

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Nov 06 2023**

**SC Court of Appeals**

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge  
The Honorable Perry Gravely, Circuit Court Judge

Case No. 2017-CP-11-00735  
Appellate Case No. 2022-001582

Sharon Brown,

Appellant,

v.

Cherokee County School District,

Respondent.

**RESPONDENT'S RETURN TO APPELLANT'S FIFTH MOTION FOR A 60-DAY  
EXTENSION OF TIME TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

**INTRODUCTION**

Pursuant to Rule 240(e), SCACR, Respondent Cherokee County School District, submits this Return to *pro se* Appellant Sharon Brown's Fifth Motion for a 60-day Extension of Time to File Initial Brief and Designation of Matter to be Included in the Record on Appeal. The District respectfully requests the Court deny Appellant's Motion for a Fifth Request for an Extension of Time to File her Initial Brief and Designation on Appeal and enforce the Court's previously granted extension to provide Appellant with the October 20, 2023, deadline to file her designation and initial brief. For the foregoing reasons, as further developed herein, Appellant's Motion for

an Extension of Time to File her Initial Brief and Designation should be DENIED, and this case dismissed and remitted to the circuit court.

### **PROCEDURAL POSTURE AND FACTUAL BACKGROUND**

This case arose in the court below following Appellant’s termination from employment by Respondent. Ultimately Plaintiff/Appellant’s Amended Complaint was remanded from the District Court of South Carolina, Greenville Division back to the Court of Common Pleas in Cherokee County due lack of subject matter jurisdiction. Following remand, the controlling complaint for relevant purposes of Appellant’s appeal alleges nine causes of action against the Defendant/Respondent.

On September 20, 2021, the Honorable Keith R. Kelly partially granted Defendant/Respondent’s Motion for Summary Judgment leaving Four (4) causes of action before the lower court. Before trial, Judge Kelly granted Defendant/Respondent’s Motion to Bifurcate Plaintiff/Appellant’s cause of action under the S.C. Whistleblower Protection Act (“SCWPA”) due to the statutory requirement that it be tried non-jury.<sup>1</sup> *Sharon Brown v. Cherokee Co. School District*, C/A No. 2017CP1100735, (Cir. Ct. Sept. 19, 2022). (**Exhibit A-Order Bifurcating Appellant’s SCWPA claim**). Following Judge Kelly’s Order to Bifurcate the SCWPA cause of action, three (3) causes of action remained against the Defendant/Respondent for the October 24-26, 2022, jury trial.

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<sup>1</sup> Under the SCWPA,

“(A) If an employee is dismissed, suspended from employment, demoted, or receives a decrease in compensation, within one year after having timely reported an alleged wrongdoing under this chapter, the employee may institute a nonjury civil action against the employing public body. . . .”

S.C. Code Ann. § 8-27-30

During the trial, the Honorable Perry Gravely granted Defendant/Respondent's directed verdict for another cause of action. Finally, on October 26, 2022, the jury found for the Defendant/Respondent for the remaining two (2) causes of action deliberated by the jury. (**Exhibit B**-Jury Verdict form). On November 4, 2022, Plaintiff/Appellant timely filed and served her Notice of Appeal of Judge Kelly's September 10, 2021; October 7, 2022, orders and "the trial held before Judge Perry Gravely on October 24, 2022; October 25, 2022; and October 26, 2022."

Although Appellant's SCWPA claim was brought under the same caption as Appellant's other causes of action, on January 27, 2023, the Honorable Keith R. Kelly, stayed the remaining bench trial for the SCWPA cause of action due to lack of jurisdiction of the lower court. *Sharon Brown v. Cherokee Co, School District*, C/A No. 2017CP1100735, (Cir. Ct. Jan. 27, 2023). (**Exhibit C**-*Filing acknowledging Court's Emailed Order staying Appellant's nonjury trial of the SCWPA claim due to lack of circuit court jurisdiction*).

