

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Case No.: 2019-CP-40-04650

Appellate Case No.: 2023-001289

Tasha Jones; and Shaniqua Thompson.....Respondents,

v.

Lyndon Southern Insurance Company,.....Appellant.

REPLY TO APPELLANT’S RETURN TO MOTION

In the Appellant’s Return to Motion to Dismiss the appeal, the Appellant asserts some positions which are inconsistent with the record. The Respondents seek to clarify those issues to comport with the record by the Respondents’ reply below and by incorporating the Respondents’ prior Memorandum in Support of Dismissal of the Appellant’s Appeal.

- I. **The Respondent cited Rule 208(a)(4), Rule 208(b)(8), and Rule 267(b), and Rule 267(g) for their position that this court is required to dismiss the Appellant’s appeal as untimely; the language of these rules is clear, unambiguous, and do not require a court’s interpretation as to the legislature’s intent.**

This court cannot accept an unsigned document that does not comply with Rule 267(g), SCACR; the Appellant’s filing of its’ brief on June 27, 2024, did not comply with

Rule 267(g) and therefore could not be accepted by this court. The rule states that “**all** briefs that comply with the requirements of Rule 267.” The Clerk of the Appellate Court “**shall sign an order dismissing an appeal**” when the brief is not filed and served on the designated date. Rule 208(a)(4). There is no ambiguity in that language which requires interpretation by this court and/or any other court; no other citations or case law is required when the language of Rule 208(a)(4), Rule 208(b)(8), and Rule 267(b), and Rule 267(g) is this clear.

The Appellant cites *Henning v. Kay*, 307 S.C.436 415 S.E.2d 794, (S.C. 1992) for its’ position that this was a harmless error. In *Hennings*, the party argued that their non-compliance with the appellate rules was due to inadvertent technical errors and minor discrepancies that essentially dealt with formatting and content issues. Furthermore, the Appellant cites an unpublished opinion, *Whitlock v. Collins*, No. 2013-UP-301, 2013 WL 8538745, at *2 (S.C. Ct. App. July 3, 1013), where a request for dismissal of an appeal was denied for failure to notify the party that a trial transcript had been requested; the Appellant provided no context as to how the *Whitlock* case is either applicable and/or similar to this case.

Both cases cited by the Appellant are easily distinguishable from this case at hand; neither case cited by the Appellant involved an appellant brief which was not timely filed because it was not compliant with Rule 267. In those cases, the court had discretion to allow the party to amend the filed documents because the briefs for both cases appeared to be timely filed, which was not the case here. It should be noted that the court in *Henning* stated that it would have been completely justified in dismissing the appeal based upon the brief containing errors with citing and structure. This court has

no such discretion or authority in this case because this court does not have the authority to enlarge the time frame for the Appellant to file a compliant appellant brief; that window closed for the Appellant and this court on June 27, 2024. The Appellant not only has a structure problem with failing to sign the brief, but more importantly, the Appellant has a filing problem which this court cannot cure pursuant to Rule 208(a)(4) SCACR.

This court should also take note that the Appellant appears to blame the Respondents for the Appellant's own error by falsely claiming that the Respondents failed to notify of its' error and/or that the Respondents are trying to turn a "molehill into a mountain" and/or that the Respondents wanted a "gotcha' moment; however, this false allegation against the Respondents conveniently ignores the fact that counsel for the Respondents requested an extension in time early on June 28, 2024 to file the Respondent Initial Brief because counsel for the Respondents was on vacation from June 28, 2024 until July 9, 2024. (See, Motion for Extension Respondents). The appellate court in *Henning*, which was cited by the Appellant, even stated that "the South Carolina Appellate Court Rules are not mere technicalities ..."; yet the Appellant shifts blame to Respondents for failing to notify the Appellant that the brief was not in compliance with the rules requiring signed documents to be filed with the court. The Appellant takes aim at the Respondents for bringing this matter before this court by referring to the Appellant's error in not submitting a signed document to this court as merely a "molehill," or something very small and/or trivial. The failure of the Appellant to file an appellant brief that complied with the appellate rules for signing a document before the court is not merely a minor inconvenience or minor error. The signature

requirement acts as a verification that the brief was read and that there were sufficient grounds to support the appeal; that did not happen with the June 27, 2024, filing by the Appellant.

The Appellant appears to further argue its' failure to follow the rules was a mere "technicality" when Appellant counsel stated that its' error "was not noticed by the Court," as if it somehow excuses the Appellant's failure to sign the brief and entitles the Appellant to another chance. The Appellant cites no authority that the deadline should be extended because the court did not bring the lack of signature on the Appellant's Initial Brief to the Appellant's attention on Jun 27, 2024. It should be noted that it was the Appellant who filed its' brief on the very last day that it could be filed, thereby risking potential issues with ensuring that the Appellant complied with the appellate rules for timely filing its' brief.

Rule 260 SCACR requires a showing of "good cause," if it seeks reinstatement of its' appeal when the court has determined that the Appellant did not comply with the requirement of the rules and the matter was dismissed. As part of this explanation of good cause, the Plaintiff must explain if its' unsigned appellant brief met the requirements of Rule 208(a)(4), Rule 208(b)(8), and Rule 267(b), when it filed its' unsigned brief on June 27, 2024. The Appellant's argument lacks good cause or "substantial reason amount to law to a legal excuse for failing to perform an act required by law." Black's Law Dictionary 476 (6th ed. 1991). The Appellant's argument cites no statute or rule or case law that allows this court to extend the deadline for accepting its' initial appellant's brief after June 27, 2024; without this authority, this court must dismiss this appeal and deny the Appellant's request to have this appeal reinstated since the

Appellant failed to show good cause and failed to show this court how it has the authority to enlarge the time for filing this new brief that comes after the deadline passed on June 27, 2024. The Appellant has failed to identify a single instance where this appellate court enlarged the deadline for filing an initial appellant brief beyond the court approved deadline and when there was no additional request for an extension of time to file the brief beyond the court approved deadline.

Conclusion

The Appellant failed to timely file its' initial Appellant brief, the Appellant failed to provide good cause for why this case should be reinstated, and the Appellant failed to provide this court with any legal basis for this court to enlarge the deadline for filing its' brief when the deadline expired on June 27, 2024. This court has no authority and/or mechanism to extend and/or enlarge the deadline again once the deadline expired on June 27, 2024. This appeal should be dismissed in accordance with the clear and unambiguous language of Rule 208(a)(4) SCACR.

Respectfully submitted,

s/ Dietrich A. Lake

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July 16, 2024
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