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Aug 15 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2023-000296

J. Doe,Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), and Town of
Sullivans Island,..... Respondents.

**RESPONDENTS DESIGN REVIEW BOARD (DRB) OF THE TOWN
OF SULLIVANS ISLAND (S.I.) AND TOWN OF SULLIVANS ISLAND’S
RETURN TO APPELLANT’S MOTION TO REINSTATE**

Respondents Design Review Board (DRB) of The Town of Sullivans Island (S.I.) and
Town of Sullivans Island (“Respondents”) respectfully submit this Return to Appellant’s Motion
to Reinstate.

This appeal was initiated via Notice of Appeal filed by Appellant on February 24, 2023
and Amended Notice of Appeal filed July 3, 2023. On July 11, 2024, after more than 16 months
of Appellant failing to follow court rules and court directives, this Court dismissed the Appeal. In
that Order, the Court stated as follows:

Appellant has failed to file the initial brief of appellant and designation of matter,
as required by Rules 208 & 209 of the South Carolina Appellate Court Rules
(SCACR) and this Court’s letter dated May 28, 2024. Accordingly, this matter is
dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

(Order filed July 11, 2024). The Motion to Reinstate seeks reinstatement pursuant to Rule 260(a), SCACR, pursuant to which Appellant must show “good cause” for the appeal to be reinstated. See Rule 260(a), SCACR (“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 . . .”).

Appellant’s Motion to Reinstate was filed on July 25, 2024. It does not contain an explanation rising to the level of good cause for Appellant’s repeated failures. It claims that the Court made a mistake because, according to Appellant, “Appellant's brief as well as designation of matter was filed within 30 days of receiving the court reporter's response to timely request for transcript which bears a postmark date of June 17, 2024.”

First, the initial brief and designation of matter were improperly filed after the appeal was dismissed. Second, it is still not clear from the Motion to Reinstate and associated filings that Appellant has complied with the Court’s rules and directives. For example, from some of the correspondence that has been filed with the Court, it appears Appellant requested a transcript from a hearing on either June 5, 2023 or June 6, 2023 and has delayed this appeal while purportedly waiting on such a transcript. See generally, **(Tr. Request Form received by COA October 20, 2023); (Letter from Holmes received by COA July 26, 2023); (Letter from Ms. Harris to Holmes dated June 12, 2024, and received by COA June 28, 2024)**. An order was issued in the underlying matter on June 5, 2023. Importantly, however, that order specifically states that there was no hearing: “This Court Denies the Petitioner’s Motion to Reconsider *without the necessity of a hearing* and decided on the record and briefs.” **(Form 4 Order dated June 5, 2023 filed with Notice of Appeal filed July 3, 2023)** (double emphasis added). Therefore, it appears Appellant

has justified the delay of this appeal based on a transcript that the filings with the Court already indicate would not exist.

It is unclear whether Appellant has even properly ordered the transcript from the hearing on September 19, 2022. See (**Order Dismissing Appeal filed with Notice of Appeal filed February 24, 2023**) (stating that “This matter came before the Court on September 19, 2022 upon Respondents’ Motion to Dismiss the Appeal. John P. Linton, Jr., Esq. appeared on behalf of Respondents and Cynthia Holmes appeared on behalf of Petitioner.”); see (**Letter from Court Reporter Manager to Holmes dated August 15, 2023, received by COA as an attachment to a June 3, 2024 filing**) (directing Holmes to utilize the Court form for ordering transcripts and provide all required information); (**Tr. Request Form received by COA October 20, 2023**) (requesting only a transcript from June 5, 2023, a date where there was no hearing); Rule 207, SCACR.

The Motion to Reinstate does not explain why the possible ordering of a nonexistent transcript shows good cause to reinstate the appeal. It does not otherwise explain any good cause that would justify reinstating the appeal. Our Supreme Court has noted that the rules are not mere technicalities:

Counsel is advised that the 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. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Henning v. Kaye, 415 S.E.2d 794, 794, 307 S.C. 436, 437 (1992). The Henning case involved an initial brief that did not comply with the rules in its organization, style and citations. Id. at 794, 307 S.C. at 437. The Court in that case allowed the party to file an amended brief to cure the defect. Notably, the Henning case did not involve the type of consistent failure to comply with

the rules as has been the case in this appeal. Even though the violations were much less egregious, the Court noted that “. . . this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules.” Id.

Here, Appellant has been given numerous warnings and repeatedly failed to comply. See generally, (Letters from Court of Appeals to Appellant dated March 1, 2023, May, 1, 2023, July 21, 2023, July 26, 2023, October 10, 2023, April 1, 2024, May 28, 2024,); see also generally, Rule 207(1), (5), SCACR; Rule 203(d)(B), SCACR, Rule 607, SCACR. As is clear from the above, the Motion to Reinstate the appeal should be denied because Appellant has not demonstrated good cause.

Respectfully submitted,

s/ John P. Linton, Jr.
John P. Linton, Jr. (SC Bar # 79130)
G. Trenholm Walker (SC Bar # 5777)
Walker Gressette Linton, LLC
P.O. Box 22167
Charleston, SC 29413
(843) 727-2200
Linton@wglfirm.com
Walker@wglfirm.com

Attorneys for Respondents Design Review
Board (DRB) of the Town of Sullivans
Island (S.I.) and Town of Sullivans Island

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PROOF OF SERVICE

I certify that the foregoing **Respondent Design Review Board (DRB) of the Town of Sullivans Island (S.I.) and Town of Sullivans Island’s Return to Appellant’s Motion to Reinstate** was served on the following by depositing a copy of it in the U.S. Mail, postage prepaid, and by electronic mail on this 15th day of August, 2024:

C. Holmes
P.O. Box 187
Sullivans Island, SC 29482
rule.410_retired@yahoo.comReturn



Nancy Jane Dennis, Paralegal