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Jun 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable George M. McFadden, Jr., Circuit Court Judge

Appellate No. 2023 – 001845
Civil Action No.: 2022 – CP – 25 – 00269

Daniel A. Speights Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company, Auto-Owners Insurance Company, and
Bankers Standard Insurance Company Defendants,

Of Whom Auto-Owners Insurance Company is the Respondent.

RESPONDENT AUTO-OWNERS INSURANCE COMPANY’S MOTION TO DISMISS

WALL TEMPLETON & HALDRUP, P.A.
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**Attorneys for Respondent Auto-Owners
Insurance Company**

Respondent Auto-Owners Insurance Company moves before this Honorable Court for an Order dismissing Appellant Daniel A. Speights's Appeal for (1) failure to serve or file a Record on Appeal and/or (2) failure to serve or file a Final Brief.

MATERIAL FACTS & BACKGROUND

On November 27, 2023, the Appellant filed a Notice of Appeal following the entry of an Order denying his motion to reconsider. On March 6, 2024, following two extensions granted by this Court, the Appellant filed and served his Initial Brief and Designation of Matter. On April 3, 2024, the Respondent filed and served its Initial Brief and Designation of Matter.¹ On April 15, 2024, Appellant filed his Reply Brief. As of the date of this Motion, it has been over fifty (50) days since the last brief was filed and the Appellant has failed to file or serve a Record on Appeal or a Final Brief.

STANDARD OF REVIEW

Rule 240(a), S.C.A.C.R., “governs all motions ... filed in the appellate court, including but not limited to: ... motions to ... dismiss.” Rule 260(a), S.C.A.C.R., provides that “[w]henver it appears that an appellant ... 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.” (emphasis added). “The right of appeal is a matter of grace and is not an inherent or vested right.” McCullough v. McCullough, 242 S.C. 108, 110, 130 S.E.2d 77, 78 (1963) (citing Tuner v. Joseph Walker School District No. 9, 215 S.C. 472, 56 S.E.2d 243 (1949); Horn v. Blackwell, 212 S.C. 480, 48 S.E.2d 322 (1948)). “The rules of court and statutes must be followed in perfecting an appeal.” Id. (citing Camden Investment Company v. Gibson, 204 S.C. 513, 30

¹ Respondent also filed a motion to strike alongside its Initial Brief, for which this Court entered an Order denying that motion on June 7, 2024.

S.E.2d 305 (1944)). It is important to comply with the “statutes and rules which are intended to provide for the orderly disposition of appeals.” J.L. Mott Iron Works v. Clark, 84 S.C. 493, 66 S.E. 680, 681 (1910); see also State v. McGreer, 13 S.C. 464, 466 (1880).

ARGUMENT

I. This Court should dismiss this appeal because the Appellant Has Not Served or Filed a Record on Appeal as Required by Rule 210, S.C.A.C.R.

The Court lacks a record from which it can review the issues raised in this Appeal and must therefore dismiss the Appeal. An appellant’s right to appeal may be lost through “failure to serve and file a record on appeal ... under Rule[] 210 ..., S.C.A.C.R.” State v. Serrette, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). “[T]he burden is on the appellant to provide the appellate court with an adequate record for review.” Id. (citing State v. Willaims, 321 S.C. 455, 464 n. 4, 469 S.E.2d 49, 54 n. 4 (1996)). In the absence of a sufficient record, the issues raised on appeal cannot be considered. Bonaparte v. Floyd, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987). The Appellant has not filed or served any Record on Appeal as required by the South Carolina Appellate Rules and the Court should enforce the requirements of Rule 210, S.C.A.C.R., by dismissing this Appeal.

