

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2023-001552

James Kevin Holmes and C. Collie Holmes, Appellants,

vs.

Charleston County Assessor, Respondent.

RESPONDENT’S RESPONSE TO APPELLANTS’ MOTIONS

Respondent Charleston County Assessor (“Assessor”) submits this Response to Appellants’ Motions pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (“SCACR”).

I. APPELLANTS’ MOTION TO RECONSIDER

Respondent objects to the contents of Appellants’ Motion to Reconsider because Appellants seek the same information as the former Motion that was previously denied by this Court. On January 30, 2024, the South Carolina Court of Appeals issued an Order denying Appellants’ Motion “for excerpts from the respondent’s transcript for record on appeal regarding matters of great public importance herein.” (the “Order”). In their Motion to Reconsider, Appellants request “excerpts from the tax-payer funded transcript in the best interests of the citizens of this great state regarding matters of great public importance as well as substantial justice affecting substantial rights.” Again, this appears to be the same request which was the subject of

the Court's denial earlier in the Order. Respondent does not know what transcript Appellants are requesting and cannot determine which excerpts are of great public importance to Appellants.

If the transcript that Appellants are requesting is the transcript from the hearing before the Charleston County Board of Assessment Appeals ("BAA"), there is no transcript of that hearing. The BAA does not transcribe the hearings before the Board. The BAA does keep minutes from the hearings and the minutes are provided to appellants along with the BAA decision. Therefore, there is not a transcript of Appellants' hearing before the BAA for Respondent to provide. Appellants received a copy of the minutes from their BAA hearing attached to the BAA Decision that was mailed to Appellants on October 7, 2022. Further, Appellants state "[t]he record reflects the tax collector's private transcriptionist fails to timely respond to correspondence regarding appeals and/or transcript requests." Respondent does not have a private transcriptionist, and there is no record of correspondence from Appellants requesting a copy of the BAA Hearing transcript.

Alternatively, if the transcript being requested by Appellants is the transcript of the Administrative Law Court proceeding, Rule 207(b), SCACR requires *Appellants* to order a copy of that transcript. Upon information and belief, Appellants have ordered the transcript from Creel Court Reporting, Inc. and Appellants have been notified, in writing, that the transcript will be provided to them upon receipt of payment.

In addition, Appellants argue that Respondent's failure to request permission to file a Surreponse denied Appellants' substantial rights and prejudiced the Order from the Court. The Appellate Court Rules do not mention Surreponses and do not require Respondent to seek permission to file a Surreponse with the Court. The Order cites Appellants' Motion, Respondent's Return Opposing the Motion, and Appellants' Reply. There is nothing in the Order indicating Respondent's Surreponse was even considered by the Court and that the Surreponse prejudiced

the Court's decision or denied Appellants' substantial rights. Based on the foregoing, this Court should deny the Appellants' Motion to Reconsider.

II. APPELLANTS' MOTION FOR PERMISSION TO FILE SURREPLY WITH SURREPLY

Respondent objects to the contents of Appellants' Motion for Permission to File Surreply with Surreply because Appellants continue to file multiple motions as a delay tactic to avoid addressing the issue of the transcript and moving the appellate process along. Appellants filed their Notice of Appeal on October 2, 2023, and now over 130 days later, Appellants have failed to provide a copy of the transcript of the Administrative Law Court proceedings and have not offered this Honorable Court any explanation as to why. Instead, Appellants continue to file multiple frivolous motions to further delay these proceedings. This Court should deny the Appellants' Motion for Permission to File Surreply with Surreply.

III. APPELLANTS' MOTION FOR DISPOSITION BY THE COURT

Respondent objects to the contents of Appellants' Motion for Disposition by the Court because the Motion is unclear in its requested relief, argumentative, and leads to further confusion in these proceedings. On January 30, 2024, the Court sent correspondence asking for clarification as to the retirement status of Appellant, Cynthia Holmes, and her engagement in the practice of law in South Carolina. The Court asked Appellant to clarify her status within five days of the letter which would have been February 4, 2024. Despite claiming no reasonable notice, Appellant filed a timely response by faxing a letter to the Court on February 4, 2024. Appellant Holmes' letter does not answer the Court's inquiry and instead muddies the waters even further with a request for ten days to respond. In the interest of providing Appellant Holmes the time she requested to respond, the Court filed an Order on February 7, 2024, granting Appellant Holmes an extension making the time for a filing a reply extended until February 12, 2024.

