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Apr 05 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Administrative Law Judge

Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr, Appellant,

v.

South Carolina Department of Employment
and Workforce & JDC Management, LLC, Respondents.

Motion to Strike Record on Appeal

Respondents JDC Management, LLC and the South Carolina Department of Employment and Workforce move this Court to strike the record on appeal filed by Appellant because the record contains multiple fatal defects. Specifically, Appellant's record (1) omits many documents designated by Respondents, (2) contains documents not presented to the ALC, and (3) contains documents reduced in size and that are difficult to read. Due to the seriousness of the defects with the Record on Appeal, Respondents move this Court to strike the Record and require Appellant to file and serve a record on appeal curing these defects and in compliance with the Court's rules, rather than order Appellant to file a supplemental record on appeal. Also, Respondents request the Court hold all timelines in abeyance pending the Court's ruling on this motion.

When a party serves its initial brief, the party must also serve a designation of matter under Rule 209, SCACR, which sets forth the documents and materials the party would like included in the record on appeal. Pursuant to Rule 210(c), SCACR, the record on appeal "shall include all matter designated to be included by any party under Rule 209." "The [r]ecord shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c).

Here, Appellant's record on appeal contains significant defects. First, the record omits many documents, in part or in whole, designated by Respondents. Respondents filed and served their designation of matter on February 28, 2022, and designated eighteen items. However, Appellant's record on appeal includes only four of the eighteen items designated by Respondents. The record includes items four, seven, eight, and ten from Respondents' designation of matter, and it omits the remaining fourteen items.

These omissions violate Rule 210(c), and Respondents request the Court strike Appellant's record on appeal and require Appellant to file a new record on appeal including all documents designated by Respondents. *See* Rule 210(c) (explaining the record on appeal "shall include all matter designated to be included by any party under Rule 209" and noting when a portion of a decision is to be included in the record, the entire decision "shall" be included in the record).

Second, Appellant's record on appeal contains multiple documents that neither party presented to the ALC. For example, pages twenty-five through thirty-one in the record appear to be text messages, pictures, and other documents relating to Appellant's personal circumstances. These documents were not presented to the ALC for review.

If these documents were somehow relevant to Appellant's proceedings before the ALC, she could have presented them to the ALC. However, because Appellant failed to present these documents to the ALC, Appellant erred by including them in the record on appeal. *See* Rule 210(c)

(noting the record on appeal "shall include all matter designated to be included by any party under Rule 209" and "[t]he [r]ecord shall not, however, include matter which was not presented to the lower court or tribunal."). Additionally, pages twenty-three through twenty-four in the record appear to be portions of an untimely brief proffered by Appellant as part of a Motion for Extension filed with the ALC. However, the remainder of the Motion, the related filings, and the ALC Order (which were designated by Respondents) have been omitted from the Record on Appeal. Thus, Respondents request the Court strike Appellant's record on appeal and order her to file a record that complies with Rule 210 and includes only documents and matter within the parties' designations of matter that were presented to the lower court.

Finally, Appellant erred by reducing the size of many documents in the record so that multiple pages would fit on each page of the record. Rule 267(c), SCACR requires all documents filed with this Court to be twelve-point font or larger, and photographic reduction is not acceptable if it reduces the size of the font or renders the document unreadable. *See Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992) ("Counsel is advised that the South Carolina 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."). Here, many pages within the record contain between two and four small pages of documents, rendering the documents difficult to read.¹ Therefore, Respondents request this Court strike Appellant's record on appeal and file a new record in compliance with the Court's rules.

Based on the foregoing, Respondents move this Court to strike the record on appeal filed by Appellant because the record contains multiple fatal defects. Specifically, Appellant's record

¹ Even some of the documents in the record that Respondents designated for inclusion are difficult to read. For example, Respondents designated pages thirty-four through thirty-six in the record, but they are difficult to read.

(1) fails to contain many documents designated by Respondents, (2) contains documents not presented to the ALC, and (3) contains documents reduced in size and that are difficult to read. Due to the number of defects and the seriousness of some of them, Respondents move this Court to strike the record and require Appellant to file a record on appeal remedying these defects and in compliance with the Court's rules, rather than order Appellant to file a supplemental record on appeal. Also, Respondents request the Court hold all timelines in abeyance pending the Court's ruling on this motion.

Respectfully Submitted,

s/ Steven Jordan, Jr.
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PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Strike Record on Appeal on the parties in this case by mail and by email, on April 5, 2022, addressed to the parties at their addresses of record:

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April 5, 2022

s/ Kristi Chesley
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