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Apr 25 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity Charleston County

Case No. 2017-CP-10-5427  
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,  
Of whom Patricia Clarkin Smith is the ..... Appellant.

RESPONDENT’S RETURN APPELLANT’S  
MOTION TO FILE OUT OF TIME

Respondent, Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Respondent") by and through its undersigned counsel, hereby files and serves this Return to Appellant Patricia Clarkin Smith’s (“Appellant”) Motion To File Out of Time. (hereinafter "Motion"). Respondent respectfully requests that Appellant's Motion be denied and replies as follows:

- 1) Appellant filed her notice of appeal in this matter on July 22, 2021, and over a year later, after requesting and being granted numerous extensions of time, Appellant filed an initial brief and designation of matter on October 31, 2022. Thereafter, Respondent filed a motion to dismiss or in the alternative an order striking portions of the Appellant’s initial brief and designation of matter which contained records and/or documentation which were not filed or presented to the lower court

in this matter and thus cannot form a part of the Record on Appeal. Appellant responded to Respondent's motion acknowledging that she had not complied with the South Carolina Appellate Court Rules in filing her initial brief and designation of matter. Appellant requested this Court allow her to file an amended brief and designation of matter. By Order dated March 24, 2023, this Court granted Appellant's request and denied Respondent's motion to dismiss stating that Appellant shall file an amended initial brief and amended designation of matter by April 23, 2023. Appellant failed to timely file an amended initial brief and amended designation of matter.

2) On July 24, 2023, this Court issued an order dismissing this matter based upon Appellant's failure to file an amended brief and designation of matter, stating "[t]he remittitur will be sent as provided by Rule 221(b), SCACR."

3) On August 9, 2023, sixteen days after the Order, Appellant untimely filed a motion to reinstate. This Court granted the motion by Order dated October 5, 2023, stating that Appellant's amended initial brief and designation shall be filed and served within 30 days.

4) November 3, 2023, Appellant made her 10<sup>th</sup> motion for extension requesting a sixty (60) day extension to file Appellant's amended initial brief and designation of matter to be included in the record on appeal. Appellant's stated grounds for the Motion were: "Counsel for Appellant has reviewed the lower court's proceedings, *however, the transcripts may be unavailable pertaining to gathering the Designated Matter on Appeal and writing Appellant's initial brief.* Additionally, Appellant initially faced medical issues creating difficulty of coordinating with counsel for Appellant. Subsequently thereafter, counsel for Appellant has faced ongoing medical issues...". This Court issued an Order on December 18, 2023, granting Appellant's Motion for an Extension.

5) April 12, 2024, this Court sent a Correspondence to Appellant, stating: According to our records, the time to provide the proof of service of the record on appeal has expired. Within ten

(10) days from the date of this letter you must provide the proof of service of record on appeal, a motion to allow late filing of the proof of service, and the filing fee, or this appeal will be dismissed.”

6) On April 18, 2024, Appellant filed and served by e-mail an electronic copy of the Record on Appeal with a certificate of counsel as required by Rule 210(g), SCACR, as well as a Motion to File Out of Time. The Motion simply states the grounds for the late filing are “due to counsel for Appellant facing ongoing medical issues.”<sup>1</sup>

7) **The Record on Appeal Appellant served electronically upon Respondent on April 18, 2024, is incomplete, deficient, and improper in numerous respects.** Rule 210(g), SCACR, states: Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. Rule 210(c), SCACR, states: “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. The Record shall not, however, include matter which was not presented to the lower court or tribunal.”

8) In this case Appellant only included in the Record on Appeal matters listed in Appellant’s designation of matter, and not matters listed in Respondent’s designation of matter, which were not also listed in Appellant’s designation of matter. Appellant failed to include the following documents requested by Respondent in its Designation of Matter:

- A) **The Transcript of Hearing dated May 11, 2021. This is the transcript of hearing which resulted in the Order dated June 21, 2021, which Appellant is appealing in this appellate matter;**
- B) DOM#6 Appellant’s Counsel’s Motion to be Relieved as Counsel, filed April 4, 2019;

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<sup>1</sup> Rule 240(c)(3), SCACR, states: “Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.” No affidavit was included with the Motion to file out of time.

