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Oct 05 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr.

Appellate Case No. 2021-000301

Charles Waymon Murphy,.....Appellant,

v.

Lori Ann Niverson; Starr Distributing, LLC.....Defendants,

Of which Starr Distributing, LLC, is the.....Respondent,

AND

Starr Distributing, LLC.....Third-Party Plaintiff,

v.

Arthur C. Niverson.....Respondent.

APPELLANT’S REPLY TO RESPONDENT ARTHUR C. NIVERSON’S RETURN TO THE
MOTION TO STRIKE AND TO STAY DEADLINES UNTIL THE COURT RULES ON THE
MOTION

Appellant Charles Waymon Murphy submits this brief reply to Respondent Arthur C. Niverson’s return to the motion to strike.

Respondent admits it did not file with the lower court the exhibits it designated for the record on appeal. (Return p. 2). It asserts the evidence “*relates to* a matter presented to the lower court.” *Id.* However, Rule 210(c), SCACR, permits only matter actually “presented to the lower

court or tribunal” to be included in the record on appeal. It does not permit something that *relates to* matter presented to the lower court.

Respondent Niverson mistakenly relies upon *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), to support his argument. *I’On* involved raising *issues* in an appellate court; it did not involve designating *evidence* that was not presented to the lower court. Further, *I’On* even says that “[t]he basis for respondent’s additional sustaining grounds *must appear* in the record on appeal.” *Id.* at 420, 526 S.E.2d at 723 (emphasis added). Respondent Niverson does not raise any additional sustaining grounds in his brief¹ and, regardless, he admits that the documents he seeks to designate were not presented to the lower court. Based on the plain language of Rule 210, the documents cannot be part of the record on appeal. Any other ruling is manifestly unfair to an appellant who raises issues and prepares a brief based on the evidence and documents *actually presented* to the lower court.

Appellant requests the Court grant the motion to strike.

Respectfully submitted,

October 5, 2021

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¹ Significantly, Respondent Starr Distributing, which did raise additional sustaining grounds, did not designate the documents at issue.

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Arthur C. Niverson,Respondent.

PROOF OF SERVICE

The undersigned certifies that, on October 5, 2021, a copy of Appellant’s Reply to Respondent Arthur C. Niverson’s Return to the Motion to Strike has been served upon counsel of record for the Respondents via electronic mail using the email addresses listed in the Attorney Information System as set forth below:

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