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Dec 27 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 SCACR 210(C)**

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

The Respondent has previously moved to have the Appellant’s Appeal dismissed for failure to comply with Orders of the Court pertaining to material the Appellant sought to include in the Record on Appeal that this Court had Ordered excluded. The Appellant issued an Amended Record on Appeal, but the Appellant has failed to include the material designated by the Respondent in the Record on Appeal as required by SCACR 210(c).

The Appellant has repeatedly failed to comply with the Appellate Court Rules. It frustrates the process of the Appeal when a party is repeatedly unable to advance its case due to the failure of the Appellant to properly assemble the Record on Appeal.

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 once again 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 the Appellate Court Rules and immediately correct the Record on Appeal to include material designated by the Respondent, 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
J. Kirkman Moorhead (SC Bar 07039)
2203 N Main Street
Anderson, SC 29621
Tel.: (864)225-9155; Fax: (864)225-9151
Email: kirk@mllawyers.com

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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 SCACR 210(C)** 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 27th day of December, 2024.

Daniel J. Farnsworth, Jr., Esq.
Pettus/Farnsworth, LLC
211 Pettigru Street
Greenville, SC 29601

s/J. Kirkman Moorhead
J. Kirkman Moorhead (SC Bar No.: 07039)
2203 North Main Street
Anderson, South Carolina 29621
kirk@mllawyers.com