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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, ... Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are . . . . . .Appellants,

v.

The Biship of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, ...Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . . Intervenors.

DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER, LLC'S RENEWED MOTION TO DISMISS

David J. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC (collectively, "Richter & Haller") renew their motion pursuant to Rule 240, SCACR, to dismiss this appeal based upon the repeated failure of the Appellants, Julie McDonald and Richard McDonald ("Appellants"), to serve the record on appeal as required by the Rules of Appellate Practice and their failure to comply with this Court's Order entered on August 23, 2024.

The Court's Order denied Richter & Haller's previous motion to dismiss the appeal, which

was based on Appellants' failures to assemble, serve, and file the record on appeal pursuant to the Rules of Appellate Practice and the Supreme Court's order governing electronic service. With regard to service, Richter & Haller moved for dismissal previously because Appellants attempted to serve the record on appeal using hyperlinks and a file sharing service rather than using one of the several methods set forth in the Rules. In its August 23, 2024, Order, this Court directed Appellants to "serve—via an approved method of service pursuant to Rule 262(c), SCACR, and the supreme court's order regarding electronic service—and file an amended record on appeal that includes all items designated by the parties and is consecutively paginated." Rule 262(c), SCACR, and the Supreme Court's order regarding electronic service provide multiple methods of service for the record, including: (i) personal delivery, (ii) U.S. Mail, and (iii) e-mailing the document as a PDF (or PDFs) attached to the e-mail. Hyperlinks and alternate means using file sharing services are acceptable only with consent of other parties. Appellants followed none of these methods, nor did they obtain—or even solicit—consent to use an alternate method of service. Instead, Appellants again attempted to serve the record using hyperlinks and a file sharing service, albeit this time a different service from the one they used before. This is precisely the opposite of what Appellants were instructed by the Court to do.

When confronted with the defective service on October 4, 2024,[1] Appellants' counsel did not argue he had complied. Instead, he explained, "*Once I discovered that each volume of the revised Record was too large for Gmail* to avoid its large-file-handling method, the volumes of the Record were sent via one email, as the court's order seems to prefer, and as the September 20, 2024 email reflects." (Letter from Meyers, October 6, 2024, attached as Exhibit B) (emphasis added). Thus, Appellants' counsel admitted not only that he did not serve the record by any of the

[1] Letter from Bruner to Meyers, October 4, 2024, attached as Exhibit A.

approved methods in Rule 262(c), SCACR, and the Supreme Court's order regarding electronic service, he also admits he knew when he sent the e-mail that it did not comply with the Rule because the documents would be transmitted using links for an unauthorized cloud service rather than as attachments. Absent from his response is an explanation why he did not try to serve the record on appeal by some other method that would have complied with Rule 262(c) after he discovered the files he prepared were too large for Gmail to transmit as attachments.

Appellants' counsel also contends his failure to serve the record pursuant to Rule 262(c), SCACR, and the Supreme Court's order regarding electronic service should be excused because the matter was not raised until two weeks after his September 20th e-mail attempting to serve the record. Notably, in that e-mail, Appellants' counsel invited the undersigned and other attorneys of record "to advise [him] if there was any problem receiving the Record." That is precisely what Richter & Haller did once the undersigned returned from vacation on October 1, 2024, and had an opportunity to retrieve filings from the Court's C-Track system and review the record and proof of service that was filed.[2] Now, after Richter & Haller took up the invitation from Appellants' counsel to tell him about the problems with service, Appellants argue the invitation apparently expired. Appellants have made no effort to cure the deficiencies by serving the record in a manner that does comply with Rule 262(c), SCACR, and the Supreme Court's order regarding electronic service. Appellants prefer defiance instead. A party who refuses to follow the rules governing service of documents—the way every other party and attorney in the Bar is required to do—risks their case being dismissed.

