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Dec 10 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’
SECOND MOTION TO DISMISS
APPEAL**

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Joseph and Lauren Jaco***

Under Rule 240 of the South Carolina Appellate Court Rules, Respondents Joseph and Lauren Jaco move to dismiss Appellants' putative appeal because of Appellants' failure to timely file their initial brief and designation of matter.

INTRODUCTION

Respondents bring this second Motion to Dismiss because of Appellants continued dilatory conduct in filing their initial brief and designation of matter. On October 9, 2024, this Court directed that "[t]he time for serving and filing the initial brief of appellants and designation of matter is . . . November 4, 2024." On November 4, 2024, at approximately 11:42 p.m., Appellants moved to extend yet again for another 30 days, or until December 4, 2024.

While this Court has not yet ruled on Appellants' motion to extend this deadline until December 4, 2024, Appellants have now failed to meet even this self-imposed deadline by nearly a week. Accordingly, Appellants' appeal should be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2024, in a 24-page "Final Order Making Findings of Fact and Conclusions of Law," the Circuit Court-appointed Special Referee, Jeremy Hodges, Esquire, awarded Respondents \$2,500,000.00 in damages attributable to the Appellants' negligent, trespassory, and nuisance-causing invasion of the Respondents' previously idyllic pond on land that has been in Respondent Lauren Jaco's family for decades.

Nearly four months later, on April 24, 2024, Appellants filed their notice of appeal.

After the filing of the Notice of Appeal, Respondents filed their first motion to dismiss on May 29, 2024. Respondents' first motion to dismiss generally asserted that the Appellants' appeal was untimely.

On June 11, 2024, Appellants sought an extension to file their return to the first motion to dismiss on grounds that Appellants' counsel was recovering from an illness, more specifically "acute bilateral allergic reaction conjunctivitis." Respondents were not asked to consent to the extension of time but did not file a return in opposition. On June 24, 2024, the Court granted Appellants' Motion, directing that "[t]he time for serving and filing the return to the motion to dismiss is hereby extended until July 1, 2024."

On July 2, 2024, Appellants filed another motion requesting an extension, this time until July 21, 2024, to file a return to Appellants' first motion to dismiss. This extension, Appellants stated, was based on the continuing effects of Appellants' counsel's illness. Again, Respondents were not asked to consent to the motion but did not file a return opposing the motion. On July 19, 2024, the Court granted Appellants' motion.

Despite the two extensions granted by the Court, Appellants never filed a return to Respondents' first motion to dismiss. On September 3, 2024, this Court denied Respondents' motion to dismiss based on the untimely filing of Appellants' appeal but did so "without prejudice to the parties presenting argument on this matter in their briefs."

On September 4, 2024, this Court set a briefing schedule directing that the Appellants' "initial brief and designation . . . be served and filed within thirty (30) days," that is, by Friday, October 4, 2024. The Court added that a failure to do so "will result in the dismissal of this appeal."

On October 4, 2024, Appellants filed a motion requesting that they have "until November 4, 2024, to file and serve Appellant's [*sic*] Initial Brief and Designation of Matter." This delay, Appellants asserted, was because of Hurricane Helene's effect on their counsel's ability to prepare—as power and internet were cut off to Appellants' counsel's home from "September 27th, 2024 . . . until after 5:00 p.m. on . . . October 4, 2024."

On October 8, 2024, Respondents did file a return to Appellants' motion of October 4, 2024, opposing Appellants' motion for an extension of time, or in the alternative, requesting that the Court grant Appellants no more than an additional two weeks to make said filing. On October 9, 2024, the Court granted Appellants' motion and extended Appellants' time until November 4, 2024, to file their initial brief and designation of matter.

Yet again, late in the evening on November 4, 2024, Appellants requested an extension to file their initial brief and designation of matter—this time until December 4, 2024. The next morning, on November 5, 2024, Respondents filed their return opposing Appellants' December 4, 2024, motion for an extension.

The Court has not yet ruled on Appellants' request to have until December 4, 2024, to file their designation of matter and initial brief. Even still, December 4, 2024, came and went without any filing by Appellants.

DISCUSSION

Rule 208(a)(4) of the South Carolina Appellate Court Rules provides that “[u]pon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.” While noting that Appellants' motion to extend this Court's deadline of November 4, 2024, remains pending, this Court should still dismiss this case because the Appellants' dilatory conduct and failure to abide by this Court's orders warrants as much.

To be sure, as evidenced by the lack of returns in opposition to early motions made by Appellants here, Respondents can empathize with any party or counsel undergoing medical care or lacking power for a week. And Respondents acknowledge the patience required of any litigant as the Court engages in its deliberate and thoughtful consideration of the matters before it. Even

still, “justice 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). And the importance of timely justice is particularly important here, as seen in the following “credible and compelling evidence” summarized by the Special Referee in his Final Order,

42. . . . [Respondent Lauren] Jaco echoed her and her husband [Respondent Joseph Jaco’s] close connection to this land. She referred to the prior owners, her aunt and uncle, as a “second set of parents” who passed away within months of each other from cancer in 2018. She spoke of fond memories of visiting with her family and attending parties and gatherings at the property growing up.

