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Jul 12 2023

SC Court of Appeals

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. 2023-000438

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts, and
Diana Mendheim, Individually and as agent and attorney in fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, Cheryl Kirkland, William Charles Kirkland,
Paulette Kirkland, Paul T. Allbright, Christopher Kirkland and
Shawn Kirkland,

Defendants,

of whom Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White and Cheryl Kirkland are Appellants.

**RESPONDENTS' RETURN TO APPELLANTS' MOTION TO SUBSTITUTE AND/OR
AMEND APPELLANTS' INITIAL BRIEF**

INTRODUCTION

Currently pending before this Court is the Appellants' July 5, 2023 Motion To Substitute And/Or Amend Appellants' Initial Brief, said Initial Brief having been filed on June 20, 2023 after the Appellants received and took advantage of this Court's Order extending their time for filing their Initial Brief by sixty (60) days, from the original due date of April 23, 2023 until June 20, 2023. The Respondents' counsel then filed an "Amended Initial Brief" the next day, June 21, 2023.

The June 21, 2023 "Amended" Initial Brief substantively expands the Respondents' arguments, from two cited arguments in the June 20, 2023 Initial Brief, to eight cited arguments in the June 21, 2023 Initial Brief. (The June 21, 2023 Amended Initial Brief also cites eleven (11) "Issues on Appeal, compared to the two (2) Issues on Appeal cited in the original June 20, 2023 Initial Brief.) The Respondents respectfully urge the Court to deny the Motion.

BRIEF FACTUAL BACKGROUND

This is the second appeal filed by these Respondents in this case, the prior appeal (2022-000277) that was filed on March 9, 2022 having been dismissed by this Court's Order of March 15, 2023. That dismissal followed the Supreme Court's admonition to these Respondents of January 27, 2023, which denied the Appellant's Petition For a Writ of Mandamus and warned the Appellants that the Respondents could "resubmit" their request for sanctions "should Petitioner [the Appellants] continue to act in a manner inconsistent with bringing this matter to a timely conclusion." See Exhibit A. This second appeal to this honorable Court then followed on March 22, 2023.

Although the Respondents acknowledge Appellants' counsel advised the Clerk of Court by email of June 21, 2023 that he filed the original June 20, 2023 Initial Brief "in error" while tired

(thereby arguably setting forth a factual basis for the Motion), the Respondents urge the Court to deny the Motion because prejudice will be suffered by the Respondents as a result of the filing of the Amended Initial Brief in that substantive additional arguments (six or nine more, depending upon whether the Court counts the increased number of “arguments” or the increased “issues on appeal”). In addition, the Respondents urge the Court to consider the totality of the circumstances of these repeated appeals, and keeping in mind the Supreme Court’s Order of January 27, 2023, the Respondents pray that this Court hold the Appellants to the strict timing rules of this Court, deny the Motion to Substitute And/Or Amend Appellants’ Initial Brief, and allow the case to move forward expeditiously based upon the Initial Brief that was filed ninety (90) days after the filing of the Notice of Appeal.

ARGUMENT AND CITATION OF AUTHORITY

The Court is well aware from earlier filings and Orders in 2022-000277, 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 made in Case No. 2022-000277 to strike the amended initial briefs Respondents’ counsel filed therein. The South Carolina Appellate Court Rules do not allow a party to simply file an “amended” initial brief at their leisure and this Amended Initial Brief adds substantial new arguments, which were not timely presented to this Court.

The Appellants are by this Motion seeking a belated Order of this Court allowing the filing of the “amended” Initial Brief, and the Respondents urge the Court to deny the request because there has been no showing nor argument of any reasonable factual basis for such a request, and to grant that request would prejudice the Respondents by costing the Respondents further time and legal fees that will be necessary to address the additional substantive arguments added inappropriately into the Amended Initial Brief 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.

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 a sixty (60) day filing extension, and no good cause having been shown, and since prejudice to the Respondents would result from such an Order, the Respondents urge this Court to deny the Appellant’s Motion To Substitute And/Or Amend Appellants’ Initial Brief filed July 5, 2023.

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Bluffton, South Carolina
July 12, 2023

The Supreme Court of South Carolina

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

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JAN 27 2023

SC Court of Appeals

v.

The Court of Appeals of South Carolina and The
Honorable Marvin H. Dukes, Respondent.

In Re: Appellate Case No. 2022-000277
Court of Common Pleas Case No. 2020-CP-07-2301

Georgia Harrison, Barbara Harrison, Joyce Ellen
Harrison, Williams S. Harrison, III, Stanley Roberts, and
Diana Mendheim Individually and as Agent and Attorney

in Fact, Respondents,

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

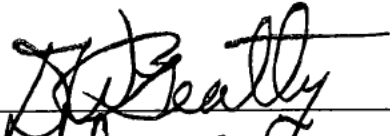
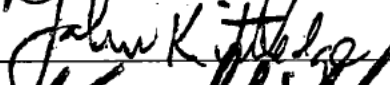


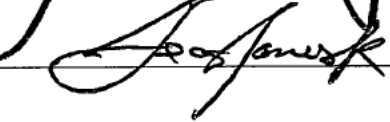
Appellate Case No. 2022-001628

ORDER

Petitioner seeks a writ of mandamus in this Court's original jurisdiction to require the South Carolina Court of Appeals to issue an order of supersedeas and set a supersedeas bond. Petitioner has not made the requisite showing for a writ of mandamus. *See City of Rock Hill v. Thompson*, 349 S.C. 197, 201, 563 S.E.2d 101, 102 (2002) (holding to obtain a writ of mandamus, the petitioner must show: (1) a duty of the respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary;

and (4) a lack of any other legal remedy). Therefore, the petition for a writ of mandamus is denied.

Respondents ask the Court to impose sanctions on Petitioner. This request is denied without prejudice to Respondent's right to resubmit the request should Petitioner continue to act in a manner inconsistent with bringing this matter to a timely conclusion.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
January 25, 2023

cc:
Charles E. Houston, Jr., Esquire
Alan McCrory Wilson, Esquire
Thomas C Taylor, Esquire
Chester C. Williams, Esquire
The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

PATRICIA A. HOWARD, CLERK OF COURT

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SC Court of Appeals

Honorable Jenny A. Kitchings
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201-3726

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The Honorable Marvin H. Dukes, III
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Shawn Kirkland,

Defendants,

of whom Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White and Cheryl Kirkland are 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
SUBSTITUTE AND/OR AMEND APPELLANTS' INITIAL BRIEF**

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Bluffton, South Carolina
July 12, 2023