

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO. 2022-000277

RECEIVED

Jan 26 2023

SC Court of Appeals

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts, and
Diana Mendheim, Individually and As Attorney In Fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, and Cheryl Kirkland,

Appellants.

**RESPONDENTS' RETURN TO APPELLANTS' MOTION TO FILE AMENDED BRIEF
AND TO SET ASIDE ORDER OF DISMISSAL**

INTRODUCTION

Currently pending before this Court is the Appellant's Motion To File Amended Brief And To Set Aside Order Of Dismissal, as was filed on January 19, 2023. The Motion was filed within hours of this Court's Order of January 19, 2023, granting the Respondents' Motion to Strike Appellants' Amended Initial Briefs, filed on November 7, 2022 and the Respondents'

Supplemented Motion To Strike Appellants' Amended Initial Briefs, filed on November 17, 2022. The pending Motion is substantively identical to the Appellant's Return To Respondent's Motion To Dismiss Appellants Amended Brief, as was filed on January 17, 2023. It contains no allegations of fact nor citations to case law supporting the request that this Court "set aside its Order of January 19, 2023 dismissing its November 2, 2022 Amended Initial Brief and by this Motion non pro tunc move the Court for an Order reinstating the Amended Initial Brief submitted for filing on November 14, 2022." See Motion of January 19, 2023, unnumbered page 2. The Respondents urge the Court to deny the Motion and impose sanctions on the attorney or the Respondents pursuant to Rule 269 because the Motion is frivolous or taken solely for the purpose of delay.

BRIEF FACTUAL BACKGROUND

On June 27, 2022, the Clerk of the Court of Appeals issued a notice letter to Charles Houston, Appellants' counsel, advising him and the Appellants that their initial brief was due to be filed on July 27, 2022. On August 24, 2022, almost a full month after that filing deadline, Mr. Houston filed a Motion to Extend the Appellants' time for filing of their initial brief and designation of matter, and on August 25, 2022, this Court issued an Order granting the Appellants an extension until September 16, 2022 to file their initial brief and designation of matter. On September 13, 2022, Mr. Houston filed a second Motion for an extension to file the Appellants' initial brief and designation of matter, to which the Respondents objected. On September 20, 2022, this Court issued an Order granting the second extension to file the Appellants' initial brief and designation of matter until October 17, 2022, and advised that "No further extensions will be granted absent extraordinary circumstances."

On October 17, 2022, Mr. Houston filed the Appellants' initial brief. Respondents received a copy of the Appellants' initial brief as filed on October 17, 2022 and began to work on their draft responsive brief immediately due to the time exigencies of this case.

On November 1, 2022, Clerk Allen sent Mr. Houston and the Appellants a "deficiency letter" regarding the October 17, 2022 Appellants' Initial Brief. On November 2, 2022, sixteen (16) days after filing the Appellants' initial brief and designation of matter, and without having made a motion or having received permission from this Court, the Appellants submitted an "Amended Initial Brief" electronically to the Clerk of Court at 11:07 a.m., which was received and filed by the Clerk. Two hours later that same day, at 1:08 p.m., Mr. Houston submitted a second "corrected" Amended Initial Brief for the Appellants, which was electronically sent to the Clerk, and was received and stamped "filed" by the Clerk. Both of the November 2, 2022 amended initial briefs contained substantively changed and supplemented arguments not included in the original October 17, 2022, timely-filed, after two filing deadline extensions, initial brief. The Respondents filed their original Motion To Strike the amended initial briefs on November 7, 2022.

On November 14, 2022, the Appellants filed another Amended Initial Brief, this one supposedly incorporating the changes required by Clerk Allen's deficiency letter of November 1, 2022. However, as is set forth in detail in the Supplemented Motion To Strike, that deficiency letter was aimed at the only Initial Brief before the Court on November 1, 2022—that being the original Appellants' Initial Brief as filed on October 17, 2022, and the "corrected" version should have been the October 17, 2022 Initial Brief with the appropriate deficiency corrections. It should not have been a version of the substantively changed and supplemented "Amended Briefs" filed on November 2, 2022.

The Respondents timely filed their Initial Respondents' Brief consistent with SCACR 208 on November 16, 2022, addressing the Appellants' Initial Brief that was filed October 17, 2022. On January 19, 2023, this Court entered its Order granting Respondents' motion to strike Appellants' amended Initial Brief filed November 2, 2022 and the second amended Initial Brief filed on November 14, 2022. The pending Motion followed within hours, same being the substantively identical document filed by Mr. Houston on December 17, 2023 under the heading "Appellant's Return To Respondent's Motions To Dismiss Appellants Amended Brief."

ARGUMENT AND CITATION OF AUTHORITY

The Court is well aware from earlier filings and Orders in this matter that this case involves the sale of a large tract of land that was previously heirs property on Hilton Head Island, of which the Appellants own less than a 1.2 percent interest (with the Respondents owning the remaining 98.8 percent), and that the continuing delays occasioned by the repeated filings made by Mr. Houston on behalf of the Appellants, is jeopardizing the potential closing of the contract that will greatly benefit all of the co-owners of the land—the Appellants and the Respondents.

