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Nov 05 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’ SECOND MOTION FOR EXTENSION OF TIME**

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Attorneys for Respondents
Joseph and Lauren Jaco

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondents Joseph and Lauren Jaco respectfully submit this return in opposition to Appellants’ November 4, 2024,

“Second 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. Consequently, 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. Subsequently, on January 8, 2024, the Special Referee issued a 24-page “Final Order Making Findings of Fact and Conclusions of Law” awarding Respondents \$2,500,000.00 in damages.

Following this Final Order, Appellants failed to file a motion for reconsideration and instead untimely filed a notice of appeal on April 24, 2024.

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, at approximately 11:06 p.m. 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, at around 12:32 a.m., 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, at roughly 11:59 p.m., 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. Appellants' request was founded on the loss of power Appellants' counsel suffered due to effects of Hurricane Helene from September 27, 2024, through October 4, 2024.

On Monday, November 4, 2024, at approximately 11:42 p.m., Appellants filed their most recent (now fourth) motion for an extension of time in this matter.

DISCUSSION

Appellants' repeated dilatory conduct fundamentally frustrates the Court's and Respondents' pursuit of timely justice. Respondents acknowledge that unexpected circumstances can arise. However, Appellants have been granted multiple extensions, including a significant two-month delay for their counsel's illness. Even with this accommodation, Appellants failed to file a return to Respondents' Motion to Dismiss. Appellants already requested and received a thirty-day extension due to the effects of Hurricane Helene. While ordinarily "two significant trials . . . over the next two weeks in Greenville" would suggest good cause for an extension of time, here, Appellants have had over six months during the pendency of this appeal to prepare. Moreover, Appellants' assertions that they "ha[ve] exercised diligent efforts to comply with the timeline established by this Court []," and that they do not make their latest "motion . . . for the purpose of delay" is confusing and belied by Appellants' persistence in waiting until (at best) the very last hour to request further extensions of time, here.

"[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). 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.

This Court should take this opportunity to confirm the seriousness of its orders because history has shown that if it does not, Appellants' next move is entirely predictable. *Carnrite v. Granada Hosp. Grp., Inc.*, 175 F.R.D. 439, 448 (W.D.N.Y. 1997) ("if the courts do not take seriously their own scheduling orders who will?")

Accordingly, this Court should dismiss Appellants' appeal or, in the alternative, grant Appellants no 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. Alternatively, if the Court grants any extension, it should be limited to a strict fourteen (14) days from the original deadline, with no further extensions absent extraordinary circumstances.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Ian T. Duggan

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Attorneys for Respondents

Joseph and Lauren Jaco

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PROOF OF SERVICE

I hereby certify that, on this date, the **RESPONDENTS’ RETURN TO APPELLANTS’ SECOND 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
November 5, 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' Second 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 and first-class mail 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)