

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 27 2022
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2021-000804

Johnnie Cordero Appellant

v.

Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party; The Richland County Democratic Party;
Trav Robertson, Jr., in his official capacity as
Chair of The South Carolina Democratic
Party; The South Carolina Democratic Party, Respondents.

**APPELLANT'S REPLY IN OPPOSITION TO RESPONDENTS'
JOINT MOTION TO CORRECT RECORD ON APPEAL
AND FOR EXTENSION OF TIME**

Appellant, acting on his own behalf, herewith files his Reply in Opposition to Respondents' Joint Motion to Correct Record on Appeal received on May 21, 2022.

**Appellants' Record on Appeal
Complies with Rule 210 SCACR**

First, Respondents assert, erroneously, that "Appellant did not include item number eight in Respondents' Designation of Matter, the Remand Order dated September 30, 2020" (p.2, para, 1).

The reason that the requested document is not listed is because no such document exists. There is no Remand Order dated September 30, 2020, the Order to which Respondents refer is dated September 25, 2020, and is contained in the Record on Appeal at page 108, and is listed in the Index #8 as *Order Adopting Report and Recommendation, September 25, 2020*. This is the only Remand Order issued by the Hon. Joseph F. Anderson, Jr. in the Federal action. The Order is dated September 25, 2020.

A cursory review of the Order will reveal that it is the same Order that Respondents submitted as Exhibit A in this Motion arguing that “. . . Appellant did not include item number eight in Respondents’ Designation of Matter, the Remand Order dated September 30, 2020.” (Motion p. 2, para. 1). Again, *there is no Remand Order dated September 30, 2020*.

Counsel for Respondents are well aware that there is no Remand Order dated September 30, 2020. This has been a bone of contention throughout these proceedings. Yet they continue to raise this issue.

As this court is aware Rule 11 requires that the signature of an attorney “. . . constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.”

Under this Rule, an attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. See Link v. School Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990). The attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause

unnecessary delay) whether or not there is good ground to support it. See Johnson v. Dailey, 318 S.C. 318, 457 S.E.2d 613 (1995). *Burns v. Universal Health Services Inc.*, 340 S.C. 509, 513 (S.C. Ct. App. 2000)

It is difficult to understand how counsel could have read the pleading, motion or paper and not realize that the Order to which they refer is contained in the Record on Appeal albeit under its accurate date. Even if they continue in good faith to maintain that the date of Remand Order is September 30, 2020, even a cursory glance at Item 8 would have revealed that the document that they designated to appear in the Record on Appeal was actually there.

**Everything in Record on Appeal
is Permitted by the Rule**

Respondents' also assert that somehow some items included in the Record on Appeal are not permitted. The rule provides that the record shall include all matter designated to be included by any party under Rule 209 The Record shall not, however, include matter which was not presented to the lower court or tribunal."

But it is also true that the "the appellant bears the burden of providing a record on appeal sufficient for intelligent review and from which an appellate court can determine whether the trial court erred." *Schultze v. Schultze*, 403 S.C. 1, 8 (S.C. Ct. App. 2013).

It is Appellant's contention that the rule has been complied with since he has designated the items objected to. It is Appellant's burden to see that the record on appeal is sufficient for intelligent review. There is no rule that requires any parties approval of the matters contained in the Record on Appeal.

The items to which Respondents object are numbered 4, 18, 19, 21 and 22. I will address each seriatim. Documents 4, 18 and 19 are documents submitted to the lower

court and are part of the lower court record. Surely Respondents are not objecting to inclusion of documents reviewed by the lower court in making the decision appealed from here.

Item 21, documents Appellant's constructive notice argument raised in Appellant's Initial Brief (Amended). The court will take notice that the Respondents' filed a Motion to Strike which motion included an objection to Appellant's constructive notice argument. This court denied the motion which implies the law of the case doctrine on this issue.

Finally, Item 22 is the Appellant's Reply to the Respondents' Initial Brief. Appellant included this document out of an abundance of caution. Appellant contends Respondents' Initial Brief and Appellant's Reply should be considered as one. Both are part of the appellate record. Moreover, all of the issues contained in the Reply Brief were raised in Appellant's Initial Brief.

It is now settled law that an Appellant may address an issue in his reply brief if it was raised in his Initial Brief. See *Glasscock*, 348 S.C. at 81, 557 S.E.2d at 692 ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.") *Hughes v. Bank of* Appellant raised this issue in his Initial Brief (Amended). *f. Am.*, No. 2021-UP-354, at *10 (S.C. Ct. App. Oct. 13, 2021).