In response to the pending motion, the Respondents reiterate their arguments made by memo supporting the earlier motions to strike the amended initial briefs. The South Carolina Appellate Court Rules do not allow a party to simply file an "amended" initial brief at their leisure, and the Appellants' attempt to do so three times without Court approval or motion was inappropriate and highly prejudicial to the Respondents, because not only had the Respondents' counsel already spent substantial time researching, drafting, and finalizing their initial Respondents' Brief in reliance upon the Appellants' initial brief as filed on October 17, 2022, but the proposed "amended" briefs added substantial new arguments, which were not timely presented

to this Court, coming well after the October 17, 2022 deadline for filing the Appellants' initial brief.

In addition, to the extent the refiled document under the title of this Motion seeks a belated Order of this Court allowing the filing of the final "amended" initial brief, the Respondents urge the Court to deny the request because there has been no showing nor argument of any reasonable factual basis¹ for such a request, and to grant that request would greatly prejudice the Respondents by further delaying this appeal and by costing the Respondents further time and legal fees that would be necessary to address the additional substantive arguments added inappropriately into the several amended initial briefs filed. And most importantly, it would further delay and therefore endanger the closing of this real estate transaction that will benefit all the co-owners substantially.

The only case cited by the Appellants in arguable support of the pending motion is Boyle v. State, 820 S.W.2d 122 (Tex. Crim. App. 1989), reversed on other grounds by Gordon v. State, 801 S.W.2d 899 (Tex. Crim. App. 1990). A plain reading of Boyle reveals that it neither in any way stands for nor supports the argument that appellate briefs should be allowed to be amended at will. The wording cited on unnumbered page 4 of the pending motion comes from page 141 of the Boyle case and was directed at the legal question of whether the Texas Supreme Court was going to consider an issue of third-party consent on a motion for rehearing, when it was not

¹ This is not the first time in this case that Respondents' counsel has petitioned this Court for permission to file out of time. Mr. Houston is familiar with the Rules and the unstated requirement that some factual assertion be alleged showing a reasonable basis for such a request. On December 17, 2022, Respondents' counsel filed a Motion To File Motion For Rehearing Out Of Time, advising the Court that "[t]he event that caused the delay for the timely filing of the motion was an internet failure. While the time that counsel was waiting for the internet service to be restored counsel fell asleep sitting in front of his computer. At the time he awoke the internet service had been restored and the filing was then submitted." See unnumbered page 2 of the Respondents' December 17, 2022 Motion. Respondents' counsel then alleged that his falling asleep was an "event [of] excusable neglect." Setting aside any argument as to the whether that was "excusable neglect," in the pending motion, no reasonable facts have been alleged, no Affidavits submitted, and no argument of any type has been proffered, as to why the Respondents' complete arguments were not made in their initial brief after two extensions had been granted.

originally raised on direct appeal in that death penalty case. While the Texas Supreme Court did find that “justice required” consideration of the alleged third party consent in the death penalty case rehearing, the case did not include any consideration of the issue of amending or supplementing initial briefs in the appellate setting. Boyle, 820 S.W.2d at 141. Boyle is inapplicable to this issue.

CONCLUSION

There having been no reason why the Appellants could not have included all their issues in their initial Brief after taking full advantage of two filing deadline extensions, and no good cause having been shown, and since substantial prejudice to the Respondents would result from such an Order, the Respondents urge this Court to deny the Appellant’s Motion To File Amended Brief And To Set Aside Order Of Dismissal filed January 19, 2023. Further, for the reasons set forth above, the Respondents request this Court sanction the Appellants and/or their Counsel, pursuant to Rule 269, because this motion is frivolous or was taken solely for the purposes of delay.

LAW OFFICE OF THOMAS C. TAYLOR,
LLC

s/Thomas C. Taylor

Thomas C. Taylor
Attorney for Plaintiffs
SC Bar No.: 5499
PO Box 1808
Bluffton, SC 29910-1808
1-843-785-5050
tom@thomastaylorlaw.com

LAW OFFICE OF CHESTER C.
WILLIAMS, LLC

s/Chester C. Williams

Chester C. Williams
Attorney for Plaintiffs
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028
1-843-842-5411
firm@ccwlaw.net

Bluffton, South Carolina
January 26, 2023

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jan 26 2023

SC Court of Appeals

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO. 2022-000277

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts and
Diana Mendheim Individually And As Attorney In Fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, And Cheryl Kirkland,

Appellants.

PROOF OF SERVICE

I hereby certify that this law firm represents the Respondents in the above-captioned matter and that on the date below, in Bluffton, South Carolina, I served a copy of the forgoing on the following person via electronic mail to his AIS E-mail address:

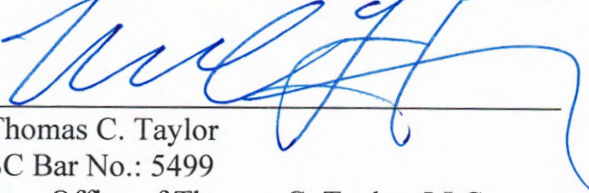
Documents Served: RESPONDENTS' RETURN TO APPELLANTS' MOTION TO FILE AMENDED BRIEF AND TO SET ASIDE ORDER OF DISMISSAL

Parties Served:

Charles E. Houston, Esquire
The Houston Law Firm, LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926;
chouston@houstonlawfirm.net

ATTORNEY FOR APPELLANTS

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor
SC Bar No.: 5499
Law Office of Thomas C. Taylor, LLC
PO Box 1880
Bluffton, SC 29910-1808
843-785-5050
tom@thomastaylorlaw.com

ATTORNEY FOR RESPONDENTS

Bluffton, South Carolina
January 26, 2023