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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge
Case No.: 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association are the Respondents.

Respondents' Reply to Appellant's Response to Motion to Dismiss

Respondents, by and through their undersigned attorneys, file this Reply to Appellant's Response to Respondents' Motion to Dismiss the Appeal, which they received via regular U.S. Mail only on August 30, 2023.

Argument

Appellant requests this Court deny Respondents' Motion to Dismiss, arguing good cause exists and no prejudice is shown for his mistakes of not copying opposing counsel or the Court of Appeals on correspondence with the court reporter. Appellant asserts his counsel "did

everything in its power to obtain a copy of the transcript” and that counsel “did make sure all said parties were kept apprised of the status of the search for the transcript.” **App. Resp. at 5.**

Respondents disagree and request this Court dismiss the appeal because Appellant has ignored the rule and this Court’s reminders requiring copying counsel and the Court of Appeals on correspondence with the court reporter, and Appellant has not demonstrated good cause to reinstate an appeal in the event the Clerk or this Court dismisses the appeal.

Rule 207(a)(1)’s mandate is clear: “Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” A failure to follow the rules empowers the Clerk to dismiss the appeal, which can be reinstated only if good cause is shown. Rule 260(a), SCACR. Although the appeal is merely in abeyance, the appeal should be dismissed based on the applicable rules and as argued in Respondents’ Motion to Dismiss. There is no requirement to show good cause or prejudice to dismiss the appeal. The appellant, however, must show good cause to reinstate the appeal.

If the Court considers Appellant’s good cause arguments—either in ruling on the motion to dismiss or to reinstate the appeal—Appellant cannot show good cause for ignoring the rules or the Clerk’s reminders. Appellant’s failure to copy opposing counsel and the Court of Appeals on correspondence with the court reporter was not a simple one-time mistake. Instead, it is a repeating error that continues to this day.

On December 7, 2022, and March 29, 2023, the Clerk reminded Appellant of his responsibility to copy all counsel and the Court on correspondence with the court reporter. **See Exs. 1 & 6 to Resp. Mot. to Dismiss.** Opposing counsel and the Court of Appeals were unaware of Appellant’s January 6, 2023 correspondence with the court reporter until Appellant moved for

an extension of time to file his designation of matter and initial brief on January 18, 2023. Appellant included the email from the court reporter as Exhibit E to the motion, in which the court reporter explains it would take a “few weeks” to prepare the transcript. This Court granted an extension until March 20, 2023, to file and serve the designation of matter and initial brief. **See Ex. 4 to Resp. Mot. to Dismiss.** On March 20, 2023, Appellant moved for another extension, explaining the court reporter needed additional time to provide the transcript, but in support attached the same January 6, 2023 email from the court reporter. **See Ex. 5 to Resp. Mot. to Dismiss.** Apparently, Appellant did not communicate with the court reporter between January 6 and March 20, 2023, on the status of the transcript.

The Clerk held the appeal timing in abeyance on March 29, 2023, until such time as the Appellant received the transcript. **See Ex. 6 to Resp. Mot. to Dismiss.** Appellant was reminded again to copy all parties and the Court on correspondence with the court reporter. *Id.* Due to the appeal languishing and having not received any correspondence from Appellant with the court reporter, Respondents moved to dismiss the appeal on August 18, 2023. To Respondents’ surprise, in response to being served with the Motion to Dismiss, Appellant’s counsel advised they communicated with the court reporter and received the transcript on August 11th. Again, Appellant failed to provide opposing counsel and this Court with copies of the communication with the court reporter.

Notably, despite recognizing in their Response it was error to not copy opposing counsel and the Court on communications with the court reporter, or provide copies of those communications, Appellant has yet to provide a copy of the August 11, 2023 email from the court reporter with the transcript—the email is not an exhibit to Appellant’s response.

Appellant relies on *Jordan v. Harford Financial Group, Inc.*, to support his assertion he has shown good cause and the mistakes do not warrant dismissing the appeal, but that reliance is misplaced. *Jordan* involved an appeal from the worker's compensation commission dismissing an appeal because the appellant did not file the brief on time. 435 S.C. 501, 504, 868 S.E.2d 400, 402 (Ct. App. 2021). The appellant moved to reinstate the appeal, arguing good cause existed because he failed to file the brief on time as a result of his paralegal mis-calendaring the deadline. *Id.* The commission refused to reinstate the appeal, but did not explain its reasoning. *Id.* The Court of Appeals determined the commission failed to exercise discretion by not explaining its reasoning, which was arbitrary and an abuse of discretion, and the court reinstated the appeal. *Id.* at 507, 868 S.E.2d at 403. The court acknowledged the good cause standard exists to protect the interests of justice, such that a "harmless procedural foot fault" does not jettison parties out of court. *Id.* at 505, 868 S.E.2d at 402. The court also noted, however, mis-calendaring is not per se good cause, and suggested the courts should consider the degree of carelessness and period of inattention. *See id.* at 506, 868 S.E.2d at 403. Ultimately, good cause needs to be decided on a case-by-case basis understanding the circumstances of each case.

Appellant's refusal to follow the Appellate Court Rules and ignoring the Clerk's reminders to copy opposing counsel and the Court on correspondence with the court reporter were not simple mistakes like in *Jordan*. Despite in January obtaining a 60-day extension based on the court reporter's representation she would take a few weeks to prepare the transcript, Appellant requested another extension based on that same representation in March. The March request did not include any further correspondence with the court reporter, suggesting Appellant had not communicated with the court reporter since January to follow up on the transcript. It was not until Respondents served Appellant with the Motion to Dismiss did Appellant reveal he

had communicated with the court reporter and received the transcript a week prior. But Appellant did not provide the email or transcript. Further, Appellant responds to the Motion to Dismiss and references the August 11th email and transcript, but again does not provide copies to opposing counsel and this Court. Appellant's failure to comply with the rules and the Clerk's reminders could be seen as willful noncompliance. As a result, the appeal has been considerably delayed—it has been nearly eleven months since the appeal was noticed and initial briefing has not begun.

In sum, this Court should dismiss Appellant's appeal because Appellant has repeatedly failed, and continues to fail, to comply with court rules and the Clerk's reminders to provide copies of correspondence with the court reporter. Appellant's repeated failure is not a simple mistake such that the Court should deny the motion to dismiss, or find good cause exists to reinstate the appeal.

Respectfully submitted,

This 1st day of September, 2023.

s/Skyler C. Wilson

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of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association are the Respondents.

PROOF OF SERVICE

I certify that I have served *Respondents' Reply to Appellant's Response to Motion to Dismiss* upon the parties below by depositing a copy of it in the United States Mail, postage prepaid and/or via electronic mail, on September 1, 2023, addressed as follows:

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Counsel for Appellant

This 1st day of September, 2023.

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
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REPLY TO SC OFFICE

September 1, 2023

VIA EMAIL and REGULAR MAIL

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Re: Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Appellant,
v. ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and
ADESSO Homeowners' Association, Respondents
Appellate Case No. 2022-001434

Dear Ms. Kitchings:

Enclosed for filing, please find *Respondents' Reply to Appellant's Response to Motion to Dismiss the Appeal* in this case, together with Proof of Service. By copy of this letter, we are providing the Reply to Appellant's counsel. If anything further is required from these Respondents at this time, please advise.

Sincerely,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr
Enclosures

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