It is well established that South Carolina attorneys are expected—and indeed required—to exercise competence with technology. The Supreme Court emphasized that principle eleven years

[2] Appellants did not serve or try to serve a copy of the proof of service upon Richter & Haller. A copy was obtained from the C-Track system.

ago, when it suspended an attorney's license because she refused to have an active e-mail address as required by Rule 410(g), SCACR. See In re Collie, Order 2013-10-17-01 (October 17, 2013). On November 27, 2019, the Supreme Court revised Rule 1.1, RPC, based upon a petition from the South Carolina Bar, to include Comment 6 to provide guidance to lawyers about the benefits and risks of using certain technologies:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

In re: Amendments to Rules 1.0, 1.1, and 1.6, Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules, Supreme Court Order No. 2019-11-27-02 (November 27, 2019).[3] Two years later, the Supreme Court further revised Rule 1.1 "to provide guidance about lawyers' ethical duties in light of the advancement of technology in the practice of law." In re: Amendments to the Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules, Order No. 2021-11-17-01 (November 17, 2021). In addition to providing guidance to the Bar, the Supreme Court has adopted rules allowing for electronic service of documents. The rules governing electronic service, however, have practical limitations. Attorneys who cannot—or will not—exert the minimum effort required to form a basic understanding of the technology they use in the practice of law risk falling short of compliance with rules and court orders. Here, Appellants and their counsel took that risk when they attempted to serve the record on appeal using a Gmail account that Appellants' counsel knew would not transmit the documents as PDF attachments but rather would send file sharing links. (Letter from Meyers, October 6, 2024 (acknowledging Appellants' counsel attempted service by e-mail despite discovering "that each volume of the

[3] Comment 6 was later renumbered to Comment 8. *See* Order No. 2021-11-17-01.

revised Record was too large for Gmail[.]").) As noted above, the rules governing electronic service allow a party to serve a document by e-mailing the document as a PDF (or PDFs) attached to the e-mail, but they do not allow for the use of hyperlinks or another file sharing method absent written consent, and Appellants neither obtained nor even solicited that consent. While Appellants' counsel claims ignorance and having an "untrained eye" as the reason for insufficient service, his plain statement that he sent the e-mail knowing the documents would not be sent as attachments proves the insufficient service was the result not of ignorance or an "untrained eye" but rather of disregard for the Rules and a "maybe this will be good enough" approach. Rule 1.1, SCRPC, requires more than that.

The Supreme Court has gone to great effort to draft, tailor, and adopt rules and to issue orders that provide multiple options by which to serve papers. Appellants and their attorney simply refuse to follow those rules and court orders. Richter & Haller previously moved to dismiss this appeal in April 2024 due in part to the very same deficiency of service when Appellant's counsel inaccurately claimed to have served the record by e-mail. Despite this Court's admonition to serve the record on appeal "via an approved method of service pursuant to Rule 262(c), SCACR, and the supreme court's order regarding electronic service," Appellants and their counsel continue to serve documents in whatever method they deem most convenient to them at the time. When the Appellants elected to attempt service using Gmail hyperlinks rather than one of the court-approved methods, they took the known risk that their method of "service" would fall short of complying with the Court's August 23rd Order and that the appeal would be dismissed. It was a risk well known to Appellants' counsel, who saw a prior appeal in similar litigation against Richter & Haller dismissed when he attempted to file and serve documents using a file sharing hyperlink that the Court deemed insufficient. (*See* Appellate Court Case No. 2017-001996.)

At this point, the Court should dismiss this appeal. The Court previously admonished Appellants to serve the record on appeal "via an approved method of service pursuant to Rule 262(c), SCACR, and the supreme court's order regarding electronic service," and clearly warned them that failure to do so would result in dismissal. Those warnings notwithstanding, Appellants failed again to serve the record on appeal by an approved method. To date, the record on appeal still has not been properly served. Appellants have no grounds to claim surprise or ignorance of the requirements to serve the record on appeal. Their repeated failure to serve the record as the Court has instructed is inexcusable and warrants dismissal of this appeal.

Respectfully Submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

/s/ Benjamin C. Bruner
Benjamin C. Bruner, Bar No. 77544
Chelsea J. Clark, Bar No. 102211
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina (803) 252-7693
bbruner@brunerpowell.com
cclark@brunerpowell.com
Attorneys for Lawrence E. Richter, Jr. and Richter & Haller, LLC

GALLIVAN, WHITE & BOYD, PA

/s/ John E. Cuttino
John E. Cuttino, Bar No. 1519
Post Office Box 7368 (29202)
1201 Main Street, Suite 1200 (29201)
Columbia, South Carolina
(803) 724-1714
jcuttino@gwblawfirm.com
Attorney for David K. Haller

October 11, 2024
Columbia, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200 (29204)
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.
CHELSEA J. CLARK, P.A.

