

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Aug 29 2024**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

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

Case No. 2022-CP-23-04451  
Appellate Case No. 2023-001129

Danny Rose,

Respondent,

v.

Robert Rose, Gloria Rose-Ruch,  
Mary Margaret Doll Rose, and John  
Does 1-99, Defendants,

Of Whom Robert Rose, Gloria Rose-Ruch,  
and Mary Margaret Doll Rose are the

Appellants.

MOTION TO DISMISS APPEAL

Respondent Danny Rose, by and through his undersigned counsel, moves for a dismissal of the instant appeal as a result of Appellants' continued and repeated failures to comply with the South Carolina Appellate Court Rules and specific directives from the Court.

Rule 260(a), SCACR, provides: "Whenever it appears that an appellant or 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." In this matter, Appellants have failed numerous times to comply with the Rules. Each time, the Court has notified Appellants of their failures and has warned them dismissal would result from a

continued failure to follow the Rules. Appellants have not heeded these warnings. Therefore, the Court should dismiss the appeal.

Appellants' most recent failure to comply stems from the Court's order granting Respondent's motion to strike portions of the record on appeal, filed July 3, 2024, which concludes with the following unambiguous instructions: "Within thirty days of the date of this order, Appellants shall file and serve an amended initial brief and amended designation of matter omitting references to [the stricken material]."

Appellants submitted an amended designation of matter but failed to submit an amended initial brief. As a result, on August 15, 2024, forty-three days after its initial order, the Court reminded Appellants that an amended initial brief needed to be filed and provided Appellants an additional ten days to file the amended initial brief accompanied by a motion to file and serve the amended initial brief outside of the filing deadlines established by the Court. The Court concluded its reminder to Appellants by noting that failing to file the amended brief and motion within ten days would result in a dismissal of the appeal.

Based on the Court's letter, Appellants' amended initial brief and motion to file outside the deadline was due no later than August 26, 2024. Appellants did not file anything by this deadline. Instead, on August 28, Appellants' counsel, via email, attempted to excuse the failure to comply on a change in office. Counsel also inquired whether an amended initial brief and motion to file out of time were *really* necessary, as if the Court's order and its subsequent letter were not sufficiently clear. Appellants' two competing explanations for the failure to comply with the Court's directions—that counsel's office was being moved and confusion over what the Court required—cannot pass muster. If clarification was needed following the initial order, it was provided in the Court's August 15<sup>th</sup> communication. Even then, Appellants did not take any

action until *after* the Court graciously granted an additional ten days to comply with the order. Appellants had ample time and warning of what the Court required. Relocating an office a month after a deadline does not explain or excuse the deadline being ignored.

As alluded to above, this is not the first time Appellants have disregarded the Court's deadlines and the Appellate Court Rules. Appellants failed to provide proof the transcript of the circuit court had been delivered as required by Rule 207, SCACR and failed to file their initial brief as required by Rule 208, SCACR. This Court dismissed the appeal for these failures, but subsequently granted Appellants' motion to reinstate the appeal. After reinstatement, although Appellants obtained an extension of time to file their initial brief, they missed the extended deadline. When the Court advised Appellants of the missed deadline, Appellants sought a second extension, blaming the delay on a calendaring error by their counsel. Appellants subsequently obtained a third extension to file their initial brief, finally submitting their initial brief May 3, 2024—ten months after the notice of intent to appeal was filed.

Appellants' consistent refusals to comply with the Court's orders and Appellate Court Rules have unquestionably caused significant delays in this appeal<sup>1</sup>. In theory, most Appellants would be acutely aware of deadlines after their appeal was dismissed for missing prior deadlines. In this case, however, Appellants have persisted in their noncompliance, wasting the Court's time and resources in the process.

The Court's order and subsequent instructions were clear. Further, Appellate Court Rules 208, 209, 210, 211, and 260 use the words "shall" and "must" when referring to deadlines and the penalty for missing the deadlines. Appellants have repeatedly ignored the Court's deadlines

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<sup>1</sup> Ten appeals on the Court's September roster were filed after this appeal yet have been fully briefed and are ready to be decided by the Court. In addition, other appeals filed more recently are ready for consideration by the Court, reflecting those matters have also been fully briefed. *See, e.g. Romero v. Rosemond*, Appellate Case No. 2024-000032 (filed January 9, 2024).

and have refused the Court's offer to file a motion to enlarge time. The Court should refuse to further accommodate Appellants who clearly have no desire to follow the Court's rulings or heed its warnings. Accordingly, the Court should enforce its Rules and instructions and dismiss this appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2024, he caused to be served the foregoing Motion to Dismiss upon all counsel of record, via electronic means, to counsel's email address on file with the South Carolina Attorney Information System.

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