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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from the Administrative Law Court
Honorable Milton G. Kimpson, Administrative Law Judge

Appellate Case No.: 2023-000441

Stephen Mueller, Appellant,

v.

South Carolina Department of Health and Environmental Control, and
Carla Varn DuPre and Jasper B. Varn, III, Respondents.

**RESPONDENTS', CARLA VARN DUPRE AND JASPER B. VARN, III, REPLY TO
APPELLANT'S RETURN TO RESPONDENTS' SECOND JOINT MOTION TO
REQUEST DISMISSAL**

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*Attorneys for the Respondents,
Carla Varn DuPre and Jasper B. Varn, III*

NOW COME Respondents Carla Varn DuPre and Jasper B. Varn, III, pursuant to 240(f), SCACR, and hereby reply to the responsive motion filed by Appellant, Stephen Mueller, to Respondents' Second Joint Motion to Request Dismissal. Respondents are compelled to respond to the allegation contained in the Return that counsel did not consult with counsel for DHEC before filing the Motion. The undersigned counsel hereby confirms that counsel for DHEC was consulted by phone and by email prior to the filing of the motion, given an opportunity to review the draft, and requested two edits that were made before consenting to the filing as a "JOINT" motion. DHEC's counsel was completely aware of the content of the content of said motion.

Respondents are further compelled to respond to Mr. Mueller's suggestion that he "never retained Mr. Richardson [as his attorney]." Mr. Mueller must not understand that, as this Court noted, Mr. Richardson filed a Notice of Appearance in this appeal as Mr. Mueller's attorney. This filing is evident in the record of this case. Respondents are unaware of any information from Mr. Mueller indicating that Mr. Richardson was not his counsel. In fact, on May 4, 2023, the undersigned participated in a conference call with Mr. Richardson and counsel for DHEC and discussed Mr. Mueller's appeal.

Finally, Respondents reiterate that Mr. Mueller's actions are denying finality of this legal process, despite their full compliance with all applicable rules, which they have assured through the hiring of the undersigned counsel. As of the most recent deficiency letter sent by the Clerk to Mr. Mueller on August 1, 2023, this Court has, on four occasions, given Mr. Mueller ten days to correct deficiencies in his filings "or this matter [or appeal] will be dismissed." However, there has been no follow through with dismissal, even though it would be fully justified under Rule 260(a), SCACR ("whenever it appears

that an appellant or petitioner has failed to comply with the requirements of these Rules, the Clerk ***shall*** issue an order of dismissal, which ***shall*** have the same force and effect as an order of the appellate court” (emphasis added). See *a/so Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”)¹ The South Carolina Supreme Court has dismissed appeals for failure to comply with the rules of the Court. *Lawson v. Mills*, 259 S.C. 308, 191 S.E.2d 637 (1972).

These actions have unfairly and unjustly prejudiced Respondents. Accordingly, Respondents again request an Order from the Clerk dismissing this appeal for Mr. Mueller’s continuing failures to follow the instructions of this Court. In the alternative, Respondents request that the Clerk reduce the time allowed to Mr. Mueller for correction of deficiencies identified in his most recent filing to five days.

In addition, Respondents again request to have all deadlines pending in this matter held in abeyance until this Motion is determined.

s/Mary D. Shahid, Esq.
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August 2, 2023
Charleston, South Carolina

¹ When the appellant fails to follow the rules, “this Court would be completely justified in dismissing this appeal based on appellant’s numerous violations of the Rules ...” *Henning*, 307 S.C. at 437, 415 S.E.2d at 794. This should ring particularly true where the numerous violations are frequent and repetitive.

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Appeal from the Administrative Law Court
Honorable Milton G. Kimpson, Administrative Law Judge
Case No.: 2021-ALJ-07-0144-CC

Appellate Case No.: 2023-000441

Stephen Mueller,.....Appellant,

v.

South Carolina Department of Health and Environmental Control, and
Carla Varn DuPre and Jasper B. Varn, III,
Respondents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have this date, August 2, 2023, served this Respondents', Carla Varn Dupre and Jasper B. Varn, III, Reply to Appellant's Return to Respondents' Second Joint Motion to Request Dismissal upon all parties to this appeal, and/or their attorneys, by depositing a copy hereof in the United States mail, postage paid, and by electronic mail to the following:

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[SIGNATURE ON FOLLOWING PAGE]

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August 2, 2023

VIA USPS MAIL & ELECTRONIC MAIL

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Re: 21-ALJ-07-0144-CC Mueller v. SC DHEC

Dear Madam Clerk:

Please find enclosed for service Respondents', Carla Varn Dupre and Jasper B. Varn, III, Reply to Appellant's Return to Respondents' Second Joint Motion to Request Dismissal in the above referenced matter.

This Reply was delivered to the Court via email on Wednesday, August 2, 2023 along with the Certificate of Service.

Very truly yours,

Mary D. Shahid

Mary D. Shahid

Enclosure(s)

cc: Bradley D. Churdar, Esq. (churdabd@dhec.sc.gov),
Steven Mueller (stevem44442002@yahoo.com)