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Aug 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Case No. 2023-001394

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Respondent,

v.

Terry Lennette Grant,

Defendants,

Of whom, Terry Lennette Grant is the Appellant.

RETURN AND MEMORANDUM IN OPPOSITION TO APPELLANT'S
MOTION TO REINSTATE APPEAL

Chad W. Burgess, Esq.
(S.C. Bar No.: 72520)
BROCK & SCOTT, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(803) 454-3540
Attorney for Respondent

NOW COMES Respondent, Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (“Deutsche Bank”), by and through its undersigned attorney, and pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, hereby submits its Return and Memorandum in Opposition to the “Letter Motion” filed by Terry Lennette Grant on August 20, 2024 requesting reinstatement of her appeal (“Appellant” or “Grant”), averring as follows:

BRIEF PROCEDURAL HISTORY

This matter is an action to foreclose a mortgage on real property in Beaufort County, South Carolina. Appellant initiated her appeal on September 5, 2023.

Throughout this appeal, Appellant has repeatedly ignored the South Carolina Appellate Court Rules (“SCACR”). Appellant’s disregard for the SCACR resulted in a March 28, 2024 order dismissing the appeal. Appellant subsequently sought reinstatement of the appeal despite her failure to comply with the SCACR. On July 9, 2024, the Court granted Appellant’s request to reinstate her appeal, thereby giving Appellant an opportunity to comply with the SCACR. In a letter dated July 15, 2024, Appellant was directed to file and serve an amended initial brief and designation of matter within thirty (30) days or the appeal would be dismissed. Appellant yet again ignored the SCACR and this Court’s explicit instructions and failed to submit an amended initial brief and designation of matter. Accordingly, this Court issued an order on August 19, 2024 dismissing the appeal. On August 20, 2024, Appellant submitted a document entitled “Letter Motion” requesting, inter alia, that the appeal be reinstated once again.

ARGUMENT AND CITATION OF AUTHORITY

The dismissal of this appeal was proper based Appellant ignoring the SCACR and this explicit instruction despite being given numerous opportunities to correct any deficiencies or failures in her filings. Though Appellant has repeatedly pointed fingers at other parties, she has no one else to blame but herself for her appeal being dismissed. Appellant's motion states no grounds or cognizable argument, other than her own misunderstanding of the SCACR, for reinstating the appeal. Appellant's motion goes so far as to request that this Court reverse the foreclosure judgment as a part of granting her motion, thereby dispensing with all requirements of the SCACR.

“[T]he 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.’” *Forner v. Butler*, 319 S.C. 275, 276 n.1, 460 S.E.2d 425, 426 n.1 (1995) (quoting *Henning v. Kaye*, 307, S.C. 436, 436, 415 S.E.2d 794, 794 (1992)). “Whenever 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.” Rule 260(a), SCACR. All litigants, whether pro se or represented by counsel, are held to the same standards and are expected to adhere to the Rules of the Court. *See State v. Barnes*, 407 S.C. 27, 31, 753 S.E.2d 545, 547 (2014) (“Appellant [who moved to be allowed to proceed pro se] acknowledged he understood he would be held to the same standards as an attorney regarding the rules of court and of evidence.”).

Appellant's assertion that the Court's dismissal of her appeal was premature is bewildering and directly contradicts the SCACR. Appellant incorrectly asserts that calculation of a deadline

under the SCACR “does not include weekends (Saturday, Sunday) nor (Holidays). Letter Motion, Pp. 4-5. This assertion demonstrates the depth of Appellant’s disregard for the SCACR. Rule 263, SCACR provides:

(a)Computation. In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. **When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.** A half holiday shall be considered as other days and not as a holiday. No additional time shall be allowed after service by mail or upon a statutory agent. Rule 6(e), SCRCF, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail or upon a statutory agent.

(b)Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

(bold emphasis added). Based upon the clear and unambiguous language of Rule 263(a), intermediate Saturdays, Sundays and holidays are only excluded if the time prescribed is less than seven (7) days. Here, Appellant was directed to file an amended initial brief and designation of matter within thirty (30) days from July 15, 2024. Therefore, Appellant’s amended initial brief and designation of matter were due on or before Wednesday, August 14, 2024. Appellant failed to make any filing whatsoever within the time prescribed by the July 15, 2024 letter.

This Court’s August 19, 2024 dismissal was appropriate. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (affirming trial court decision where appellant failed to satisfy burden of presenting an adequate record on appeal); *Milton v. Richland Cnty.*, No. 2015-MO-046, 2015 S.C. Unpub. LEXIS 45, at 6, 2015 WL 4642832 (S.C. Aug. 5, 2015) (dismissing

appeal “[b]ecause [p]etitioner failed to submit a sufficient record, th[e] case present[ed] nothing more than a dispute of a hypothetical character”); *Epps v. Epps*, No. 2012-UP-146, 2012 S.C. App. Unpub. LEXIS 207, at *1 (S.C. Ct. App. Mar. 7, 2012) (dismissing an appeal because procedural defects precluded meaningful review of the appeal). Appellant’s mistaken assertion that weekends and holidays are not to be included in the calculation of the time set forth by the Court does not constitute grounds for reinstating the appeal. Therefore, Appellant’s request to reinstate her appeal should be denied.

The remainder of the requests in Appellant’s “Letter Motion” constitute requests to dispense with the SCACR and summarily overturn the Special Referee’s judgment of foreclosure in favor of Respondent. These requests are facially improper and should be denied.

CONCLUSION

Appellant failed to comply with the SCACR and this Court’s explicit direction resulting in her appeal being dismissed twice. Appellant’s latest request to reinstate her appeal is without merit. Appellant’s blatant disregard of the clear and ambiguous SCACR and explicit direction given in this Court’s July 15, 2024 letter appropriately resulted in the dismissal of her appeal. The remainder of the requests in Appellant’s motion are wholly improper. Based upon the foregoing, Respondent respectfully requests that Appellant’s motion be denied and for such other and further relief to be granted to Respondent as this Court deems appropriate.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

BROCK AND SCOTT, PLLC

s/Chad W. Burgess

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*Attorney for Respondent Deutsche Bank
National Trust Company as Trustee for
NovaStar Mortgage Funding Trust, Series
2006-5 NovaStar Home Equity Loan Asset-
Backed Certificates, Series 2006-5*

Dated: August 23, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 23, 2024, she served a copy of Respondent's Return and Memorandum in Opposition to Appellant's Motion to Reinstate Appeal, and Certificate of Service upon the person below by depositing the same in the U.S. Mail with proper postage affixed and addressed as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
226 Wild Horse Road
Hilton Head Island, SC 29926



Anna Maya
BROCK & SCOTT, PLLC