.

Andrew W. Chandler, Esquire, in his capacity as Special  
Administrator of the Estate of Doris Duane Colucci,  
Michael C. Fox, Successor Trustee of the Colucci Living Trust,  
Dated February 24, 2005, Michael Frederick Antonio Colucci, John Martin Antonio,  
Henry Burkes, and Richard M. Hyman, Jr., Esquire ..... Respondents.

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**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO SUPPLEMENT RECORD**

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Appellant has filed a Motion seeking to supplement the record with certain emails between Respondent and the Dorchester County Probate Court. Appellant's Motion must be denied because: 1) the emails were not presented to the lower court (which, in this appeal, is the Dorchester County Circuit Court); and 2) the emails are not relevant to the appeal.

This appeal concerns two separate orders of the circuit court, both entered on May 28, 2019. (See Appellant's Notice of Appeal and orders attached thereto). The first is the circuit court's order denying Appellant's Petition for Appointment and finding that Appellant Fox was not qualified to serve as personal representative of the Estate of Doris Duane Colucci (the "Estate"). (R. pp. 82-83)

The second order on appeal is the circuit court's order, issued on May 28, 2019, in its appellate capacity, denying Appellant's Emergency Petition for Writ of Supersedeas on the basis that it was procedurally deficient. (R. p. 88) In this order, the circuit court also indicated that it was dismissing Appellant's appeals of nine probate court orders, apparently on the basis that they were not final orders and/or not appealable at that point in time. (R. p. 88)

Rule 210(c), SCACR, mandates that the record on appeal shall not include matter which was not presented to the lower court. The emails Appellant seeks to supplement the record with were not presented to the circuit court. See Norris v. Ferre, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (denying motion to supplement record on appeal with documents not presented to the lower court). As stated by Appellant in his Motion, he did not come into possession of these emails until June 4, 2021, more than two years after the orders on appeal were entered by the circuit court.

Additionally, Rule 209(b), SCACR, prohibits a party from designating any matter for the record on appeal that is not relevant to the appeal. At issue on appeal is whether the circuit court

erred in: 1) denying Appellant's Petition for Appointment (as personal representative of the Estate); and 2) dismissing Appellant's Emergency Petition for Writ of Supersedeas and his appeals of various probate court orders. The emails Appellant seeks to add to the record are not relevant to either of these issues.

In his Motion, Appellant contends that the emails "undermine the legitimacy of the Probate Court Orders under appeal". However, no probate court order is on appeal.<sup>1</sup> Appellant did appeal certain probate court orders to the circuit court. It is, at most, the propriety of the circuit court's dismissal of those appeals that is on appeal.

Appellant further argues that the emails "show a likely prejudice towards [Appellant] or [Appellant's counsel]." Even if that were the case, the emails remain irrelevant to this appeal and to the determination of whether the circuit court erred. The emails are between the probate court judges and Respondent, not between the circuit court and Respondent.

Notably, Appellant previously sought to designate for inclusion in the record a "Motion for Disclosure of all *Ex Parte* Communications and for Recusal and/or Disqualification of the Honorable Mary Blunt and All Affiliated Persons", which was filed by Respondent John Antonio in the Dorchester County Probate Court on January 24, 2020. By Order filed March 13, 2020, this Court granted Respondent's Motion to Strike, directing that the Motion for Disclosure/Recusal "shall not be included in the record on appeal." Appellant is now attempting once again to interject issues relevant to the Motion for Disclosure/Recusal and essentially, his and other parties' displeasure with the probate court's actions, into this appeal which concerns only the decisions of the circuit court.

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<sup>1</sup> Absent an exception not applicable here, appeals from probate court must be to the circuit court. See S.C. Code Ann. § 62-1-308.

As the Supreme Court stated in Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992), the 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 and facilitates appellate review.” Because the material Appellant seeks to add to the record was not presented to the lower court as required by Rule 210(c) and is not relevant to the issues on appeal as required by Rule 209(b), Appellant’s Motion must be denied.

Respectfully submitted,

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**PROOF OF SERVICE**

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I do hereby certify that on July 15, 2021, I have served all counsel in this action with a  
copy of the documents herein below specified via email:

Documents:           **Respondent Andrew Chandler's Return to Appellant's Motion to  
Supplement Record**

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