

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000200

Anthony Beasley, Individually and on behalf of the minor child, LB
born 2014,Appellant

v.

South Carolina Department of Social Services, South Carolina
Department of Children Advocacy, Children’s Advocacy Center of
Spartanburg, Cherokee and Union Counties, Inc.,Defendants

of whom South Carolina Department of Social Services and South
Carolina Department of Children Advocacy are.....Respondents

RESPONDENTS’ MOTION TO DISMISS APPEAL

Respondents South Carolina Department of Social Services and South Carolina
Department of Children Advocacy move the Court, pursuant to Rules 208, 240, and 260 of the
South Carolina Appellate Court Rules, for an order dismissing Appellant’s Appeal. This motion is
made upon the following grounds:

1. Respondent South Carolina Department of Social Services filed a Motion to Dismiss on
November 20, 2023.
2. Respondent South Carolina Department of Children Advocacy filed a Motion to Dismiss
on December 19, 2023.
3. Respondents’ motions were heard by the trial court on January 10, 2024.

4. The court granted in part and denied in part the motions to dismiss by order filed on January 16, 2024.
5. Appellant filed Notice of Appeal on February 13, 2024.
6. That same day, Appellant submitted a Transcript Request Form for the January 16, 2024 hearing.
7. Appellant received the transcript on February 25, 2024.
8. Appellant did not file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal within thirty days of receiving the transcript.
9. On April 17, 2024, the Court sent a letter to Appellant's counsel acknowledging that the transcript was delivered to Appellant on February 25, 2024, and that Appellant's time to file and serve Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal had expired. The Court instructed Appellant to belatedly file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal with a motion requesting permission to do so outside of the filing deadlines within ten days. The Court also cautioned Appellant that his "appeal will be dismissed if no motion is made within ten (10) days from the date of this letter."
10. On April 23, 2024, Appellant's counsel incorrectly reported that she had not received the transcript.
11. Appellant did not file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal, or a motion requesting permission to serve and file his Initial Brief and Designation of Matter to be Included in the Record on Appeal outside of the deadlines as instructed by the Court.

12. On May 31, 2024, the Court sent a letter to Appellant's counsel because the Court had not received Appellant's Initial Brief nor any notice from Appellant concerning the status of the transcript. The Court advised Appellant that his appeal "will be dismissed" if he failed to "advise the Court of the status of the transcript within ten (10) days of the date of this letter."
13. On June 7, 2024, Appellant's counsel again incorrectly reported that she had not yet received the transcript.
14. On June 10, 2024, Circuit Court Reporter Pamela E. Green sent an email to Appellant's counsel confirming that the transcript had been successfully delivered on February 25, 2024, to the email address that Appellant's counsel provided on the Transcript Request Form. She indicated that the invoice for the transcript had been paid by Appellant's counsel on March 21, 2024.
15. On June 11, 2024, Appellant's counsel informed the Court that she "received the transcript in this matter on January 11, 2022."
16. Appellant has failed to comply with the South Carolina Appellate Court Rules and the instructions of this Court.
17. Respondents are entitled to an order dismissing Appellant's appeal as a matter of law.

This motion is based upon the pleadings filed in this action, applicable common and statutory law, and the memorandum of authorities filed herewith.

s/Stephanie H. Burton
Stephanie H. Burton
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

*Attorneys for Respondents South Carolina
Department of Social Services and South Carolina
Department of Children Advocacy*

June 12, 2024

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MEMORANDUM IN SUPPORT OF RESPONDENTS’ MOTION TO DISMISS APPEAL

In accordance with Rule 240(c) of the South Carolina Appellate Court Rules, Respondents
South Carolina Department of Social Services and South Carolina Department of Children
Advocacy submit this Memorandum in support of their Motion to Dismiss this Appeal.

BACKGROUND

Respondent South Carolina Department of Social Services filed a Motion to Dismiss on
November 20, 2023. Respondent South Carolina Department of Children Advocacy filed a Motion
to Dismiss on December 19, 2023. The motions were heard by the trial court on January 10, 2024.
The court granted in part and denied in part the motions to dismiss by order filed on January 16,
2024.

Appellant filed Notice of Appeal on February 13, 2024. (Feb. 13, 2024, Notice of Appeal.) That same day, Appellant submitted a Transcript Request Form for the January 16, 2024 hearing. (Feb. 13, 2024, Transcript Request Form.) Appellant received the transcript on February 25, 2024. (April 17, 2024, Letter; June 10, 2024, Email from Pamela E. Green.) Appellant did not serve and file his Initial Brief and Designation of Matter to be Included in the Record on Appeal within thirty days of receiving the transcript.

On April 17, 2024, the Court wrote Appellant's counsel indicating that the transcript was delivered to Appellant on February 25, 2024, and that the time for filing and serving Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal had expired. (April 17, 2024, Letter.) The Court instructed Appellant to file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal with a motion requesting permission to file and serve his documents beyond the filing deadlines within ten days. (Id.) The Court cautioned Appellant that his "appeal will be dismissed if no motion is made within ten (10) days from the date of this letter." (Id.)

On April 23, 2024, Appellant's counsel incorrectly reported to the Court and Court Administration that she had not yet received the transcript. (April 23, 2024, Letter.) Appellant did not file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal, or a motion requesting permission to file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal.