Following the timely Notice of Appeal, Appellant admits that she received a copy of the transcript from the Court reporter on April 22, 2023. On May 18, 2023, the Appellant filed, and the Court granted, Appellant's Motion For A 30-Day Extension of Time To her File Initial Brief and Designation of Matter To Be Included In The Record On Appeal, extending the deadline to June 21, 2023.

On June 12, 2023, Appellant filed a *second* motion requesting an additional 30-day extension of the deadline for filing her Initial Brief and Designation on appeal, to which the Court granted and extended the deadline for the filing of Appellant's Initial Brief and Designation on Appeal until July 21, 2023.

On July 13, 2023, Appellant filed a *third* motion seeking an additional sixty (60) days to file her Initial Brief and Designation on appeal, to which the Court granted and extended the

deadline for the filing of Appellant's initial brief and designation of matters on appeal until September 20, 2023.

On September 21, 2023, Appellant filed a *fourth* motion seeking an additional sixty (60) days to file her Initial Brief and Designation on appeal, to which on October 16, 2023, the Court partially granted and extended the deadline for the filing of Appellant's Initial Brief and Designation of Matters on appeal until October 20, 2023. (**Exhibit D-Notice to Parties extending deadline to October 16, 2023**). Appellant failed to file or serve Appellant's Initial Brief and Designation of Matters on Appeal by the Court's October 20, 2023, deadline. Notably as of the date of this filing, Appellant has exceeded the Court's deadline to file or serve Appellant's Initial Brief and Designation of Matters on Appeal.

On October 26, 2023, Appellant filed a *fifth* motion seeking an additional sixty (60) days to file her Initial Brief and Designation on Appeal. Appellant claims that she did not receive the Court's notice of the Order partially granting her *fourth* extension until October 21, 2023, after the Court's October 20, 2023, deadline. In her *fifth* motion seeking additional time to file the Designation of Matters on Appeal and Initial Brief, Appellant fails to provide any evidence, whether documentary or via affidavit, that she failed to receive notice of the Court's October 16 Order. Furthermore, Appellant cites no reason that the Court's notice was not timely received as alleged—despite the clear evidence to the contrary (*See Exhibit D*). Appellant provides no documents from the U.S. Mail or email service rejecting or returning the Court's properly filed and served October 16, 2023, notice of the partially granted extension. Most notably, on October 16, 2023, the Court notified both parties via electronic mail of the Court's extended deadline for Appellant to file and serve her Designation of Matters on Appeal and Initial Brief until October 20, 2021.

Based on the reasons below, Respondent respectfully requests the Court deny Appellant's October 26, 2023, motion and enforce its Order designating the current deadline of October 20, 2023, for Appellant to file her initial brief and designation on appeal.

### LAW/ANALYSIS

Under Rule 208(a)(1), SCACR,

*“Brief of Appellant. within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.”*

Likewise, under Rule 209(a), SCACR,

*“at the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.”*

In this case, Appellant has failed to comply with both Rules 208 and 209, SCACR, for her lack of filing or serving her initial brief and designation of matters on the record on appeal. Appellants admits to receiving the transcript from Court Reporter Micheal Watson on April 22, 2023, via Email. (*See Appellant's First Motion for a 30-day Extension*). Appellants receipt of the trial transcript occurred well over six (6) months ago, well in excess of the thirty (30) day deadline to file her designation and initial brief.

Appellant's *fifth* motion for an extension time should be denied because the motion was not timely filed or served; Respondent is prejudiced in defending the on-going and underlying non-jury SCWPA claim due to lack of lower court jurisdiction; the Appellant's lack of evidence that she did not receive the Court's notice of the extended October 20, 2023 deadline—initiated by her *fourth* motion for an extension; and under the rules of this Court Appellant's appeal should have

been dismissed for her failure to engage in the proper procedures to litigate the appeal brought by her in a case filed by her more than six (6) years ago.

