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Aug 30 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM COUNTY
Court of Common Pleas

Appellate Case No. 2022-001554

Nicholas Sanfilippo.....Appellant,

vs.

Estate at Westbury Horizontal Property Regime a/k/a Estate
at Westbury Owners Association (a multifamily real estate
community) and High Tide Associates (a property and HOA
management company)Respondent.

THIRD AMENDED MOTION TO DISMISS APPELLANT'S APPEAL

TO: GARY COGGIN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Respondents will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the South Carolina Court of Appeals or such other person as may be designated to hear such matters, for an Order of this Court dismissing Appellant's Appeal as to Respondents pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure for failure to prosecute and comply with court orders, as well as Rules 209, 208(a)(1), 260, 262, 240, and 267 for failure to comply with the Rules of Appellate Procedure, to wit: continued failures to timely

cure deficiencies, file a timely initial brief, failing to provide notification or proof of service upon Respondents of motions and other filings with the court.

On July 28, 2023 the Court of Appeals issued a Non-Dispositional Letter to the parties herein denying the Respondents' Second Amended Motion to Dismiss the Appellant's Appeal and Setting a Time for Corrections. In the Court's July 28 letter, the Court ordered the Appellant "to file a designation of matter in accordance with Rule 209, SCACR, and a proof of service for the amended initial brief in compliance with rules 208(a)(1) and 262 of the South Carolina Appellate Court Rules within ten days" of the date of the letter. On or about August 7, 2023 the Appellant made a filing in an effort to satisfy the July 28 order from the Court. It appears to be a designation of matter, however no proof of service for the amended initial brief in compliance with Rules 208 and 262 was filed with it, as required. On August 14, 2023, the Court issued yet another Deficiency letter to the Appellant, this time addressing the lack of the proof of service and continuing issues with the designation of matter and requiring the Appellant to re-file within ten days "or this matter will be dismissed." To date, August 30, 2023, the Appellant has failed to comply with the most recent orders from the court. Even if the Appellant had filed within ten days of the most recent deficiency letter sent on August 14 by the court, the Appellant would still have failed to provide the requisite proof of service within the time period set by the Court itself in its July 28, 2023 letter to the Appellant. As provided in the Court's previous letter, this matter should be dismissed.

This is just the most recent and unreasonable delay from the Appellant. The Appellant's continued and unreasonable neglect of this matter at the expense of the time and resources of the Respondents since late October, 2022 is sufficient evidence that the Appellant's Appeal must be dismissed not only for a sustained dismissal and disregard of the rules of appellate procedure and of the rights of the Respondents but of repeated violations of Orders from this very Court. Although the Court has historically been generous and lenient in this matter with respect to the above, the Respondent respectfully requests the Appellant's Appeal be dismissed.

"The plaintiff has the burden of prosecuting his action, and the court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause." Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983). "Such power is deemed to be necessarily vested in the courts [in order for them] to manage their own affairs so as to achieve orderly and expeditious disposition of cases." Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 212 493 S.E.2d 826, 832 (1997). Generally, the dismissal of actions for failure to prosecute is appropriate in cases where: (1) the dismissals are imposed to maintain the orderly disposition of cases in the face of repeated warnings or multiple opportunities to proceed with trial; and (2) only then upon a finding of unreasonable neglect. McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct.App. 2006).

This motion shall be based upon the South Carolina Appellate Court Rules, the statutory and common laws of the State of South Carolina, the South

Carolina Rules of Civil Procedure, the pleadings filed herein, and any and all affidavits which may be served on or before the date of hearing hereon.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Nathan E. Akers | SC Bar No. 103415

PO Box 40

Beaufort, SC 29901-0040

(843) 522-2400

Attorney for Respondent

Beaufort, South Carolina

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management company)Respondent.

RESPONDENT'S PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Respondents' Third Amended Motion to Dismiss Appeal upon all counsel of
record via email and by affixing same with proper postage and placing same with
the United States Postal Service on the 30th day of August, 2023 addressed to
the following:

Gary Coggin gcitylaw@aol.com
Gary Coggin Law Offices
PO Box 7092
Hilton Head Island, SC 29928

HOWELL, GIBSON & HUGHES, P.A.

By: 

Nathan E. Akers | SC Bar No. 103415

PO Box 40

Beaufort, SC 29901-0040

(843) 522-2400

NAkers@hgghpa.com

Attorney for Respondent

Beaufort, South Carolina

August 30, 2023

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW
Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

STEPHEN P. HUGHES
ROBERT W. ACHURCH III *
DAVID S. BLACK
THOMAS A. BENDLE, JR.

WILLIAM H. COX, III
NATHAN E. AKERS
ROBERT S. DENNIS
DYLAN C. KIDD

* Certified Mediator

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
WRITER'S DIRECT: 843-522-2401
DIRECT E-MAIL: nakers@hghpa.com
PARALEGAL E-MAIL: ltownsend@hghpa.com

August 30, 2023

Via Email Only
ctappfilings@sccourts.org

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Aug 30 2023

SC Court of Appeals

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Nicholas Sanfilippo vs. Estate at Westbury Horizontal Property
Regime aka Estate at Westbury Owners Association and High Tide
Associates
Case No.: 2022-001554


Dear Madame Clerk:

Please find enclosed herewith for filing *Respondent's Third Amended Motion to Dismiss Appellant's Appeal* with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me via email to NAkers@hghpa.com and LTownsend@hghpa.com. If return of the clocked copy must be via U.S. Mail, please advise and I will provide a self-addressed, stamped envelope provided for same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Nathan E. Akers
NEA/lt
Enclosures

cc: Gary Coggin gcitylaw@aol.com
via email and U.S. Mail