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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, ... Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are . . . . . .Appellants,

v.

The Biship of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, ...Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . . Intervenors.

DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER, LLC'S REPLY BRIEF REGARDING THEIR MOTION TO DISMISS

Pursuant to Rule 240(f), SCACR, David J. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC (collectively, "Richter & Haller") submit this reply in reference to the motion to dismiss filed April 2, 2024, and in response to arguments raised in the return served April 13, 2024 on behalf of the Appellants, Julie McDonald and Richard McDonald ("Appellants").

Appellants contend the motion to dismiss should be denied because it is based on "technicalities of service" and because the undersigned impliedly consented to accept service of

documents through the unfamiliar file sharing service their counsel utilizes. In addition, Appellants suggest granting the motion would constitute "special consideration" and would fuel their conspiracy and corruption theories. None of those arguments holds water.

"[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. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Here, it is undisputed that Appellants were required to file and serve the record on appeal no later than March 15, 2024.[1] Appellants attempted to serve the record on March 14th using a file sharing system, then later served a "correct" version of Volume 4 of the record on appeal by attaching it to an e-mail. Later, Appellants' counsel attempted to serve a revised version of Volume 3 of the record on appeal using the same file sharing service on March 25, 2024. Two weeks later, on March 28, 2024, and at the request of the undersigned, Appellants' counsel uploaded a copy of the record on appeal, as it existed at the time. That copy, however, failed to comport to the requirements of the Appellate Court Rules, as noted in Richter & Haller's motion to dismiss.

Finally, between 3:53 pm and 3:55 pm on April 3, 2024, the day Appellants' counsel contended Richter & Haller were required to file and serve their final brief, Appellants served Volumes 2 and 4 of the record as e-mail attachments and attempted to serve the remaining volumes using Google Drive. Appellants also served a "Supplemental Proof of Service," ostensibly a brief in opposition to the motion to dismiss which Appellants' counsel had been told was coming. The Supplemental Proof of Service notwithstanding, it is apparent Appellants in fact failed to serve and file record on appeal by March 15, 2024, as required by the Court's Order and Rules 210 and

[1] Order entered February 29, 2024.

262. It is also apparent the record that Appellants eventually served on March 28, 2024, failed to comply with the requirements of the Rules. While Appellants' counsel correctly notes that attorneys typically cooperate to resolve procedural issues, this is no typical case, and it never has been. The long and tortured history of this litigation over the past sixteen years is replete with accusations of legal malpractice, collusion, fraud, judicial misconduct, and other wrongful acts, all of which appear to be fueled by a personal vendetta against Richter & Haller. In this context, Appellants and their counsel cannot reasonably expect Richter & Haller or their counsel to overlook their failures, especially when the failures frustrate the purpose of the Appellate Court Rules to provide "an orderly mechanism through which to guide" this appeal. Id.

Appellants also argue service of the record on appeal was effective on March 14, 2024, because counsel for Richter & Haller "had already implicitly given consent in the proceedings below" to accepting service of documents through their unfamiliar file sharing service. They cite no legal authority for that position because there is none, and there is none because that argument is based on an unreasonable and unworkable interpretation of a Supreme Court Order. The operative language from the Order states, "In the absence of consent, a lawyer serving a document by e-mail may not utilize another file format or a file-sharing service." (Order entered May 6, 2022, Appellate Case No. 2020-000447.) While the Supreme Court does not specify whether the consent must be express, that interpretation aligns with other Court rules. See, e.g., Rule 6(b), SCRCP (allowing for enlargement of time "by written agreement of counsel"). Even if implied consent is sufficient, as Appellants argue, implied consent must be voluntary and knowing because it equates to waiver of the requirements in the Appellate Court Rules that an attorney serve documents either by traditional means or by attaching the documents to one or more e-mails. See Harvey v. Jefferson Standard Life Ins. Co., 165 S.C. 427, 164 S.E. 6, 6 (1932) ("Waiver has been

