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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2021-000641

Stonington Community Association, Inc. Respondent,

v.

Carl D. Taylor, Jonathan Stevens, Veronica Stevens, Lena M. Bretous, Vickie M. Wise, Gerald Maynard, Lisa Maynard, Reginald Dalton, Donna Dalton, Thomas Lafayette Brown a/k/a Thomas L. Brown, Sharline Brown, Derrick L. Taylor, Gaye S. Taylor, Syrecea Parker, Carolyn L. Austin, Richea G. House, Sr., Gayle D. House, Larkin Hancock, Jr., Katrina Hancock, Jeffery M. Farmer, Kelly S. Farmer, Anthony T. Reddish, Diann Reddish, Joel H. Daley, Syreta L. Daley, Judy Dove, Henry Faison, Dorothy Brisbon, George L. Lawrence, Annette M. Lawrence, Devinci L. Fulton, and John A Francis, Defendants, of whom Carl D. Taylor, Lena M. Bretous, Vickie M. Wise, Gerald Maynard, Lisa Maynard, Derrick L. Taylor, Gaye S. Taylor, Syrecea Parker, Richea G. House, Sr., Gayle D. House, Devinci L. Fulton, and John A. Francis are the Appellants.

RESPONDENT'S MOTION TO STRIKE MATTERS FROM APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL AND MOTION FOR EXTENSION OF TIME

Pursuant to Rules 209 and 210, SCACR, Respondent respectfully moves this Honorable Court for an order striking certain matters from Appellants' Designation of Matter to be Included in the Record on Appeal (hereinafter, "Designation") and all references to them stricken from Appellants' brief for the following reasons:

1. Appellants' designated matter for inclusion in the record on appeal, listed as Items 14, 15, 19, and 20, on its Designation, that were not properly presented to the trial 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 14 and 15 in Appellants' Designation include a Motion to Alter or Amend, Pursuant to Rule 59(e), SCRCP, and exhibit thereto (hereinafter "Motion") which were filed with the trial court by Appellants on *June 7, 2021*.
6. Appellants filed their Notice of Appeal on *June 15, 2021*, appealing an order from the Richland County Court of Common Pleas dated *May 28, 2021*,

prematurely divesting the trial court of jurisdiction to consider or rule on the pending June 7, 2021 Motion or allowing Respondents to file a response.

7. Items 19 and 20 are Orders from the trial court, filed *July 6 & 7, 2021*, respectively, in response to the Motion, both of which Appellants concede the trial court lacked jurisdiction to issue. (Initial Br. of Appellants, p.12, n.4).
8. Appellants' reference and rely on Items 14 & 15 in their Initial Brief. However, because Appellants prematurely divested the trial court of its jurisdiction to consider and rule on the Motion and Respondents of its opportunity to rebut allegations in the Motion with evidence for trial court's consideration, it would be inequitable to allow Appellants to rely on the Motion in this appeal. Furthermore, the Motion had no bearing on the trial court's order of May 28, 2021, which Appellants have decided to appeal.
9. Items 14, 15, 19 and 20 in Appellants' Designation are not properly designated for inclusion in the record on appeal and should be stricken from Appellants' designation and all references to them stricken from Appellants' brief.

In addition to the foregoing and pursuant to Rule 263(b), SCACR, Respondent requests an extension of time to file Respondent's Initial Brief. This request is made due to the herein motion to strike, the workloads of Respondent's counsel and the number and complexity of issues raised in this appeal. The deadline to file the Initial Brief of Respondent is currently January 4, 2021. With a thirty-day extension, the Initial Brief of Respondent would be due February 3, 2022. This is Respondent's second request for an extension.

WHEREFORE Respondent prays for an order striking items 14, 15, 19, and 20 from Appellants' designation of matter to be included in the record on appeal and for all references

made to these items to be stricken from Appellants' brief. Respondent also prays for a extension of time to file Respondent's Initial Brief until after the motion to strike is ruled upon or, in the alternative, until February 3, 2021.

Respectfully submitted,

s/ Valerie Garcia Giovanoli

Valerie Garcia Giovanoli (SC Bar No. 102524)

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December 30, 2021
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Licensed in South Carolina
Licensed in Florida

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January 4, 2022

JAN 06 2022

SC Court of Appeals

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

Re: Stonington Community Association, Inc. v. Carl D. Taylor, *et al.*
Appellate Case No. 2021-000641
Trial Court Case No.: 2018-CP-40-06557
MTB File No.: 013158.00084

Dear Ms. Kitchings:

Enclosed, please find Respondent's Motion to Strike Matters from Appellants' Designation of Matter to be included in Record on Appeal and Motion for Extension of Time electronically filed on December 30, 2021. Also enclosed is my firm's check in the amount of \$50.00 for requisite filing fee.

Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

Valerie Garcia Giovanoli

VGG/bdp
Enclosures

cc: Jonathan D. Waller, Esq.
Brent M. Boyd, Esq.
Respondent



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The Honorable Jenny Abbott Kitchings
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