JAMES L. BRUNER (1950–2023)

J. COLE HANCOCK
J. WEBSTER HALL

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

October 4, 2024

VIA E-MAIL & U.S. MAIL
Gregg E. Meyers, Esquire
114 4th Ave NW
Byron, MN 55920
attygm@gmail.com

Re: ***John Doe #53, et al. v. The Bishop of Charleston, et al.***
Appellate Case No: 2023-000720
BPWM File No.: 3-716-134.012

Gregg:

The South Carolina Court of Appeals issued an Order in this appeal on August 23, 2024 directing you to "serve—via an approved method of service pursuant to Rule 262(c), SCACR, and the supreme court's order regarding electronic service—and file an amended record on appeal that includes all items designated by the parties and is consecutively paginated." As far as I am aware, that order has not been followed.

First, the record has not been served "via an approved method of service pursuant to Rule 262(c), SCACR, and the supreme court's order regarding electronic service." As noted in the motion to dismiss we filed in April of this year, Rule 262 provides various alternative methods for service. With regard to electronic service, the Rule states, "Service upon the attorney or upon a party **shall be made** by . . . Serving a copy on the person by electronic means in a manner provided by order of the Supreme Court of South Carolina." Rule 262(c), SCACR (emphasis added). The applicable supreme court order governing electronic service is its Order entered April 24, 2024. That Order states, "Documents **must** be e-mailed as an attachment in .pdf. In the absence of consent, a lawyer serving a document by e-mail may not utilize another file format or a file-sharing service." *In re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules*, S.C. Sup. Ct. Order (as amended April 24, 2024) (emphasis added). To date, no copy of the record has been served in person, by U.S. Mail, or by any of the approved electronic means. Instead, you did the same thing you did before: you e-mailed out links. I am not aware of you obtaining—or even seeking—consent from counsel to serve the record in a manner other than as PDF attachments. Based on your e-mail it appears you knew we would not receive the documents as PDF attachments but instead as hyperlinks. You could have broken the

large PDFs into files small enough to e-mail as attachments, but you instead elected to proceed with the hyperlinks. When you did that, you took the risk that your manner of service would not comply with the Rules and the Orders. And it did not.

I further note that in the proof of service you filed with the Court of Appeals on September 20, 2024, you state, "Counsel for the appellants has served the four volume Record on Appeal by sending a copy of each volume to each of the counsel listed below, four separate emails, one email for each of the four volumes of the Record on Appeal, with a corrected Index listing as to each of pages 1188 and 1341." We have located no record of "four separate emails, one email for each of the four volumes" having been sent, so that certification to the Court appears to be inaccurate, too. In fact, the e-mail you attached to the proof of service belies the "four separate emails" statement in your proof of service.

The Court's August 23rd Order states that the failure to comply "will result in dismissal of this appeal." It is therefore my intent to move yet again to dismiss the appeal based on these failures. If you did serve the Record pursuant to Rule 262(c) and the Court Orders, or if there were in fact one or more emails transmitting documents as PDF attachments rather than links, then please advise.

Sincerely,

Benjamin C. Bruner

BCB/gh

cc: Richard S. Dukes, Jr., Esquire (via e-mail only)
Carmelo Barone Sammataro, Esquire (via e-mail only)
John Cuttino, Esquire (via e-mail only)
Chelsea J. Clark, Esquire (via e-mail only)
S.C. Court of Appeals (via e-mail only to ctappfilings@sccourts.org)

Gregg Meyers
Attorney at Law

114 4th Ave NW
Byron MN 55920
attygm@gmail.com
843/324-1589

October 6, 2024

Via email: ctappfilings@sccourts.org

Clerk of Court
South Carolina Court of Appeals
Columbia SC

Re: Appeal 2023-0000720, John Doe #53 et al. v. The Bishop of Charleston

To the clerk:

Submitted with this letter is an amended proof of service for the September 20 Record on Appeal, which had been amended.

On October 4, Mr. Bruner was kind enough to point out to me that I failed to properly revise my initial Proof of Service. The initial proof of service reflected I had transmitted the four volumes of the Record on Appeal by means of four separate emails.