43. In recent years, Mrs. Jaco and her husband have spent more time at their property. Mrs. Jaco became emotional when describing how stressed she has felt seeing the changes to the pond—how hearing earth moving equipment makes her fear that more land will be cleared and further harm the [Respondents’] pond.

44. The Jacos have a seventeen-year-old daughter with whom her aunt and uncle were also very close—a “third set of grandparents.” The Jacos intend to leave this land to their daughter when they pass. To Mrs. Jaco, the land is “priceless,” and she would never consider selling it.

45. **For several months, Mrs. Jaco has been undergoing chemotherapy to treat breast cancer.** While she still enjoys the respite that this property provides to her and her family, she became emotional during her testimony, describing how she had “let [her aunt and uncle down] because the pond looks so bad.”

(emphasis added, last substitution original).

Conversely, Appellants’ conduct merits no special treatment and there is no “good cause” suggesting that this appeal should remain pending. *See generally* SCACR 260(a). Instead, while this Court has repeatedly indulged Appellants’ requests for extensions of time, the Court has also emphasized the serious potential consequences should they fail to adhere to the Court’s orders. *See, e.g.*, September 4, 2024, Order of the Court (“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.*”) (emphasis added); *see also* SCACR 208(a)(4) (same). Understandably,

resolution of appeals on their merits is a laudable goal. But SCACR 208's rules are there for a reason, because "[i]f the courts do not take seriously their own scheduling orders who will?" *Carnrite v. Granada Hosp. Grp., Inc.*, 175 F.R.D. 439, 448 (W.D.N.Y. 1997). Certainly not the Appellants.

More specifically, this Court granted three eleventh-hour or even late motions for extensions of time filed by Appellants. The first two extensions granted by this Court were unopposed and related to the deadline for Appellants to file a return to Respondents' first Motion to Dismiss. But, evidencing their true motivations, Appellants, despite having several additional weeks to do so, never filed their promised return to that motion to dismiss even after requesting and receiving several weeks of additional time to prepare.

Indeed, while this Court has not yet ruled on Appellants' November 4, 2024, and latest (fourth) motion for an extension here, nearly a week has passed since the Appellants' self-imposed deadline of December 4, 2024, to file their designation of matter and initial brief. But this is not a surprising development. In their November 5, 2024, return to Appellants' latest motion, Respondents posited that if the Court did not enter an order "confirming the seriousness of its orders . . . history has shown that . . . Appellants' next move is entirely predictable." Time has confirmed this much is true.¹

While Appellants' November 4, 2024, and most recent motion seeking an extension of time contends that "the complexities of issues involved in this appeal have necessitated extensive legal analysis, contributing to an unexpectantly prolonged drafting process," the Special Referee's Final Order here was served on the parties (nearly a year ago) on January 8, 2024. Even accounting for

¹ And, in keeping with this past precedent, Respondents have every expectation that Appellants will not file a timely return to this Motion either.

Appellants' untimely filing of a notice of appeal, this appellate proceeding has been pending for over seven and a half months. By any measure, Appellants, represented by talented and experienced counsel, have had ample opportunity to prepare an initial brief. Thus, the question is why do the Appellants continue to delay?

The record reflects that Appellants' motivation is nothing more than "delay for delay's sake." Certainly, what has taken place in this appeal coincides with the Appellants' past behavior before the Circuit Court below.² Indeed, Appellants failed to timely file (i.) a responsive pleading to the Complaint (after repeatedly dodging service); (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, Appellants have shown no respect for deadlines and the record reflects they are using this proceeding not for its intended purpose—"a serious effort on the part of adult human beings to administer justice," *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992)—but instead to delay the consequences of their serious acts and omissions and the consequent judgment of the Circuit Court.

For these reasons, this Court should immediately dismiss Appellants' appeal.

CONCLUSION

Appellants failed to file their initial brief and designation of matter by this Court's extended deadline of November 4, 2024, or by Appellants' self-imposed deadline of December 4, 2024. Accordingly, Appellants' appeal should be dismissed.

[SIGNATURE PAGE FOLLOWS]

² Discussed at length in Appellants' first motion to dismiss filed on May 29, 2024.

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

PROOF OF SERVICE

I hereby certify that, on this date, the **RESPONDENTS’ SECOND MOTION TO DISMISS APPEAL** 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
December 10, 2024

Ian T. Duggan - Lawyer
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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
1220 Senate Street
Columbia, SC 29201

**Re: Joseph and Lauren Jaco vs. J.N. Green and Associates, LLC, Big Blue Express, LLC, and Joe N. Green
Appellate Tracking No. 2024-000679
Our File No. 8728.001**

Dear Ms. Kitchings:

Enclosed herewith please find the Respondents' Second Motion to Dismiss Appeal, 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. My firm's check in the amount of \$50.00 as the filing fee for the Motion will be hand-delivered to the Court.

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 J. Duggan

Ian T. Duggan

ITD:kam

Enclosures

cc: Adrienne L. Turner, Esquire (via email and first-class mail)
Joseph and Lauren Jaco (via email)