**I. APPELLANT’S FOURTH MOTION FOR AN EXTENSION DID NOT STAY THE COURT’S DEADLINE**

On September 21, 2023, Appellant sought her *fourth* extension for an additional 60 days to file her Initial Brief and Designation of Matters on Appeal. At the time of her filing of the *fourth* extension, the deadline for her to file was September 20, 2023. Based on her *fifth* motion for an extension, Appellant makes the, *albeit* incorrect assumption, that by filing her motion for an extension she is relieved from pending deadline. However, under Rule 240(b), SCACR, time limits imposed by the court’s rules “are not stayed by the filing of the motion or petition.” *Id.* It is unclear what Appellant believes to be within her rights to delay her responsibilities of this appeal—instigated by her— through her extension requests, but it is clear, the Court did not grant her *fourth* extension until after the deadline of the Court’s grant of her *third* extension. After Appellant filed and served her *fourth* motion for an extension, the deadline for the *third* extension had expired.

Based on the language of Appellant’s motions, it is clear she does not even contemplate this Court’s ability to deny her motions for extensions of time despite her repeated personal reasons for more time to initiate the substantive portions of her appeal. Appellant has not communicated with the undersigned on any occasion to seek consent or compromise to extend her time to file the required documents under Rules 208 and 209, SCACR. Therefore, based on Appellant’s repeated delays to even seek extensions and clear presumptions that filing a motion for an extension would guarantee at least a partial extension—contrary to Rule 240(b)—the Court should deny her fifth motion for an extension of time to file her Initial Brief and Designation of Matter on Appeal.

**II. APPELLANT’S MOTION FOR A FIFTH EXTENSION OF TIME SHOULD BE DENIED BECAUSE THE COURT’S NOTICE OF THE OCTOBER 20, 2023, DEADLINE WAS PROPERLY SERVED ON THE PARTIES.**

In her *fifth* motion for an extension of time to file her Initial Brief and Designation of Matter on Appeal, Appellant states: “Appellant, received a notice on October 21, 2023, from our Court of Appeals giving Appellant until October 20, 2023, to file Appellant's Initial Brief and Designation of Matter to Be Included In the Record.” (See App. Fifth Motion). Under Rule 262(c)(3), SCACR, service by the court via electronic means to a party so long as it is conducted in a manner provided by the Supreme Court of South Carolina. Currently the Supreme Court of South Carolina allows Electronic Filing and Service under Rule 262 (as amended May 6, 2022). Per the Court’s Order, “An appellate court may send an order, opinion or other correspondence to a lawyer admitted to practice law in South Carolina using that lawyer's primary e-mail address in AIS. A self-represented litigant may request the appellate court serve the litigant by e-mail under this provision.” See App. Case No. 2020-000447, Order RE Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022). In this case, Appellant has constantly and consistently used the email address “Sharon.brown21@yahoo.com” to file documents with the Court, communicate with Court personnel, to obtain the transcript, and for other means of correspondence or receipt of Court notices.

On October 16, 2023, Shelby Spencer, Appeals Specialist, S.C. Court of Appeals, notified all parties and counsel via email of the Court’s October 16, 2023, order partially granting Appellant’s *fourth* extension thereby making the deadline to file her Initial Brief and Designation of Matters on Appeal October 20, 2023. See **Exhibit D**. Spencer notified the undersigned via email, and the undersigned received the Court’s Order as reflected in the filed notice.

In her *fifth* motion, Appellant completely disregards the documented proof of service of the October 16, 2023, order via email to her own email address. Furthermore, she provides no evidence, neither documentary nor testimonial affidavit (*See* Rule 240(c)(3), SCACR, that the email was not delivered or that the Court did not deliver the Order by other means available. Appellant not only claims she did not receive the Order, but despite proof to the contrary, provides no justifiable excuse or good cause as to why she did not receive the Order, and she does not attempt to remediate her failure to follow the properly served notice from the Court. Therefore, the Court should deny Appellant's *fifth* motion for an extension because she was properly served the October 16, 2023, Order from the Court, and does not provided any evidence to the contrary.

