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Oct 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Jeremy C. Hodges, Esquire, Special Referee

Case No. 2022-CP-28-00877

Appellate Case No.: 2024-000679

Joseph and Lauren Jaco.....Respondents,

vs.

J.N. Green and Associates, LLC, Big Blue Express, LLC, and Joe N. Green.....Appellants.

**RESPONDENTS’
RETURN TO APPELLANTS’ MOTION FOR EXTENSION OF TIME**

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Attorneys for Respondents
Joseph and Lauren Jaco

Under Rule 240(e) of the South Carolina Appellate Court Rules, Respondents Joseph and Lauren Jaco submit this return in opposition to Appellants’ October 4, 2024, “Motion for Extension

of Time to File and Serve Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal.”

FACTUAL AND PROCEDURAL BACKGROUND

Respondents filed their Complaint on October 22, 2022.¹ Following service of the Complaint via publication, the Appellants failed to timely file a responsive pleading. On January 6, 2023, the Circuit Court entered default, and ordered the appointment of Jeremy C. Hodges, Esquire, as Special Referee.

On September 22, 2023, the Special Referee conducted a final hearing on Respondents’ claims. On January 8, 2024, the Special Referee issued a 24-page “Final Order Making Findings of Fact and Conclusions of Law” and awarded Respondents \$2,500,000.00 in damages.

Following the issuance of the Final Order, Appellants never filed a motion for reconsideration. Instead, on April 24, 2024, Appellants untimely filed and served their notice of appeal.

On May 29, 2024, Respondents filed a motion asking this Court to “dismiss Appellants’ putative appeal as untimely brought.” *See, e.g., Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 220–21, 810 S.E.2d 856, 861 (2018) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the *appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.*”) (citations omitted)(emphasis in *Wells Fargo*).

¹ Because documents memorializing this Procedural Background are appended to Respondents’ May 29, 2024, Motion to Dismiss or reference filings with this Court, they are not appended here.

On June 11, 2024, Appellants untimely filed a motion for extension of time to respond to Respondents' motion to dismiss. This Court granted the Appellants' request on June 24, 2024, providing that "[t]he time for serving and filing the return to the motion to dismiss is . . . extended until July 1, 2024."

On July 2, 2024, Appellants untimely filed their second motion for an extension of time to respond to Respondents' motion to dismiss. On July 19, 2024, this Court granted the motion in an order providing, "[t]he time for serving and filing the return to the motion to dismiss is . . . extended until July 22, 2024. No further extensions will be granted absent extraordinary circumstances."

Yet even though they received two extensions of time, Appellants failed to respond to Respondents' motion to dismiss, at all. *See* Rule 240(e) ("Failure of party to timely file a return may be deemed a consent by that party to the relief sought in the motion . . .").

Even still, on September 3, 2024, this Court denied "Respondents' motion to dismiss without prejudice to the parties presenting argument on this matter in their briefs."

On September 4, 2024, the Court informed the parties of the following,

The appellants' initial brief and designation of matter are due to be served and filed within thirty (30) days from [September 4, 2024]. Failure to serve and file the appellants' initial brief and designation of matter within thirty (30) days from the date of this letter will result in the dismissal of this appeal.

On Friday, October 4, 2024, Appellants moved for an extension of time "request[ing] an extension of time until November 4, 2024, to file and serve Appellant's" initial brief and designation of matter.

DISCUSSION

Appellants repeated dilatory conduct frustrates the Court's and Respondents' quest for justice. This matter is before this Court today because Appellants failed to timely file (i.) a responsive pleading to the Complaint; (ii.) a motion for reconsideration of the Special Referee's

Final Order; (iii.) a Notice of Appeal; (iv.) a return to Appellant's motion to dismiss; and (v.) an initial brief and designation of matters on appeal. In sum, at every step of this case, both before the Circuit Court and here, Appellants have shown no respect for deadlines. "[J]ustice delayed is justice denied. Although this saying is often invoked in the criminal context, it is no less applicable to civil cases." *In re Atwater*, 397 S.C. 518, 528, 725 S.E.2d 686, 691 (2012).

Appellants were informed on September 4, 2024, that their "[f]ailure to serve and file the[ir] initial brief and designation of matter within thirty (30) days . . . will result in the dismissal of this appeal." Appellants have had more than sufficient time to make their case before this Court. Accordingly, this Court should not grant Appellants (yet another) extension of time, and dismissal of this appeal is now warranted.

In the alternative, this Court should not grant Appellants more than a fourteen (14) day extension from this Court's original deadline to file their initial brief and designation of matters on appeal and grant Appellants "[n]o further extensions . . . absent extraordinary circumstances."

CONCLUSION

This Court should deny Appellants' motion for an extension of time and dismiss this appeal. In the alternative, this Court should immediately issue an order granting Appellants no more than a fourteen (14) day extension to file their initial brief and designation of matters on appeal and further direct that no further extensions will be given to Appellants absent extraordinary circumstances.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

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Attorneys for Respondents

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PROOF OF SERVICE

I hereby certify that, on this date, the **RESPONDENTS’ RETURN TO APPELLANTS’ MOTION FOR EXTENSION OF TIME** was served on Appellants’ counsel via first-class mail delivery, and by email, pursuant to Supreme Court Order dated April 24, 2024, as follows:

Adrienne L. Turner, Esquire
Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
aturner@turnerlawsc.com
Attorney for Appellants
J.N. Green & Associates, LLC,
Big Blue Express, LLC, and Joe N. Green

I further certify that all parties required by Rule to be served have been served.

s/ Ian T. Duggan

Ian T. Duggan, SC Bar No. 80074

Columbia, South Carolina
October 8, 2024

IAN T. DUGGAN - LAWYER
Telephone: 803-404-6900
IanDuggan@callisontighe.com

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SC Court of Appeals

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VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: Joseph and Lauren Jaco vs. J.N. Green and Associates, LLC, et al.
Appellate Case No. 2024-000679

Dear Ms. Kitchings:

Enclosed herewith please find Respondents' Return to Appellants' Motion for Extension of Time, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned via return email.

The enclosed documents have been served upon Appellants' counsel today via email as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

Ian T. Duggan

ITD:ksr

Enclosures

cc (w/enc.): Adrienne L. Turner, Esquire (via email and USPS)
Joseph and Lauren Jaco (via email)