frequently defined as 'the voluntary relinquishment of a known legal right,' and is referable to the intention of a party as indicated by language or conduct. In 27 R. C. L. at page 908, we find: 'To constitute a waiver within the definitions already given, it is essential that there be an existing right, benefit, or advantage; a knowledge, actual or constructive, of its existence, and an intention to relinquish it.'"). Appellants' implied consent argument falls far short of this standard. They contend that while this case was before the Circuit Court they served an amended motion with attachments on December 8, 2023, using the same file sharing service. The absence of any objection, they argue, proves implied consent. What Appellants overlook is that service of the amended motion and other documents on the parties was accomplished not through any file sharing service but instead when they e-filed the documents on December 6 & 7, 2022, using the state's e-filing system. See also Rule 4(a), S.C. Electronic Filing Policies and Guidelines, Pilot Version-Common Pleas ("The electronic transmission of a document to the E-Filing System in accordance with these Policies and Procedures and the Filer Interface User Guide constitutes the filing of that document in accordance with Rule 5(e), SCRCP."). Appellants provide no response or affirmation from Richter & Haller's counsel acknowledging receipt and accepting service through the file sharing service or, for that matter, knowingly and voluntarily waiving all future requirements governing service of documents. At best, Appellants have proven only that they attempted service on December 8, 2022, not that they effected service that day. Any service required by the Rules of Civil Procedure had already been effected through the e-filing system. Moreover, Richter & Haller were class counsel in the underlying case; they were not named parties to the case at that time. Therefore, there was no legal requirement to serve their counsel, including the undersigned, with the filings. A person cannot, through mere lack of response, be deemed to have knowingly and voluntarily waived a legal requirement that did not exist at the time, nor can the lack of a

response be deemed to waive all legal obligations that arise in the future under different Court Rules. See Harvey, supra.

The failure of the Appellants to file and serve the record on appeal by March 15, 2024, coupled with the deficiencies the record on appeal that was filed and later served, are apparent and require dismissal. Rule 260(a), 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."). These shortcomings of Appellants and their counsel are not innocuous but instead have hampered the ability of this appeal to proceed in an orderly fashion as contemplated by the Appellate Court Rules. Specifically, the difficulties with the record, coupled with the insistence of Appellants' counsel in writing that the deadline for Richter & Haller to submit their final brief was April 3, 2024 (even though the record was never properly assembled and served), resulted in Richter & Haller having only roughly one-third the time to prepare their final brief that the Rules contemplate. The various errors and deficiencies prevented Richter & Haller from completing their final brief as contemplated by the Rules. Richter & Haller submitted their final brief, to the extent they were able, on the appointed day to avoid any potential argument from Appellants about missing the April 3rd deadline. Contemporaneously with their final brief, Richter & Haller submitted their motion to dismiss to bring the Court's attention to the Appellants' clear failure to comply with the requirements of the Rules and to request dismissal. The Rules would then allow Appellants to move to reinstate the appeal upon good cause, if they can show good cause.

Finally, Appellants' counsel suggests that dismissal would only prove his theories of collusion, judge-shopping, and corruption. He has indeed taken the words of Carl Sandburg[2] to

[2] "If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell."

heart, with an added twist of arguing that dismissal would require "special consideration" for Richter & Haller from this Court. It is an ironic argument indeed given special consideration is precisely what Appellants and their counsel request here: they ask this Court to overlook their various failures. Despite their table-pounding,[3] Appellants have failed to show they complied with the requirements of this Court's Order and Rules 210 and 262, SCACR.

The Court should grant the motion and dismiss the case accordingly.

Respectfully Submitted,

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April 18, 2024
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[3] See ibid.

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And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . . Intervenors.

PROOF OF SERVICE

I, Bridge Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, counsel for Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached **DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER, LLC'S REPLY BRIEF REGARDING THEIR MOTION TO DISMISS** by e-mail on April 18, 2024, addressed to the following:

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April 18, 2024

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April 18, 2024

VIA EMAIL ONLY
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Re: John Doe #53 v. The Bishop of Charleston
Appellate Case No: 2023-000720
BPWM File No.: 3-716-134.012

Dear Ms. Kitchings:

Enclosed herewith for filing please find David K. Haller, Lawerence E. Richter, Jr. and Richter & Haller, LLC's Reply Brief Regarding Motion to Dismiss in the above referenced matter.

Sincerely,

Benjamin C. Bruner

BCB/bs
Encl.

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
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