On May 31, 2024, the Court informed Appellant that it had not received Appellant's Initial Brief nor any notice from Appellant concerning the status of the transcript. (May 31, 2024, Letter.) The Court advised Appellant that his appeal "will be dismissed" if he failed to "advise the Court of the status of the transcript within ten (10) days of the date of this letter." (Id.)

On June 7, 2024, Appellant’s counsel again incorrectly that she had not yet received the transcript. (June 7, 2024, Letter.) On June 10, 2024, Circuit Court Reporter Pamela E. Green sent an email to Appellant’s counsel confirming that the transcript had been successfully delivered on February 25, 2024, to the email address that Appellant’s counsel provided on the Transcript Request Form. (June 10, 2024, Email from Pamela E. Green.) Notably, Ms. Green mentioned in the email that the invoice for the transcript had been paid by Appellant’s counsel on March 21, 2024. (Id.) On June 11, 2024, Appellant’s counsel informed the Court that she “received the transcript in this matter on January 11, 2022.” (June 11, 2024, Letter.) To date, Appellant has not served and filed his Initial Brief or Designation of Matter to be Included in the Record on Appeal in this case.

ARGUMENT

This Court should dismiss Appellant’s appeal given his failure to timely prosecute same or comply with the South Carolina Appellate Court Rules and instructions of this Court. Rule 208 of the South Carolina Appellate Court Rules provides that Appellant shall file and serve his Initial Brief “within thirty (30) days after receiving the transcript.” Rule 208(a)(1), SCACR. Rule 208 also provides that upon Appellant’s failure to file and serve his Initial Brief with the time prescribed, “**the clerk of the appellate court shall sign an order dismissing the appeal**, and the appeal shall not be reinstated except as provided by Rule 260.” Rule 208(a)(4), SCACR. Rule 260 provides that “[w]henver 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.” Rule 260(a), SCACR.

“[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.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Where, as here, an appellant fails to submit his initial brief, this Court is left with no discretion and the appeal shall be dismissed. See Roberts v. LaConey, 375 S.C. 97, 100, 650 S.E.2d 474, 475 (2007) (dismissing an appeal because the appellant failed to file a brief despite being instructed to do so.); State v. Serrette, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007) (“The right to an appeal may be lost through a variety of actions by an appellant, such as:… (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR.”) In Lisenby v. South Carolina Dep’t of Corr., Appellate Case No. 2012-212336 (Ct. App. June 15, 2012), the appellant filed notice of appeal on June 15, 2012. The appellant submitted an amended notice of appeal on July 16, 2012. Approximately five months later, on December 13, 2012, this Court dismissed the appellant’s appeal *sua sponte* because the appellant failed to serve and file his initial brief and designation of matter as required by the South Carolina Appellate Court Rules.

Here, Appellant received the transcript on February 25, 2024, and paid for it on March 21, 2024. Therefore, Appellant was required to file and serve his Initial Brief and Designation of Matter to be Included in the Record on Appeal on or before Tuesday, March 26, 2024. Appellant failed to do so. In accordance with this Court’s instructions on April 17, 2024, Appellant was required to serve and file his Initial Brief and Designation of Matter to be Included in the Record on Appeal and a motion requesting permission to serve and file those materials outside of the filing deadlines by April 27, 2024. However, given that the deadline ended on a Saturday, the deadline was moved to Monday, April 29, 2024. Rule 263(a), SCACR. Despite the Court’s clear

instructions, Appellant again failed to submit his Initial Brief and Designation of Matter to be Included in the Record on Appeal. Appellant also failed to move for an extension.

Appellant has unduly delayed these proceedings. Despite having had the transcript for 108 days, Appellant has yet to comply with South Carolina Appellate Court Rules and the instructions of this Court. Accordingly, his appeal should be dismissed.

CONCLUSION

Based upon the foregoing authorities and arguments and applicable common and statutory law, Respondents South Carolina Department of Social Services and South Carolina Department of Children Advocacy respectfully submit that this Court should issue an order dismissing Appellant's appeal.

Respectfully submitted,

s/Stephanie H. Burton

Stephanie H. Burton

GIBBES BURTON, LLC

308 East Saint John Street

Spartanburg, SC 29302

sburton@gibbesburton.com

Telephone: (864) 327-5000

Facsimile: (864) 342-6884

*Attorneys for Respondents South Carolina
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PROOF OF SERVICE

The undersigned, Stephanie H. Burton certifies that she is a member of Gibbes Burton,
LLC and on the 12th day of June 2024, she served copies of the following:

1. Respondents’ Motion to Dismiss Appeal; and
2. Memorandum in Support of Respondents’ Motion to Dismiss Appeal.

by email, copies of the same addressed to:

By Email:

Ms. Melinda Butler
Butler Law Firm
211 E. Main Street
Union, SC 29379

melinda@butlerservingjustice.com

Mr. W. McElhaney White
Holcombe Bomar, P.A.
101 W. St. John Street, Suite 200
Spartanburg, SC 29306
mwhite@holcombebomar.com

s/Stephanie H. Burton
Stephanie H. Burton