

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

AUG 23 2013

SC Court of Appeals

Appellate No.: 2009-141246
Civil Action No. 2008-CP-23-5245

Blue Ridge Electric Cooperative, Inc.....Appellant/Respondent,

v.

Kathleen J. Gresham.....Respondent/Appellant.

**MEMORANDUM IN SUPPORT OF RESPONDENT/APPELLANT'S MOTION TO
DISMISS OR IN THE ALTERNATIVE FOR A STAY AND ORDER REQUIRING
RESPONDENT/APPELLANT GRESHAM COMPLY WITH SOUTH CAROLINA
APPELLATE COURT RULES**

Larry C. Brandt, P.A.
P.O. Box 738
3691 Blue Ridge Blvd.
Walhalla, South Carolina 29691
864-638-5406

Steven W. Hamm
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

*Counsel for Appellant/Respondent Blue Ridge
Electric Cooperative, Inc.*

August 23, 2013

INTRODUCTION

In the instant appeal, Respondent/Appellant Kathleen J. Gresham (“Gresham”) has set forth in her “Initial Brief of Respondent/Appellant” seven grounds for appeal. Gresham’s brief, which appears to total approximately three hundred (300) pages, does not comply with the South Carolina Appellate Court Rules (“SCACR”). Accordingly, Appellant/Respondent Blue Ridge Electric Cooperative, Inc. (“Blue Ridge”) respectfully moves this honorable Court to dismiss Gresham’s appeal or in the alternative order Gresham to submit a brief and Designation of Matter to Be Included in the Record on Appeal in compliance with the SCACR. Blue Ridge would also respectfully request a Stay in the briefing schedule until such time as this Court can rule on the instant motion.

RELEVANT BACKGROUND

This is a cross-appeal arising from jury trial before the Honorable R. Lawton McIntosh. Blue Ridge initiated an action against Gresham and her husband to collect unpaid power costs related to the electrical service Blue Ridge provided to the Greshams’ residence over a time period of approximately four years. The Greshams, individually appearing *pro se*,¹ filed answers and counter-claims against Blue Ridge for trespass related to Blue Ridge’s placement of an electric pole and guy wire on land the Greshams claimed was their property and outside the South Carolina Department of Transportation’s right-of-way. After a three-day jury trial, the jury returned a verdict against Blue Ridge for the

¹ Although the Greshams appeared *pro se*, and have repeatedly referenced how difficult it has been to appear *pro se* and navigate the procedures of the Court, Kathleen Gresham is a graduate of the University of South Carolina School of Law and previously practiced law in this state for many years.

collection action,² a verdict in favor of the Greshams for the trespass claim, and awarded the Greshams one cent (\$0.01) in damages for trespass. Blue Ridge appealed the trespass verdict and Gresham appealed several issues related to the trial including failure to charge the jury on punitive damages, improper denial of directed verdict motions, and failure of the lower court to award sanctions.

ARGUMENT

Gresham's Initial Brief is procedurally improper and this Court should dismiss her appeal for failure to comply with the SCACR.

On August 1, 2013, Gresham served and filed what she has identified as her Initial Respondent/Appellant's brief ("Brief"). The SCACR provide if an appellant fails to file and serve his brief, the clerk of the appellate court shall sign an order dismissing the appeal. See Rule 208(a)(4). Blue Ridge respectfully submits the severe deficiencies in Gresham's Brief constitute a failure to file an Initial Brief and her appeal should be dismissed accordingly. The Brief is in contravention of SCACR 208, 209, 210, and 267.

Rule 208, SCACR provides:

(b) The initial briefs under this rule *shall* contain:

...
(A) Table of Contents and Cases. A table of contents, with page references, *and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.*

...
(5) Length of Briefs. Except in cases in which a sentence of death has been imposed, principal briefs *shall not exceed fifty (50) pages*, and reply briefs shall not exceed twenty-five (25) pages. On motion, the appellate court may grant a party permission to exceed those limitations.

² Following the presentation of Blue Ridge's case, Blue Ridge voluntarily dismissed the claims against Mr. Gresham, husband to Kathleen Gresham.

(8) Form. All briefs shall comply with the requirements of Rule 267

(emphasis added). Rule 267, SCACR, requires all documents to be double-spaced.

In the case *sub judice*, the Brief contains no table of authorities. Additionally, and perhaps most egregious, is the length of the Brief. The Brief is approximately three hundred pages. Even if the portions of the brief which are more suitable for inclusion in a Record on Appeal are not considered part of the brief, an issue which will be discussed more fully below, the length of the Gresham Brief is fifty-six pages of mostly single-spaced text. Due to the single-spaced text, the brief is actually in excess of one hundred pages if the proper SCACR with regard to double-spacing the text had been applied. Further, no request was made of this Court to exceed the length of briefs as provided by the rules. The improper length of the Gresham Brief makes it virtually impossible for Blue Ridge to adequately respond to the girth of arguments presented, while also complying with the SCACR's twenty-five page limit applicable to the Respondent's brief.

