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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Appellate Case No. 2012-211466

Jerry Gadson and Shelia Gadson, Appellants,

v.

Caroline Deloatch and Bank of America, Respondents.

Respondents' Return to Appellants' Motion to Reopen

Pursuant to Rules 240(e) and 260(a) of the South Carolina Appellate Court Rules, Respondents Caroline Deloatch and Bank of America ("Bank of America") file this Return to Appellants' Motion to Reopen. Appellants' motion fails to cite, apply, or establish the good cause required to allow reinstatement of this appeal under Rule 260(a) of the South Carolina Appellate Court Rules. In fact, Appellants' motion actually provides further support for the Court's decision to dismiss the appeal.

Appellants' counsel admits the failure to adhere to the Court's order setting the deadline to file the Amended Record on Appeal was due solely to her complete lack of diligence over this matter and supervision over her office procedures. This certainly cannot constitute good cause and, actually, is no cause at all to grant Appellants' motion. To allow reinstatement of an appeal on this basis would render wholly meaningless the deadlines imposed by our Appellate Court Rules and by order of this

Court. That cannot be the case. As a result, this Court should deny this motion and issue the remittitur in this action.

Initially, this Court should note the reason for why an order directing a corrected Record on Appeal was required to be filed in the first place. When Appellants' counsel compiled the original Record on Appeal, she improperly sought to include two items that were never presented to the trial court and Bank of America at any stage of the litigation. See Bank of America's Motion to Strike Portions of the Record on Appeal filed December 3, 2012. Bank of America moved to strike the items on that basis. Id. at p. 1-3. Importantly, Bank of America also moved to strike the items because Bank of America doubted the authenticity of the items due to Appellants' counsel never provided them to Bank of America at any time in the litigation prior to their inclusion in the original Record on Appeal. Id. at 4; see also Bank of America's Reply filed December 20, 2012, at p. 2-3. This Court issued a letter requesting that Appellants "provide proof that [these items] were presented to the lower court." See Letter dated February 14, 2013, to Appellants' counsel. Appellants' counsel **did not respond** to this letter. As a result, this Court dismissed the appeal. Allowing reinstatement of the appeal at this time would render meaningless the actions taken by Bank of America in regards to Appellants' attempt to include improper items in the Record on Appeal. Most importantly, reinstatement would render the deadlines imposed by our Appellate Court Rules and order of this Court completely meaningless. Our rules must have some meaning.

In the motion, Appellants' counsel claims that a "reorganization" in her office led to the failure to file the corrected Record on Appeal and the related dismissal. See

Motion p. 3. This is not good cause as required under Rule 260(a), SCACR. In fact, Appellants' counsel admits to this Court that she knew or should have known of the failure to comply with the Court's April 16, 2013 Order but took no action to correct the error. Appellants' counsel "admits the error and should have known, could have known, and would have known that there was an issue of a lack of follow up to the Court of Appeals due to improper management." Id. Blaming the error on staff cannot alleviate the error or constitute good cause to reinstate the appeal. It is axiomatic that Appellants' counsel is responsible for the actions of her staff and must ensure deadlines are met. Such conduct cannot constitute good cause to allow reinstatement of the appeal, especially since the dismissal relates to their failure to respond to the Court's request regarding the inaccuracy of the Record on Appeal. Appellants' counsel has not set forth any legitimate reason for ignoring¹ this Court's express deadline to file and serve the corrected Record on Appeal. Bank of America asserts that such conduct, in fact, is good cause as to why the appeal should not be reinstated.

Moreover, despite admitting the failure to file the corrected Record on Appeal by the Court-imposed deadline of May 16, 2013, Appellants' counsel took no steps to remedy this error until after the Court dismissed the appeal on May 23, 2013. Appellants' counsel did not seek leave to file the corrected Record on Appeal out of time. Instead, Appellants' counsel took no action for 18 days from the deadline to file the corrected Record on Appeal and 11 days from dismissal of the appeal before she

¹ Again, this is not the first order from this Court that Appellants' counsel ignored. Counsel also ignored the April 16, 2013 Order that directed filing of the corrected Record on Appeal.

sought any relief from this Court. This unexplained delay also weighs against reinstatement of the appeal.

In addition, the relief sought in the motion—reinstatement of the appeal—is illusory. Appellants’ counsel admits that her clients “lacked the financial capability to amend the Record on Appeal and Briefs. . . . The costs involved for filing again all Record on Appeal and Briefs were beyond Appellants financial capabilities (sic).” See Motion p. 4. Appellants’ counsel does not assert that her clients have the financial capabilities to comply with the Court’s April 16, 2013 Order at this time. Thus, reinstatement of the appeal would not correct the reason the appeal was dismissed in the first place—the failure to correct the Record on Appeal. Moreover, if this Court allows this matter to be reinstated, then Bank of America’s motion to strike and the Court’s order granting same would be rendered worthless. Appellants’ counsel would be allowed to keep the improper and fabricated documents in the Record on Appeal despite this Court’s direct order to remove those documents. Appellants cannot be allowed to avoid correction of the Record on Appeal merely with a claim that they cannot pay to do so. By choosing to pursue this appeal, our rules impose certain obligations on Appellants, specifically the duty to bear the costs of creating the Record on Appeal. See Rule 210(a), SCACR (imposing the obligation that “the appellant **shall** serve a copy of the Record on Appeal on each party who has served a brief”); Rule 210(b), SCACR (“The appellant **must** file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal . . .”) (emphasis added to both). Those requirements support the decision to dismiss the appeal. This Court should adhere to those obligations imposed on Appellants and deny this motion.


Lastly, Appellants claim Bank of America would not be prejudiced by reinstatement. See Motion p. 4-5. This is manifestly false. Bank of America is prejudiced in three ways. First, Bank of America would be prejudiced by having to bear the costs associated with having to move this Court to strike the improper items that Appellants' counsel chose to include in the Record on Appeal but not being afforded the benefit of the order granting that motion. Those costs include the costs of the motion to strike, review of Appellants' return, and the drafting of the reply to same. Second, Bank of America would also be prejudiced by having to litigate on an uneven playing field, namely that Appellants would be able to operate this appeal without having to adhere to the Appellate Court Rules while Bank of America would not be afforded the same latitude. Third, Bank of America would be prejudiced by the future costs associated with defending a meritless appeal and the likelihood of incurring the costs associated with Appellants' failure to follow the Appellate Court Rules and other orders of this Court. This Court rightly dismissed the appeal and should not reinstate it so as to spare Bank of America from further unwarranted appellate costs.

Conclusion

In conclusion, Appellants fail to establish the good cause necessary to allow reinstatement of the appeal. Reinstatement would render completely meaningless the deadlines imposed by our Appellate Court Rules and by order of this Court.

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