As reflected in the email attached to the September 20 Proof of Service, the four volumes of the revised Record were sent via one email, not four. My initial proof of service was, in that regard, incorrect. Once I discovered that each volume of the revised Record was too large for Gmail to avoid its large-file-handling method, the volumes of the Record were sent via one email, as the court's order seems to prefer, and as the September 20, 2024 email reflects.

The four volumes of the revised record have been on file with the court since September 20.

My September 20 email to counsel serving the Record invited each of them to advise me if there was any problem receiving the Record. Until today, when I was able to review Mr. Bruner's October 4 letter, I heard of no problems anyone had receiving the Record.

Mr. Bruner now says, not that he has not received the Record, but that he contends the means by which my email provider, Gmail, handles a large attachment and got it to him is not to his liking.

The Court may recall that Mr. Bruner objected to my providing the initial Record by means of a file-sharing service that he had previously been agreeable to my using in this case. He now objects to my having emailed him the revised Record in pdf form through Gmail because Gmail transmitted the pdf file to him through means Gmail uses for large email attachments. To my untrained eye, it appears Gmail uploads to Gmail itself any pdf file over a certain limit (set by

Gmail, not by me), then Gmail transmits to the recipient a means by which the large file can be downloaded with a single mouse click.

In this case, that is how Gmail handled each of the four revised Record volumes, as each was, in size, over whatever size limit their system uses as their limit).

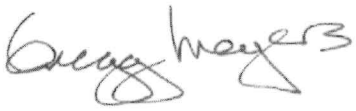
Of course, I do not control Gmail. Nor do I have a choice as to how Gmail handles large attachments. I transmitted the four volumes of the Record by pdf attachment, as the order on electronic service provides, and then I attached to the September 20 Proof of Service the September 20 email by which I did so.

Mr. Bruner contends that is insufficient service, contending that is sending merely a "link" to the pdf file, although there is no other means by which Gmail enables a large pdf attachment to be sent. Nor does Mr. Bruner contend that he has not received the Record. In my experience, Gmail has been impressive in the ease and operations of the means it uses to convey large files.

Please accept the amended proof of service to reflect the email to all counsel sent September 20 (also corrected as to appellate case number), which email attached in pdf format the four volumes of the Record on Appeal, so that Mr. Bruner may rely on a corrected proof of service so he can file whatever motion he cares to file.

Thank you very much.

Sincerely,



Gregg Meyers

c: Counsel of record

Attachment:

Amended Proof of Service and
September 20, 2024 email, corrected as to
Appellate case number

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, ... Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are . . . . . .Appellants,

v.

The Biship of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, ...Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . . Intervenors.

PROOF OF SERVICE

I, Bridge Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, counsel for Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached **DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER, LLC'S MOTION TO DISMISS** by e-mail on October 11, 2024, addressed to the following:

Gregg E. Meyers, Esquire
attygm@gmail.com
114 4th Ave. NW
Byron, MN 55920
Attorney for Appellants

Richard S. Dukes, Esquire
RDukes@TurnerPadget.com
Carmelo Barone Sammataro
ssammataro@turnerpadget.com
Turner Padget Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29413-2129
Attorneys for Diocese Defendants

John E. Cuttino, Esquire (S.C. Bar # 1519)
jcuttino@gwblawfirm.com
P.O. Box 7368
Columbia, S.C. 29202
Attorneys for David K. Haller

October 11, 2024

Bridget S. Steele

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200 (29204)
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
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WARREN C. POWELL, JR., P.A.*
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J. COLE HANCOCK
J. WEBSTER HALL

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: BSTEELE@BRUNERPOWELL.COM

October 11, 2024

VIA EMAIL ONLY
South Carolina Court of Appeals
Attn: Honorable A. Kitchings
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: John Doe #53 v. The Bishop of Charleston
Appellate Case No: 2023-000720
BPWM File No.: 3-716-134.012

Dear Ms. Kitchings:

Enclosed herewith for filing please find David K. Haller, Lawerence E. Richter, Jr. and Richter & Haller, LLC's Renewed Motion to Dismiss in the above referenced matter.

Sincerely,

Bridget S. Steele
Legal Assistant to Benjamin C. Bruner

/bs
Encl.

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Sam Sammataro, Esquire
John Cuttino, Esquire
Chelsea J. Clark, Esquire