Instead of responding to this Court’s request for clarification, Appellants filed another frivolous motion on February 12, 2024. The Motion for Disposition by the Court does not answer the Court’s original inquiry into Appellant Holmes’ retirement status and engagement in the practice of law but instead accuses this Honorable Court of committing favoritism, impermissible *ex parte* contact, and discrimination.

The confusion created by Appellant Holmes’ email address has been an ongoing issue that was previously addressed by the Supreme Court of South Carolina. In the case, *In re Collie*, Holmes was advised that she was required to have an email address under Rule 410 of the SCACR. *In re Collie*, 406 S.C. 181, 182, 749 S.E.2d 522, 523 (2013). Holmes did ultimately create an email address but had an automatic reply message stating “Rule 410- retired. No reply. Please consult the current directory for contact information.” *Id.* at 183. The Court directed Holmes to “remove the automatic message from her email and to start monitoring her email account.” *Id.* This auto response is similar to the message received by this Court and referenced in its January 30, 2024, letter to Appellants.

The County also points out that the Supreme Court warned that “this Court and/or the hearing panel may place restrictions on her filings in this disciplinary matter if it determined that she is making repetitive frivolous filings”. *Id.* at 184. Despite this warning, Holmes continued to bombard the Court with filings and was eventually told that the Court would not accept any further filings until the disciplinary matter was considered by the Commission. *Id.* Even after the Court refused to accept her filings, Holmes continued to send motions leading the South Carolina Supreme Court to find the following:

“Respondent has repeatedly refused to comply with the explicit directives, orders, and rules of this Court and of requests by the Clerk of Court by refusing to maintain and monitor an operational email account. Moreover, in spite of the Court's order of June 19,

2013, specifically prohibiting her from filing additional motions with the Court until the underlying disciplinary matter has been considered by the Commission, respondent has nevertheless attempted to submit further motions with the Court. As a result of her persistent refusal to comply with this Court's directives, the Court finds respondent poses a substantial threat of serious harm to the public and to the administration of justice. Therefore, pursuant to Rule 17(b) and (c), RLDE, Rule 413, SCACR, the Court places respondent on interim suspension.”

Id. at 186.

Appellant Holmes’ attempts to file multiple, frivolous filings in this matter is an attempt to avoid responding to this Court explaining why she has not furnished the transcript 130 days after filing the Notice of Appeal.

For the foregoing reasons, Respondent respectfully requests that this Court deny Appellants’ Motion to Reconsider, Motion for Permission to File Surreply with Surreply, and Motion for Disposition by the Court.

/s/ Brittney M. Darnell

Bernard E. Ferrara, Jr., Esquire, S.C. Bar No. 9034
Brittney M. Darnell, Esquire, S.C. Bar No. 105274
CHARLESTON COUNTY ATTORNEY’S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
bferrara@charlestoncounty.org
bdarnell@charlestoncounty.org

Attorneys for Respondent

February 14, 2024
Charleston, South Carolina

RECEIVED

Feb 14 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2023-001552

James Kevin Holmes and C. Collie Holmes, Appellants,

vs.

Charleston County Assessor, Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on this 14th day of February, 2024, she served the Appellants with a copy of Respondent’s Response to Appellants’ Motions via U.S. First Class Mail, postage prepaid, upon the following:

James Kevin Holmes
C. Collie Holmes
P.O. Box 187
Sullivan’s Island, South Carolina 29482

/s/ Brittney M. Darnell
Bernard E. Ferrara, Jr., Esquire, S.C. Bar No. 9034
Brittney M. Darnell, Esquire, S.C. Bar No. 105274
CHARLESTON COUNTY ATTORNEY’S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010
bferrara@charlestoncounty.org
bdarnell@charlestoncounty.org

Attorneys for Respondent