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Oct 17 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

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

Appellate Case No. 2023-001497

Ronald Carl Cox, III ..... Appellant

v.

Michael John Dimaggio ..... Respondent.

**MOTION TO DISMISS THE APPEAL OF THE APPELLANT OR IN THE  
ALTERNATIVE FOR AN ORDER DIRECTING THE APPELLANT TO COMPLY  
WITH THE COURT OF APPEALS PRIOR ORDER OF JUNE 7, 2024, ORDER FOR  
SANCTIONS AND FOR ATTORNEY’S FEES AND COSTS**

The respondent moves the Court of Appeals to dismiss the appeal of the Appellant on the following grounds:

On March 13, 2024, the Respondent filed a Motion to Exclude portions of the Appellant’s designation of matter to be included in the Record on Appeal for failure of the Appellant to ever introduce those documents into the record. On March 22, 2024, the Appellant requested 10 days extension to respond to the Motion to Exclude of the respondent. On March 25, 2024, the Court granted an extension to the Appellant to respond until April 5, 2024. Appellant timely filed a response to the Motion to Exclude on April 5, 2024.

On June 7, 2024, the Court excluded from the record on appeal (1) the Order of Protection dated September 7, 2023 (See Appellant’s Record on Appeal submission dated October 16, 2024,

at p. 19) and (2) the Affidavit of Lauren Lipscomb in its complete form (See Appellant's Record on Appeal submission dated October 16, 2024, at p. 70). Both of these items were expressly excluded by this Court's Order of June 7, 2024.

The Appellant was warned by this Court on September 19, 2024, that the Record on Appeal was overdue and it needed to file a Motion within ten days or its appeal would be dismissed. A day late, on the 11th day after this admonition, the Appellant sent an email (no formal Motion, no certificate of service and submitting no fee) requesting an extension and noting that the Appellant's counsel had been without power or internet since Thursday evening. Unless counsel lost power and internet for some other reason, the high winds of Hurricane Helene struck South Carolina in the early morning hours of Friday, not Thursday evening. This request was granted by this Court giving the Appellant until October 15, 2024, to file the Record on Appeal.

Today, the Appellant, having previously being warned that its appeal may be dismissed, has failed to timely file the Record on Appeal by missing the October 15, 2024, deadline and filing on October 16, 2024. And to add insult to injury, the Appellant has included in the Record on Appeal the *same materials this Court ordered excluded* by its expressed ruling of June 7, 2024.

In essence, the Respondent, after moving on March 13, 2024, to have the Record on Appeal corrected to exclude evidence that was included in the Record on Appeal by the Appellant but that never had been offered into the record of the lower Court by the Appellant, is left, seven months later, with *essentially the same record on appeal submitted by the Appellant in the first place*. The Respondent now is caused to spend more unjustified time attempting to correct that which was already ordered corrected.

#### **RULE 260. Dismissal and Reinstatement**

(a) Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a

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.

S.C. App. Ct. R. 260 Dismissal and Reinstatement (South Carolina Appellate Court Rules (2024 Edition)).

It is notable, that the failures of the Appellant that are repeatedly occurring in this Appeal are the same types of issues that resulted in the dismissal of its case by the lower Court, to wit, failure to meet deadlines, failure to follow procedural rules, failure to take steps to diligently pursue its case. The Respondent continues to receive the brunt of these omissions not only during this appeal, but since the inception of the Appellant's claim against him.

For repeated delay, failure to timely pursue its appeal, and failure to follow the expressed Orders of this Court, the Appellant's appeal should be dismissed.

Should this Court decline to dismiss the Appellant's appeal, Respondent prays that the Court Order the Appellant to comply with its previous Order of June 7, 2024, and immediately correct the Record on Appeal, sanction the Appellant appropriately, and award the Respondent attorney's fees and the cost of preparing and submitting this Motion.

Respectfully Submitted,

**MOORHEAD LEFEVRE PA**

s/J. Kirkman Moorhead  
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**CERTIFICATE OF SERVICE**

The undersigned on behalf of Moorhead LeFevre, PA, counsel for the Respondent, does hereby certify that the Respondent’s **MOTION TO DISMISS THE APPEAL OF THE APPELLANT OR IN THE ALTERNATIVE FOR AN ORDER DIRECTING THE APPELLANT TO COMPLY WITH THE COURT OF APPEALS PRIOR ORDER OF JUNE 7, 2024, ORDER FOR SANCTIONS AND FOR ATTORNEYS FEES AND COSTS** in the above-captioned matter was sent by electronic mail and by placing same in the United States Mail, first class postage prepaid, to the below listed addresses clearly indicated on said envelope this the 17<sup>th</sup> day of October, 2024.

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