

RECEIVED

Mar 08 2024

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.

RESPONDENT'S MOTION TO DISMISS

TO: GARY COGGIN, ESQUIRE, ATTORNEY FOR APPELLANT:

YOU WILL PLEASE TAKE NOTICE THAT Respondent will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the presiding Judge for 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 of the Order of the Honorable R. Ferrell Cothran, Jr. dated and filed October 4, 2022 pursuant to the South Carolina Rules of Appellate Procedure, for a failure of the Appellant to timely file a sufficient and complete record on appeal as required by the SCACR.

On January 25, 2024 the Court issued correspondence to the parties indicating that the Appellant had not filed or served the required record on appeal, which was due by January 2, 2024. In that correspondence, the Court noted that failure to provide the requested, complete, record on appeal within ten days of the letter would render the appeal dismissed.

In response, on February 2, 2024, Appellant's counsel issued his own correspondence explaining the delay and a request for an extension and motion to file the record on appeal out of time. The Appellant's extension and motion to file out of time was granted by the Court of Appeals on February 15, 2024 but requiring that that Appellant file the record on appeal no later than March 4, 2024, indicating that a failure to do so could result in the dismissal of the appeal. To date, Appellant has not yet filed a complete record on appeal as requested by the Court in the above-mentioned correspondence and as required by the SCACR.

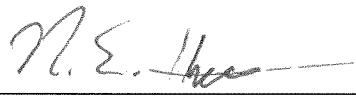
Although the Appellant filed another copy of his Initial Brief and Designation of matter on March 4, 2024, this filing is incomplete and does not include required documentation for a complete record on appeal to allow the Court to conduct de novo review. The latest filing by the Appellant does not include the required copy of the complete transcript of the hearing on the Respondent's motion for summary judgment giving rise to the present appeal. While the filing does include a transcript of a hearing before the court before undersigned counsel even represented the Respondent, the latest filing does not include a complete copy of the transcript of the hearing on motion for summary

judgment granted by Order of the Honorable R. Ferrell Cothran, Jr. dated and filed October 4, 2022. This is fatal to the Appellant's appeal as the transcript is required under the SCACR to provide a sufficient record for the Court's review. Taylor v. Taylor, 294 S.C. 296, 299, 363 S.E.2d 909, 911 (Ct. App. 1987) ("The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review."); Malpass v. Burns, 2021 WL 50249, *1 (affirming lower court order dismissing appellant's complaint where the record on appeal did not contain a complete copy of the hearing transcript.); Cleveland v. Russel, 2019 WL 5793046, *1 ("The record on appeal did not include the transcript from the hearing . . . because Cleveland did not produce a sufficient record, we cannot conduct a *de novo* review."); Hemphill v. Hemphill, 2021 WL 1664110, *3 (affirming the lower court and finding that appellant failed to provide a sufficient record where the appellant failed to include the transcript for the hearing from the lower court in the record on appeal.); Cox v. Pinckney, 2015 WL 4571526, *1 (affirming the trial court's grant of summary judgment where appellant "failed to include the transcript of the motion hearing in the record on appeal . . . this failure to provide an adequate record prevents this court from determining what arguments she made before the trial court . . ."); Johnson v. Sonoco Products Co., 381 S.C. 172, 672 S.E.2d 567 (2009) (affirming the court below, in part, because the appellant failed to provide a transcript of the hearing in the circuit court.); Averette v. Browning, 2005 WL 7082778, *2 (affirming the lower court order where the appellant failed to include the transcript from the hearing within the record on appeal.).

Based on the above, the Appellant has yet to file a sufficient record on appeal as required by the Court and the SCACR and is well beyond the extension of time given. Accordingly, the Appellant's Appeal should be dismissed.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil and Appellate 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
NAkers@hgghpa.com
Attorney for Respondent

Beaufort, South Carolina

March 8, 2023

RECEIVED

Mar 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT 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.

RESPONDENT'S PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Respondents' Motion to Dismiss 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 8th day of March, 2024 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@hgpha.com
Attorney for Respondent

Beaufort, South Carolina

March 8, 2024

RECEIVED

Mar 08 2024

SC Court of Appeals

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.

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

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

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

* Certified Mediator

March 8, 2024

Via Email Only
ctappfilings@sccourts.org

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 Motion to Dismiss and Certificate of Service 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.

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