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Oct 02 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin J. Culbertson, Circuit Court Judge

Case No. 2022-CP-26-04863

Appellate Case No.: 2023-001088

Thomas Richard Kline and Karen Marie Kline Respondents,

v.

Rhonda Merritt.....Appellant.

RESPONDENTS’ RESPONSE TO APPELLANT’S MOTION TO DISMISS

Respondents submit this filing in response to “Appellates Motion to Dismiss Respondents Motion and Plea for Sanctions” dated September 16, 2023.¹

I. Appellant’s “Motion to Dismiss” Respondents’ Motion to Dismiss is Improper.

To the extent Appellant’s filing is a “Motion to Dismiss” Respondents’ Motion to Dismiss, it is improper under the South Carolina Appellate Court Rules and should be dismissed.

¹ Appellant’s “Motion to Dismiss Respondents [sic] Motion and Plea for Sanctions,” is dated September 16, 2023, and was allegedly mailed on September 18, 2023. It does not, however, appear on the Court’s Public Index as of Sunday, October 1, 2023.

Respondents filed a Motion to Dismiss Appellant's Appeal, for the reasons stated therein, which are adopted herein verbatim. Pursuant to Rule 240, SCACR, the only filings allowed in response to a motion are a Return by the non-moving party, and then a Reply by the moving party. There is absolutely no authority for Appellant to file a "Motion to Dismiss" in response to Respondents' Motion to Dismiss.

Even though Appellant is pro se, she is nonetheless bound to abide by the South Carolina Appellate Court Rules. As stated in Respondents' Motion to Dismiss, a pro se litigant is not excused from complying with the substantive and procedural requirements of the law. State v. Burton, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). "Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (citing Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988)).

Both the Court of Appeals and the Clerk of the Court of Appeals have the authority to dismiss an appeal when a party fails to comply with the South Carolina Appellate Court Rules. See Rule 260, SCACR ("Whenever it appears that an appellant or a 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."); Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992) (holding the South Carolina Appellate Court Rules are not mere technicalities and the Court has complete justification to dismiss an appeal where a party failed to comply with those Rules).

Therefore, Appellant's "Motion to Dismiss" Respondents' Motion to Dismiss is improper, and should be dismissed.

II. Appellant failed to Address any of the Substantive Issues in Respondents' Motion to Dismiss

To the extent this Honorable Court treats Appellant's "Motion to Dismiss" as a Return to Respondent's Motion to Dismiss, then this filing is Respondents' Reply under Rule 240(f), SCACR.

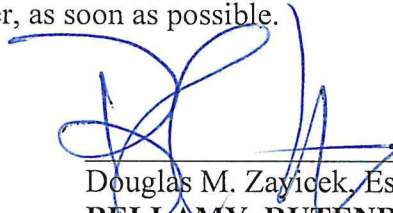
Appellant fails to address any of the issues raised by Respondents. Other than making a plea for sanctions, and trying to argue alleged "facts" that are nowhere in the record based on Appellant's failure to comply with the trial court's discovery Order, Appellant simply makes a request to have the entire underlying case thrown out.

As for Appellant's request for sanctions, this Honorable Court need look no further than its own correspondence to Appellant, advising her there was no proof of service of this Appeal on Respondents within the time required by the Rules. Respondents did not know an appeal had been filed in the Court of Appeals until it received the letter from this Court to Appellant indicating no proper proof of service had been filed. If Respondents' math is correct, they received proper notice of this Appeal some 50 days late.

As for the remainder of Appellant's "Motion to Dismiss," Appellant tries to argue alleged "facts" that are nowhere in the record, and asks for rulings on issues that have never been submitted to or ruled on by the trial court. Appellant's request for this Honorable Court to sua sponte "render the contract in this dispute null and void" is, respectfully, frivolous.

Respondents have diligently been trying to conduct written discovery and schedule Appellant's deposition, to move this case along and prepare for trial. Appellant utterly refuses to abide by any Court orders, or participate in the legal process, while all of the while collecting rent payments on a house that Respondents should now own, and in which Appellant does not even reside.

For the reasons stated above, and in Respondents' Motion to Dismiss, this Appeal should be dismissed. Appellant's attempt to circumvent the legal process is further harming Respondents, and is baseless. If Appellant's case is as strong as she contends, she should have eagerly comply with the trial court's discovery Order, sitting for her deposition, and then letting the fact finder decide the matter, as soon as possible.



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Attorney for Respondents

Dated: October 2, 2023.
Myrtle Beach, South Carolina.

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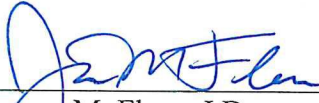
PROOF OF SERVICE

I, James M. Flom, J.D., as an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., counsel for Respondents in the above-entitled action, certify that I have this day emailed and mailed a copy of the document(s) listed below, with sufficient postage attached thereto, as follows:

Rhonda Merritt
3832 State Hwy 50B
Mooreland, OK 73852

DOCUMENTS:

1. Respondents' Response to Appellant's Motion to Dismiss; and
2. Proof of Service



 James M. Flom, J.D.
 Paralegal to Douglas M. Zayicek, Esq.

Dated: 10/2/2023
Myrtle Beach, South Carolina