Additionally, Gresham has not filed a Designation of Matter to Be Included in the Record on Appeal in accordance with Rule 209, SCACR. Rule 209 provides the Designation should be served at the same time as the Initial Brief. To the extent Gresham contends the documents included with her brief—orders, transcripts, etc.—are to be construed as her Designation, this Court should reject them as improper. Rule 209, SCACR, is clear. The Designation should

only *propose* those documents which are properly included in the Record on Appeal, not include the documents themselves. Moreover, Gresham's unbound "packet" of documents is unreliable to serve as the Designation of Matter as Blue Ridge is without sufficient knowledge as to whether the "package" contains all documents Gresham intended to include.

As referenced above, Gresham has attached documents which are improper for inclusion in an Initial Brief and are more suited for a Record on Appeal, or should not be included at all. First, the Brief contains an "Addendum" to the Initial Brief. The SCACR do not provide for an addendum and the inclusion of same is improper and in violation of the rules. Second, pages 58 – 300 of the Brief are documents more appropriate for a Record on Appeal. Gresham has included the Complaint, Answers, portions of transcripts, and Orders in the Brief. These items are not properly included in an Initial Brief. See generally Rule 208, SCACR; Rule 210(c), SCACR. To the extent these documents are Gresham's Matters to be Included in the Record on Appeal, these additional documents are not accompanied by a certification, as required by Rule 209(c), that there is no matter irrelevant to the appeal. Further, Gresham's inclusion of these documents, without first proposing them in a Designation of Matter to be Included in the Record on Appeal, as provided in Rule 209, SCACR, improperly attempts to place documents which may not be permissible under the SCACR before this Court. Gresham's inclusion of these documents denied Blue Ridge the opportunity to ensure that such documents were properly included in a potential Record on Appeal to this honorable Court and the opportunity to raise

any such objection to their inclusion in the Record on Appeal.

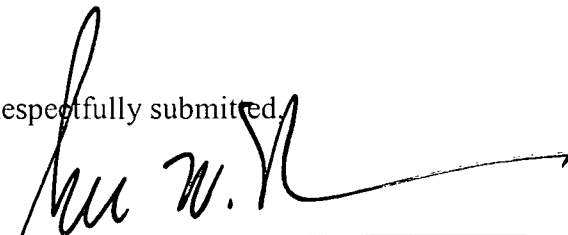
Blue Ridge is mindful that the courts of our state typically give considerable latitude to litigants appearing *pro se* as those parties are often without the benefit of a legal education and have no experience with the rules of practice and procedure of our courts. However, in this case, Blue Ridge respectfully submits such latitude should not be accorded to Gresham, who has a law degree from the University of South Carolina and practiced law in this state for approximately twenty years. As a result, Gresham is fully aware of the rules of practice and procedure applicable to our courts and has the training and experience to read and comprehend the rules of this Court and adhere to them accordingly.

CONCLUSION

For these foregoing reasons, Blue Ridge respectfully moves before the Court of Appeals for an Order dismissing Kathleen Gresham's appeal or, in the alternative, an order directing Gresham to serve and file a brief in compliance with the SCACR. Blue Ridge would also request that this Court stay the briefing schedule related to this cross-appeal until the Court issues an Order to this motion.

[SIGNATURE TO FOLLOW]

Respectfully submitted.



Steven W. Hamm
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

Larry C. Brandt, P.A.
P.O. Box 738
3691 Blue Ridge Blvd.
Walhalla, South Carolina 29691
864-638-5406

*Counsel for Appellant/Respondent Blue Ridge
Electric Cooperative, Inc.*

August 23, 2013

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

AUG 23 2013

SC Court of Appeals

Appellate No.: 2009-141246
Civil Action No. 2008-CP-23-5245

Blue Ridge Electric Cooperative, Inc.....Appellant/Respondent,

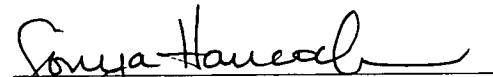
v.

Kathleen J. Gresham.....Respondent/Appellant.

PROOF OF SERVICE

I, Sonya Hancock, the undersigned employee of Richardson, Plowden & Robinson, P.A., attorneys for Blue Ridge Electric Cooperative, Inc., do hereby certify that I have served the **MEMORANDUM IN SUPPORT OF RESPONDENT/APPELLANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A STAY AND ORDER REQUIRING RESPONDENT/APPELLANT GRESHAM COMPLY WITH SOUTH CAROLINA APPELLATE COURT RULES** in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the party as indicated below on August 23, 2013:

Kathleen Gresham (Jennings), *pro se*
1524 Highway 11
Landrum, South Carolina 29356


Sonya Hancock