South Carolina Law Review

Volume 11
Issue 5 *SPECIAL ISSUE 3-A*

Article 26

Spring 1959

Supreme Court Rules As to Briefs

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tion 7 of Rule 4, the aggrieved party may set forth in the Transcript of Record an appendix containing this appeal within an appeal. *Copeland v. Craig* (1940), 193 S. C. 484, 8 S. E. 2d 858.

SUPREME COURT RULES AS TO BRIEFS

There is no Rule requiring that the folios in a Brief, like in the Transcript of Record, shall be numbered on the margin, but quite a few attorneys do so, especially if the Brief is long, because it is practical and of great help, not just to him and to the Court, but especially to his adversary in reply argument. It is also one of those American shortcuts as time savers to all concerned.

Rule 8 does not call for an initial "statement" sub-division in a Brief, as in a Transcript of Record, Rule 4, Section 1, but only for "statement of questions involved". Rule 8, Section 2. However, such a statement can be used and will be helpful all along the line in a complicated factual situation, especially where numerous facts are either undisputed or admitted.

Under Section 9 of Rule 8 the attorneys for appellant and respondent must file with the Clerk of the Supreme Court their respective Briefs the required number of days before the commencement of the monthly term. The attorneys will be advised in advance by the Clerk by a mimeographed announcement as to what cases are set for a hearing at the ensuing term and also when such term will begin. See Rule 22. This allows the attorneys to comply with Section 9 of Rule 8. Non-compliance gives the Clerk authority to sign an order dismissing the case. Also, watch out for Section 10 of Rule 8. Constantly remind oneself as to Briefs that they should be "working instruments" and not "a mere collection of words".

Sections 7 and 8 of Rule 8 call for exceptional care. Besides their bearing on one's Brief, they should be kept in mind when preparing one's proposed case (Rule 4, Section 7) for the Transcript of Record, so that no important or material fact will be omitted which should later be necessary in an exception in one's Brief.

Furman v. Nelson (1946), 208 S. C. 249, 37 S. E. 2d 741, beginning at page 250, leaves no doubt as to their application or as to an attorney's duty thereunder:

. . . Appellant has appealed to this Court on two exceptions. The questions raised cannot be determined without a consideration of the testimony, none of which is included in the Transcript of Record which the parties agreed upon. Appellant's counsel incorporated in his printed brief the testimony relied upon to sustain these exceptions. The case was placed on the calendar for oral argument on March 12, 1946. On March 8, 1946, appellant's counsel gave respondent's counsel notice that when the case was called for argument, he would move before this Court for permission to add to the Transcript of Record the testimony printed in his brief. Counsel were permitted to argue this motion along with the argument on appeal. In oral argument, appellant's counsel frankly conceded, and we think properly so, that if his motion to incorporate this testimony in the record was denied, the dismissal of this appeal would necessarily follow.

Counsel for appellant states that his motion is based on Rule 8, Section 8, of this Court, the pertinent portion of which is as follows: "If counsel desire to add any facts to those stated in the Transcript of Record they must either obtain the written consent of opposing counsel to the insertion of such additional facts, or they must, upon due notice, move this Court before the argument commences, for leave to insert such additional facts. All such additional facts inserted by consent or by the permission of the Court shall be printed."

We do not construe this rule as giving a right as a matter of course to insert additional facts in the record. The motion for permission to do so is addressed to the discretion of the Court. Orderly procedure and the prompt hearing and disposition of cases demand that counsel follow with diligence the rules of this Court governing the preparation of the record for appeal. When through inadvertence some material fact is omitted from the Transcript of Record, counsel should promptly seek permission, if the opposing party refuses to consent, to supply the deficiency.

Notwithstanding the desire of this Court to be liberal in a matter of this kind so as to afford every litigant an opportunity of having his case determined on its merits, we do not think that the circumstances in this

case warrant us in granting appellant's motion. Neither in the notice of the motion nor in the accompanying affidavit upon which it is based is any reason assigned why this testimony was not included in the Transcript of Record. Nor is any explanation given for the motion being made at such a late stage in the appeal. Respondent's brief was prepared on the theory that this testimony was not before the Court and he was entirely correct in this assumption. The testimony which appellant seeks to insert in the record apparently does not include all the testimony in the case. The granting of this motion might necessitate remanding the case for settlement by the trial Judge, as respondent in that event may desire to add other testimony, and would probably also necessitate respondent's counsel rewriting his brief. All of this would probably cause considerable delay in the final disposition of the appeal.

The motion to incorporate the testimony in the record is refused, the appeal dismissed, and the judgment below affirmed.

See also *Becker v. Uhe* (1952), 221 S. C. 334, 70 S. E. 2d 346.

Motions: "All motions made to the Court or a Justice at Chambers must be reduced to writing" and copies "must be served on the opposite party with notice of the motion four days before the day such motion is to be heard". Rule 16.

No Private Agreement or Consent is Binding: As said in *Brewton v. Inter-Carolinas Motor Bus Co.* (1932), 167 S. C. 151, 166 S. E. 85, at page 151:

Per Curiam.

The appeal herein was dismissed by Circuit Judge Sease because the defendants, who were the appellants, failed to perfect the same in accordance with the statutory requirements and the rules of Court. The appellants then moved in this Court for an order for permission to reinstate and docket the appeal.

It appears to our satisfaction that the appellants have not complied with our holdings in *Wade v. Gore et al.*, 154 S. C. 262, 151 S. E. 470, 471, as to reinstatement of appeals dismissed by the trial Courts. See, also, *Fann v. State Highway Department,* 160 S. C. 156, 159 S. E.

617, and *Wannamaker v. Johnson,* 160 S. C. 157, 159 S. E. 617, where we followed the announcements in *Wade v. Gore, supra,* and refused to reinstate appeals.

The whole trouble as to the appeal in this case seems to have arisen because of a verbal understanding, or, more correctly stated, a misunderstanding, between counsel. We said in *Wade v. Gore, supra,* on the subject of procuring consent of opposing counsel for further time to perfect an appeal, that "the proper and safer practice, for the protection of all parties, and for the Court as well, is to have such consent, if obtained, evidenced by writing."

We call attention also to Rule 15 of this Court, which is as follows: "No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced in writing to the form of an order by consent and entered."

See also, Rule 14 of the Circuit Court to the same effect.

The Court often regrets that it does not feel justified in reinstating appeals, but it becomes necessary to refuse reinstatement when counsel fail to follow plainly declared rules of the Court and statutory provisions concerning appeals.

All Section of Supreme Court Rule 8 with their up-to-date annotations must be carefully followed. Here again it might be well to mention that a helpful guide would be a printed Brief in a case handled on appeal by an experienced, careful attorney. However, as with the Transcript of Record, check it with the Supreme Court Rule and its annotations as to Briefs.

It is well, from a practical standpoint as well as being helpful to the Justices of the Supreme Court, to always underscore the title, but not the volume or page, of every case cited in one's Brief. When printed such underscored matter will be italicized and will stand out on the printed page for ready reference. It is also well to treat in like manner citations of Code and constitutional provisions. The writer asked former Chief Justice Stabler if such underscoring was of any importance. His answer was that it was not only of practical