

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Honorable Daniel Coble, Circuit Court Judge

Appellate Case No. 2023-000460

Joe Clemons.....Appellant

v.

William S. Helmly/President & CEO of Home Telecom Co. .... Respondent

**RESPONDENT’S AMENDED MOTION TO DISMISS**

Respondent William S. Helmly/President & CEO of Home Telecom Co. moves, pursuant to Rule 260 of the South Carolina Appellate Court Rules, the Court of Appeals’ February 7, 2024 and February 28, 2024 Orders, and the Court of Appeals’ February 28, 2024 letter to dismiss this appeal.<sup>1</sup>

Appellant filed his Notice of Appeal on March 20, 2023. Appellant’s Initial Brief was filed on August 10, 2023, and Respondent’s Initial Brief was filed on September 11, 2023. Thereafter, Appellant filed two motions for extension of time to file the Record on Appeal, and those extensions were granted. In an Order filed November 16, 2023, the Court notified Appellant that “[t]he time for serving and filing the record on appeal is hereby extended until December 13, 2023. No further extensions will be granted absent extraordinary circumstances.”

On December 14, 2023, Appellant filed a Record on Appeal, which did not contain a number of documents designated by the parties in their Initial Briefs. Appellant later filed a revised Record on Appeal on December 15, 2023; however, that revised record is also deficient, in that it

<sup>1</sup> This Amended Motion to Dismiss amends the motion previously filed by Respondent on March 19, 2024.

does not contain a number of documents designated by Appellant and Respondent. The documents missing from the Record on Appeal include:

1. Motion to Dismiss
2. Documents produced by Plaintiff at July 18, 2022 hearing
3. November 16, 2022 Motion to Dismiss or Alternatively, for Judgment on the Pleadings, and Motion for Sanctions
4. March 3, 2023 Response to Plaintiff's Motion to Reconsider
5. March 10, 2023 Order

Given the deficient record, Respondent filed a Motion to Correct the Record on Appeal and Motion for Extension of Time to File Final Brief on January 10, 2024. On February 7, 2024, the Court granted Respondent's motion and ordered the following:

Within twenty days of the date of this order, Appellant shall serve and file a supplemental record on appeal that includes all documents designated by the parties, which were omitted from the previously filed record on appeal. Thereafter, the parties shall serve and file their amended final briefs within ten days of service of the supplemental record on appeal. Failure to comply may result in dismissal of this appeal.

Thereafter, Appellant sent the Clerk of the Court of Appeals multiple letters, in which Appellant stated he was "requesting that this motion be dismissed and let it go to the appellate court for a decision." Appellant also requested "an abeyance until this issue is addressed." On February 28, 2024, the Court issued an Order, which stated the following:

On December 15, 2023, Appellant filed the record on appeal. On January 10, 2024, Respondent filed a motion to correct the record on appeal because the record failed to "contain all documents designated by Appellant and Respondent." On February 7, 2024, this court granted Respondent's motion and ordered Appellant to serve and file a supplemental record on appeal containing all documents designated by the parties, which were omitted from the previously filed record on appeal within thirty days of the order. The order further allowed the parties to file amended final briefs within twenty days of the date of service of the supplemental record on appeal. On February 22, 2024, and February 26, 2024, Appellant wrote letters to this court requesting Respondent's motion to correct the record on appeal "be dismissed." We construe these letters as a petition to rehear the order granting the motion to correct the record on appeal. After careful consideration, we take no action on the petition for rehearing because the order granting the motion to correct the record on appeal did not dismiss or finally decide the

appeal. *See* Rule 221(c), SCACR (“The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party’s appeal.”).

Also on February 28, 2024, the Clerk of Court sent a letter to the parties with the above-cited Order attached, and stated “The supplemental record on appeal must be served and filed within twenty (20) days of the date of this letter, or this appeal will be dismissed.”

Appellant has failed to comply with the Court’s February 7, 2024 Order, the Court’s February 28, 2024 Order, and the Court’s February 28, 2024 letter. As of the date of this filing, the deadlines established in those two orders and the Court’s letter have all passed, and Appellant has not filed a Record on Appeal that complies with Rule 210, SCACR.

Rule 260 of the South Carolina Appellate Court Rules provides “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.” Appellant has failed to comply with Rule 210, SCACR, which governs the Record on Appeal.<sup>2</sup> *See* Rule 210(a), SCACR (“Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief.”); Rule 210(c), SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267.”); *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”); *Wise v. S.C. Dep’t of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (“Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued.”); *Camp v. Camp*, 378 S.C. 237, 240, 662 S.E.2d 458, 459 (Ct. App. 2008), rev’d, 386 S.C. 571, 689 S.E.2d 634 (2010) (“The clerk shall dismiss the appeal of a party who fails to comply with the Rules, and the case

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<sup>2</sup> Respondent also notes that Appellant failed to comply with Rule 211, SCACR. Rule 211 states that final briefs are to be “identical to the brief(s) previously served under Rule 208, except for the following: (1) References to the Record . . . [and] (2) Correction of Typographical Errors and Misspellings.” However, on February 5, 2024, Appellant filed a “Final Brief” that contained sweeping substantive changes in comparison to Appellant’s Initial Brief. However, despite Plaintiff filing a document titled “Final Brief,” neither party can presently file a final brief that complies with Rules 210 and 211, SCACR, because Appellant has not filed a corrected record on appeal.

‘shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.’” (internal citation omitted)).

Despite having filed this appeal nearly one year ago, and despite all parties’ initial briefs having been filed by September 11, 2023, Appellant has failed to comply with Court’s Orders, the Court’s letter, and the South Carolina Appellate Court Rules. Appellant has had ample time to correctly file a record on appeal yet has failed to do so, which has prevented the parties from being able to file Final Briefs that comply with Rule 211, SCACR, and further prevents the appellate court from being able to consider the issues on appeal. *See* Rule 210, SCACR (“Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.”). As such, the dismissal of Appellant’s appeal is warranted.

Respectfully submitted,

*/s/ Robert E. Kneece III*

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Robert E. Kneece III  
Turner Padgett Graham & Laney, P.A.  
Post Office Box 22129  
Charleston, South Carolina 29413  
Direct: 843-576-2829  
Fax: 843-577-1639  
[RKneece@TurnerPadgett.com](mailto:RKneece@TurnerPadgett.com)

March 20, 2024

ATTORNEYS FOR RESPONDENT