**III. APPELLANT'S FURTHER DELAY TO INITIATE HER APPEAL IMMENSELY PREJUDICES RESPONDENT IN THE PENDING ACTION BEFORE THE LOWER COURT.**

Although Appellant's SCWPA claim was brought under the same caption as Appellant's other causes of action, on January 27, 2023, the Honorable Keith R. Kelly, stayed the remaining bench trial for the SCWPA cause of action due to lack of jurisdiction of the lower court. *Sharon Brown v. Cherokee Co, School District*, C/A No. 2017CP1100735, (Cir. Ct. Jan. 27, 2023). (**Exhibit B**-*Filing acknowledging Court's Emailed Order staying Appellant's nonjury trial of the SCWPA claim due to lack of circuit court jurisdiction*). Appellants constant and recurring delays in this appeal prejudices Respondent/Defendant's ability to defend the claims made against it in regard to the SCWPA claims. All of Respondent's witnesses are current or former public educators engaged in teaching or supervising public school children in Cherokee County. At Appellant's repeated attempts to delay her appeal carry on, the availability of Respondent's witnesses to provide testimony at the bench trial diminishes. Furthermore, some of the allegations in her claims under the SCWPA are supported by allegations of fact dating back more than ten (10) years ago.

The ability of Respondent's witnesses to recall events from so many years ago, only to be exacerbated by Appellant's veiled attempts to delay the appeal is to a great disadvantage to the Respondent's witnesses in their defense of their actions. Therefore, the Court should deny Appellant's *fifth* motion for an extension of time to not prejudice Respondent's ability to defend itself against the pending allegations in the lower court.

**IV. THE COURT SHOULD DISMISS APPELLANT'S APPEAL FOR FAILURE TO TIMELY FILE HER INITIAL BRIEF AND DESIGNATION OF MATTERS ON APPEAL.**

Under Rule 260(a), SCACR,

**“Involuntary Dismissal and Reinstatement** 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. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.”

In this case, Appellant has failed to file her Initial Brief and Designation of Matter on Appeal by the Court's October 20, 2023, deadline. Appellant failed to timely file her initial brief with this Court pursuant to Rule 208(a)(4), SCACR, and failed to comply with Rule 209, SCACR Pursuant to 208 (4), SCACR, and Rule 260(a), SCACR, Appellant's appeal should be dismissed, and not be reinstated without “good cause shown”. The Court has ruled that the right to an appeal may be lost, and an appeal can be dismissed for the failure to serve and file an initial brief and designation of matter. *Roberts v. LaConey*, 375 S.C. 97, 100, 650 S.E.2d 474, 475 (2007); *see also*, *State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). Appellant has not provided evidence of “good cause shown” but instead has misled the Court that she was not notified of the October 16, 2023, Order demonstrating the October 20, 2023, deadline and Respondent would ask that his appeal be dismissed


Even by the instigation of her own Motion for an extension of time, Appellant has only sought to delay this appeal by defying the Court's Order and rules of this Court. Even more than one year after this matter was tried before a jury, Appellant has done nothing more than bare minimum of filing her notice of appeal and obtaining the trial transcript. Meanwhile, Respondent has expended costs, attorney's fees, and other resources to defend the actions brought against it. Based on the foregoing, Respondent respectfully requests that Appellant's appeal be dismissed.

**CONCLUSION**

It is the Respondent's position that the Appellant's motion for a *fifth* extension of time be denied by this Court in accordance with Rule 208(a), SCACR. In consideration of the foregoing failure to comply with Rule 208(a) and at minimum the Court enforce its deadline for Appellant to file her initial brief and designation by the previously ordered date of October 20, 2023.

*Respectfully submitted,*  
**WHITE & STORY, LLC**

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November 3, 2023  
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