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May 02 2024

SC Court of Appeals

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 MOTION TO DISMISS APPEAL

Respondent William S. Helmly/President & CEO of Home Telecom Co. moves, pursuant to Rule 260 of the South Carolina Appellate Court Rules and the Court’s April 2, 2024 Order, to dismiss this appeal.

In its April 2, 2024 Order, the Court ordered Appellant to “file and serve a supplemental record on appeal containing all documents designated by the parties, which were omitted from the previously filed record on appeal, that complies with Rule 210 and 212 of the South Carolina Appellate Court Rules within twenty days of the date of this order.” That Order stated that “Failure to comply will result in the dismissal of this appeal.” On April 22, 2024, Appellant filed a Supplemental Record on Appeal that fails to comply with the Court’s order and this state’s appellate court rules; as such, this appeal should be dismissed.

To date, Appellant has on three separate occasions filed some version of a record on appeal: on December 14, 2023 he filed a Record on Appeal, on December 15, 2023 he filed a Revised Record on Appeal, and on April 22, 2024 he filed a Supplemental Record on Appeal.¹ However,

¹ Additionally, on March 20, 2024, Appellant emailed the Court documents he contended “address the requested Supplemental Record on Appeal;” however, the Court’s April 2, 2024 Order denied Appellant’s request to accept that filing as the supplemental record on appeal.

Appellant's Record on Appeal is still deficient and fails to include certain documents designated by the parties.

As an initial note, the Supplemental Record on Appeal filed on April 22, 2024 fails to contain multiple documents that were designated by the parties that Appellant did previously include in either the December 14, 2023 Record on Appeal or the December 15, 2023 Corrected Record on Appeal.² However, even if one was to cobble together the multiple versions of the Record on Appeal filed by Appellant in an attempt to assemble one coherent record, the record would still be deficient. Appellant's Designation of Matter filed on August 11, 2023 stated the following:

Appellant proposes the following be included in the Record on Appeal:

1. Two Complaints
2. Hearings of 7-18-22 & 1-31-23
3. Briefs of Both Hearings
4. No Reliable Transcript was Receive (sic)
5. The Letter of Reconsideration of Dismissal of Both Cases
6. Exhibits and Paperwork that was Presented at Both Hearings

To date, despite designating "Hearings of 7-18-22 & 1-31-23," Appellant has never included transcripts from either of the hearings of July 18, 2022 or January 31, 2023 in any of the records on appeal that he has filed. Appellant's Initial Brief references the alleged statements³ made by the parties and/or judge at these hearings as being the very basis for his appeal (see the "Statement of the Case" and "Argument" portions of Appellant's Initial Brief); however, he has not provided any transcripts of the hearings. Additionally, while Appellant included "Briefs of Both Hearings" in his Designation of Matter, Appellant's records on appeal do not contain Respondent's Motion to Dismiss (filed on January 31, 2022), which was the basis for the July 18, 2022 hearing.

² For instance, the Supplemental Record on Appeal filed on April 22, 2024 does not contain Plaintiff's August 31, 2022 Motion to Reconsider, Plaintiff's January 5, 2023 Response to Defendant's Motion to Dismiss, the February 6, 2023 Order to Dismiss, or Plaintiff's February 16, 2023 Motion to Reconsider.

³ It is Respondent's position that Appellant's recount of these alleged statements is inaccurate.

This appeal was filed over one year ago and, after requesting multiple extensions, Appellant's Record on Appeal was due to be filed and served by December 13, 2023. As of the date of this filing, 140 days have elapsed since that deadline, during which Appellant has been ordered multiple times to file a Record on Appeal that complies with South Carolina's Appellate Court Rules. Most recently, on April 2, 2024, the Court ordered Appellant to "file and serve a supplemental record on appeal containing *all documents designated by the parties*" and cautioned that "[f]ailure to comply *will result in the dismissal of this appeal.*" (emphasis added). As such, pursuant to the Court's April 2, 2024 Order and Rule 260, SCACR, this appeal should be dismissed as a result of Appellant's continued failure to file and serve a Record on Appeal that complies with the South Carolina Appellate Court Rules and the Court's prior orders.

Respectfully submitted,

/s/ Robert E. Kneece III

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May 1, 2024

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

The undersigned, an attorney in this matter for Respondent, certifies that on **May 1, 2024**, I have served copies of **Respondent’s Motion to Dismiss Appeal** upon Joe Clemons, Pro Se Appellant via e-mail to Joe Clemons, clemonswelding1@gmail.com

/s/ Robert E. Kneece III

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