- C) DOM#9 Appellant's Motion for Continuance, filed January 27, 2020;
- D) DOM#11 Appellant's Motion for Continuance, filed February 18, 2020;
- E) DOM#17 Appellant's Letter to Judge Young, filed November 1, 2019;
- F) DOM#18 Affidavit of Kelly Evans in Support of Motion to Enforce Settlement, filed August 13, 2019;
- G) DOM#19 Notice of Appearance of New Counsel for Appellant, filed June 30, 2019;
- H) DOM#20 Notice of Hearing and Respondent's Certificate of Service, filed December 24, 2020;
- I) DOM#21 Notice of Hearing and Respondent's Certificate of Service, filed April 16, 2021;
- J) DOM#22 Certificate of Service for Proposed Order Granting Summary Judgment, filed June 10, 2021;
- K) DOM#24 Email 5/10/21 5:20 p.m. from Respondent's Counsel to the Master's Office and Appellant containing a pdf copy of certified official records of the Probate Matter (2014-GC-10- 0209), 50 pages including the court exemplification dated 8/15/19;
- L) DOM#25 Copy of the Probate Matter Records a hard copy of which was provided to the Master on May 11, 2021, during the hearing on May 11, 2021, and an electronic copy of which was emailed to the Master's Office and Appellant on May 10, 2021; 50 pages including the court exemplification dated 8/15/19;
- M) DOM#26 Email 4/1/21 11:40 AM from the Master's Office to Respondent's Counsel and Appellant informing the parties a hearing on the Motion for Summary Judgment would be held Tuesday May 11, 2021, at 12pm.
- N) DOM#27 Email 4/16/21 10:29 AM from Respondent's Counsel to the Master's Office and Appellant, attaching a courtesy copy of the Notice of Hearing 5/11/21 Respondent Mailed to Appellant on April 16, 2021.
- O) DOM#28 Email 5/7/21 5:07 PM from Appellant to Master's Office and Respondent's Counsel requesting a continuance of the Motion Hearing Scheduled for 5/11/21.
- P) DOM#29 Email 5/10/21 12:09 PM from the Master's Office to Appellant and Respondent's Counsel, informing the Appellant the hearing will proceed forward as scheduled and Appellant is welcome to appear by either Web-Ex or in person, but there is no requirement for her to appear.

Q) DOM#30 Charleston County Circuit Court Case Details Public Index for Case Number 2017-CP-10-05427, available online at:  
<https://jcmsweb.charlestoncounty.org/PublicIndex/CaseDetails.aspx?CourtAgency=10002&Casenum=2017CP1005427&CaseType=V&HKey=10978122121102748772501167054100748371721038155907711310812148471021115110673113115705274117738298113119&Org=AC>

9) Respondent set forth thirty (30), documents to be included in the Record on Appeal in Respondent's Designation of Matter, and Appellant failed to include seventeen (17) of those thirty documents within the Record on Appeal. Most importantly Appellant did not include the transcript of hearing for the order on appeal! Respondent cannot at this time draft, file and serve Respondent's final brief when the Record on Appeal is so incomplete and deficient.

10) Though Appellant did not include a majority of Respondent's requested documents in the Record on Appeal, Appellant did include an order from another case, which was issued after the order of final judgment on appeal before this Court, and over a year after Appellant filed this Appeal. (See Appellant's Final Brief, Designation Matter, the Record on Appeal, which include reference to "[ROA] 23. Order on Motions for Attorney Fees, Costs, Reimbursements and for Final Disbursement in Case No. 2022-CP-08-0910 entered on November 3, 2022. R. pgs. 537-541"). This order was never before the lower court, and thus its inclusion in the Record on Appeal and Appellant's Brief violates Rule 210(c), SCACR.

11) Additionally, at present Appellant has failed to serve Respondent a hard bound copy of both the Record on Appeal and Appellant's final brief in violation of Rule 267(d), SCACR, which states: "Records on Appeal...and briefs must be bound."

12) A year and a half ago, on October 31, 2022, Appellant previously failed to comply with the Appellate Court Rules by filing an initial brief and designation of matter which both included numerous references to documents and/or evidence which were not before or presented to the lower court. This Court granted Appellant the opportunity to file an amended initial brief and

designation of matter, but Appellant failed to do so resulting in this Court dismissing this matter by Order dated July 25, 2023. Thereafter the Court reinstated Appellant's appeal by Order dated October 5, 2023. Now, Appellant again violates the Appellate Court rules by again untimely filing the Record on Appeal and Appellant's Final Brief, which again include matters which were not before or presented to the lower court.

13) Rule 260(a), SCACR, states: "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."

Here, again Appellant has failed to comply with the appellate court rules and orders of this Court. Appellant's motion does not evidence good cause shown for the delay, which is the latest delay in a string of delay's caused by Appellant which have resulted in this Appeal still not being ready for this Court's review despite Appellant having filed the Appeal nearly three (3) years ago. If this Court were to permit Appellant another bite at the proverbial apple, allowing Appellant to amend the record on appeal and amend her brief and designation of matter for a second time, this will result in additional delays, which will further prejudice Respondent beyond the prejudice respondent has already suffered as a result of Appellant's failure to follow the appellate court rules and this Court's orders, over the course of the last three years this appeal has been pending.

**WHEREFORE**, Respondent respectfully requests of this Court the following:

- 1) Appellant's Motion to File out of Time, filed April 18, 2024, be denied and this matter be dismissed.

2) Respondent's time to file its final brief be stayed until after order of this Court regarding Appellant's Motion to File Out of Time and an order addressing Appellant's deficiencies of filing as set forth in this Return.

April 25, 2024.

THE LAW OFFICE OF  
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Of whom Patricia Clarkin Smith is the ..... Appellant.

CERTIFICATE OF SERVICE

I certify that on this 25<sup>th</sup> day of April 2024, I have served Respondent’s Return to Appellant’s Motion upon counsel for Appellant at the email address list for said counsel on AIS as follows:

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April 25, 2024

Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).

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**RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia  
Clarkin Smith, Et al.  
App. Case No. 2021-000793**

Madam Clerk:

Enclosed please find in regard to the above referenced matter the following:

- 1) Respondent's Return to Appellant's Motion to File Out of Time; and
- 2) Proof of Service for the Return.

I kindly request that you file the same

With kind regards,

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC



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Enclosures:  
(as stated)  
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