

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Aug 19 2021**

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Thomas A. Russo, Circuit Judge

Appellate Case No. 2020-000056

Sterling Hills Homeowners Association,.....Respondent,

v.

Elliot Hayes,.....Appellant.

MOTION TO STRIKE MATTER FROM RESPONDENT’S DESIGNATION OF  
MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant hereby moves pursuant to Rules 209 and 210, SCACR, for an order striking certain matter from Respondent’s designation of matter to be included in the record on appeal. The grounds for this motion are as follows:

1. The Respondent designated matter for inclusion in the record on appeal, listed as Items 24 through 30 on its designation, that was never presented to the lower court.
2. The purpose of an appeal is for the appellate court “to review the judgment of the circuit court for reversible error based on the issues and evidence presented to that court.” Sanders v. Salley, 283 S.C. 458, 460, 322 S.E.2d 829, 830 (Ct. App. 1984). The Court of Appeals does not “sit as a trial court to receive evidence on disputed issues of fact[.]” Id. “[A]ppellate review should be limited to the record in the trial court.” Id. at 461.

3. Rule 210(c), SCACR, prohibits the inclusion in the record on appeal of “matter which was not presented to the lower court or tribunal.” Accord State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007); Sanders, 283 S.C. at 460; see Cobb v. Benjamin, 325 S.C. 573, 581 n. 2, 482 S.E.2d 589, 593 n. 2 (Ct. App. 1997).
4. Rule 209(b), SCACR, provides that a designation of matter for inclusion in the record on appeal “may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the record on appeal.”
5. Items 24 through 30 are not properly designated for inclusion in the record on appeal and should be stricken from Respondent’s designation.

WHEREFORE Appellant prays for an order striking Items 24 through 30 from Respondent’s designation of matter to be included in the record on appeal.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I served the foregoing motion to strike in this case by providing a copy of it by email to opposing counsel at the email address shown below and on the date shown below:

Christian Saville, Esq.  
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Respectfully submitted,

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