Additionally, the Appellant has not filed any motion for an extension of time to file and serve the Record on Appeal despite being well-beyond the deadline. Rule 210(a), S.C.A.C.R., required the Appellant to serve a copy of the Record on Appeal “[w]ithin thirty (30) days after service of the last brief...” The Appellant must “immediately” file proof of service with the clerk of the appellate court. Id. The Appellant filed his Initial Brief on April 3, 2024 and his Reply Brief on April 15, 2024. More than fifty (50) days have passed since the Reply Brief was filed on April 15, 2024, yet Appellant has still not filed or served the Record on Appeal or a motion for an extension of time. These delays impact the entire appeal as Respondent cannot serve its Final Brief

until after the Record on Appeal has been served. These delays are unnecessary and are grounds for dismissal to prevent backlogs among the courts. “The appellate backlog in South Carolina ... no longer permits us the luxury of entertaining improper appeals.” Brode v. Brode, 278 S.C. 457, 458, 298 S.E.2d 443, 444 (1982) (citing State v. Harris, 278 S.C. 46, 292 S.E.2d 40 (1982)). As such, this Court should dismiss Appellant’s Appeal for failing to serve or file a Record on Appeal.

II. This Court Should Dismiss This Appeal Because the Appellant Has Not Served or Filed a Final Brief as Required by Rule 211, S.C.A.C.R.

As an additional basis for dismissal, the Court should dismiss this Appeal because the Appellant has not filed or served a Final Brief. An appellant’s right to appeal may be lost through “failure to serve and file a .. final brief under Rule[] ... 211, S.C.A.C.R.” State v. Serrette, 375 S.C. at 652, 654 S.E.2d at 555. Rule 211(a), S.C.A.C.R., provides, in relevant part, “[w]ithin twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of the party’s final brief(s) on every other party to the appeal, and file the final brief(s) with clerk of the appellate court.” With a lack of any Record on Appeal, the Appellant cannot and has not served a Final Brief and the entirety of the appeal remains stalled. As with the Record on Appeal, the Appellant has not filed any motion for an extension of time to file the appropriate materials and this Court should prevent further delay by dismissing the appeal.

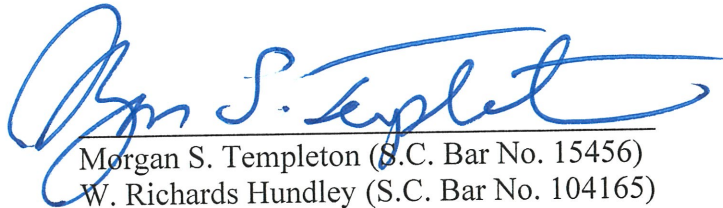
CONCLUSION

Based upon the foregoing, Respondent respectfully requests that this Honorable Court issue an Order dismissing Appellant’s appeal.

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Date: June 11, 2024

WALL TEMPLETON & HALDRUP, P.A.



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Daniel A. Speights Appellant,

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Chubb Limited d/b/a Chubb National Insurance Company, Auto-Owners Insurance Company,
and Bankers Standard Insurance Company
Defendants,

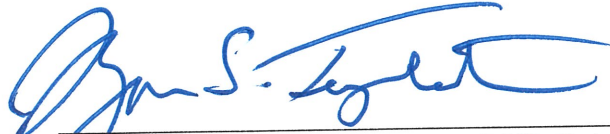
Of Whom Auto-Owners Insurance Company is the Respondent.

PROOF OF SERVICE

I, Morgan Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served
Respondent Auto-Owners Insurance Company's Motion to Dismiss by depositing the same in the
United States Mail, properly posted on June 11, 2024 addressed as follows to counsel of record:

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Attorneys for Plaintiff

Dated this 11th day of June, 2024.



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SC Court of Appeals

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RE: *Daniel A. Speights v. Chubb Limited, et al*
Civil Action No.: 2022-CP-25-00269
App Case No.: 2023-001845

Dear Ms. Spencer:

Enclosed please find Respondent, Auto-Owners Insurance Company's Motion to Dismiss along with the requisite Proof of Service for filing in the above-referenced matter. I am also enclosing the filing fee of \$50.00. I would ask that you file the original with the Court and return a filed-stamped copy at your convenience.

If you have any questions or concerns, please feel free to give me a call.

Sincerely

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST/sjs

Enclosures

cc: A. Gibson Solomons, III, Esquire (*w/ encl, via electronic mail only*)