If Appellant's Reply Brief is in the record and available to the court for review without appearing in the Record on Appeal it is at best redundant and harmless - it can simply be ignored by Respondents thereby not requiring an Amended Record on Appeal. In any event, the Appellant, of course, will comply with any directive from the court.

Respondents' Motion for Extension of Time

Appellant opposes the Motion for Extension of Time because it is nothing more than an attempt to interpose yet another delay in these proceedings and to increase billables. Appellant notes that this matter for declaratory and injunctive relief was filed on April 16, 2020. In more than two years this matter remains unresolved. Respondents continue to do everything they can to delay these proceedings. They now request an additional 30 days after an amended Record on Appeal is filed to file their Final Brief. It should be noted here that Respondents attorneys are a law firm with eight attorneys and paralegal staff who bill themselves as "superlawyers". Surely they should have no problem filing their Final Brief in a timely fashion. This request is clearly dilatory and unnecessary for the following reasons:

First, the Final Brief is to be served within twenty days of receipt of the Record on Appeal; a request for 30 days is more than the amount of time permitted by the statute in the first place. In effect the Respondents now ask for an extension of approximately seventy five days to file their final brief.

My calculation is as follows: the length of time for this motion to be 30 to 45 days plus 30 days after the receipt of the amended Record on Appeal assuming the motion is granted. Not to mention a minimum of ten days that would likely be allowed for Appellant to file an amended Record on Appeal if one is required.

Second, assuming *arguendo*, that the court holds in Respondents favor the issues raised in their motion will not prevent them from filing their final brief in a timely fashion. "The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:(1) References to the Record. The references in the initial

brief shall be revised to indicate where the material appears in the Record on Appeal.” S.C. App. Ct. R. 211. There will be no changes that will affect the references to the record.

This court should also take note of the fact that upon information and belief counsel for Respondents has already billed in excess of Ninety Thousand (\$90,000.00) Dollars to their clients for a simple declaratory judgment action that could have been resolved in less than a month. (See, *Stutts v. Republican Party*, No 2021-CP-23-02173 (Greenville Cty. C.P. May 6, 2021) a similar matter filed after this action and resolved in 20 days.

Conclusion

For the foregoing reasons Appellant respectfully requests that this court deny Respondents’ Motion in its entirety and direct Respondents’ to file their Final Brief in accordance with Rule 211 SCACR.

Dated: May 25, 2022
Columbia, South Carolina

Respectfully submitted,



Johnnie Cordero
4204 Mandel Drive
Columbia, SC 29210
(803)753-8091

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 27 2022
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2021-000804

Johnnie Cordero Appellant

v.

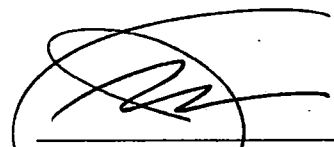
Matthew Kisner, in his official capacity as
Chair of The Richland County Democratic
Party; The Richland County Democratic Party;
Trav Robertson, Jr., in his official capacity as
Chair of The South Carolina Democratic
Party; The South Carolina Democratic Party, Respondents.

Certificate of Service

I, Johnnie Cordero, hereby certify that I have served an exact copy of Appellant's Reply in Opposition To Respondents' Joint Motion to Correct Record on Appeal and for Extension of Time on attorneys for Respondents by depositing same with the United States Postal Service, first class postage prepaid, and addressed as follows:

Nekki Shutt
Grant Burnette Lefever
BURNETTE, SHUTT & MCDANIEL, PA
912 LADY STREET, 2ND FLOOR (29201)
PO BOX 1929
COLUMBIA, SC 29202

Dated: May 25, 2022
Columbia, SC

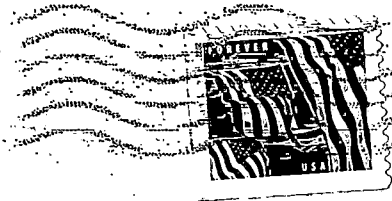


Johnnie Cordero

CORDERO
4204 MANDEL DR
COLUMBIA, SC 29210

COLUMBIA, SC 29201

25 MAY 2022 PM 7 1



SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SC 29201

RECEIVED

MAY 27 2022

SC Court of Appeals

29201-076999

