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Jan 09 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Marion County
Court of Common Pleas

The Honorable H. Steven DeBerry, IV, Circuit Court Judge 2771

Appellate Case No. 2024-000868
Civil Action No. 2023-CP-33-00500

Thomas Betancourt, Nicole Betancourt, Jimmy Boatwright, Arnie Boatwright, Norman Whetzel
and Kristana Whetzel.....Appellants,

v.

City of Mullins Zoning Board, Dr. Todd Blevins and Blevins Dentistry.....Respondents.

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

This Appeal should be dismissed for the Appellant's non-compliance with the Court's rules and Orders. On November 21, 2024, his Court ordered Appellants to file their initial Brief and their Designation of Matter for the Record on Appeal by Friday, January 3, 2025. *From the documents now filed with the Court and available on C-Track, it is now clear that No Brief was filed or mailed to the Court on January 3rd and No Designation for the Record on Appeal was filed or mailed to the Court on January 3rd.*

As can be seen on C-Track, the Brief was submitted to the Court by email on January 6, 2025.¹ The January 6th C-Track filings also include emails with Court staff on December 31,

¹ The January 6th cover e-mail also appears to attach the Designation of Matter though it is not presently found or filed on C-Track; *strangely, a listing on C-Track dated January 3rd and labeled*

2024 and January 3, 2024 *without any submissions* although the *pro se* Appellants had repeatedly electronically submitted material to this Court on prior occasions. The actual submissions were made by email on January 6th -- days *after* the Court's lenient and gracious deadline.

The Proof of Service filed with the Court is also deficient in that it bears no type of signature. The Proof of Service is also phrased as the certification of a single *pro se* litigant, Nicole Betancourt – the individual who has repeatedly acted as the unlicensed lead litigant in the group; but again, it is not signed. It also does not even suggest that a copy of the required Brief and Designation were sent to the Court on January 3, 2025, as required by the extension order of November 21, 2024.²

The present non-compliance with Court Rules and Orders only re-illustrates the concerns undersigned counsel has had all along. In this case, the *only* timely Notice of Appeal was by submitted Appellant Nicole Betancourt and it was done without an actual signature – and without the “s/” signature format.³ ***Moreover, allowing the other Appellants to sign-up belatedly is not only inconsistent this Court's rules and statutory limits of jurisdiction,⁴ it effectively allows***

“Designation of Matter Filed-Appellant” is NOT that – but rather a repeated filing of the December 12, 2024 court correspondence.

² Per SCACR 262(a)(2), a mailing to the Court on January 3rd would arguably be a filing with the Court on that date; as is clear from the emails, this was not done.

³ SCACR 267(b) does allow for “other electronic version of the person's signature” but it is not conceded that even this requirement has been satisfied by merely typing a name in normal font.

⁴ As noted in *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008), “Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.” *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999). “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.” *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

litigant Betancourt to advocate for others without licensure. Thus, arguably this Appeal should be dismissed for *all* (see footnote 2) or most appellants for lack of jurisdiction as well.

Even if this Court's appellate jurisdiction has been properly invoked, however, this Appeal should be dismissed for the Appellant's non-compliance with the Court's rules and Orders – in particular, this Court's Order of November 21, 2024.

January 9, 2025

Florence, South Carolina

By: /s/ J. Rene Josey

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Turner, Padgett, Graham & Laney, P.A., counsel for the Respondents Dr. Todd Blevins and Blevins Dentistry, does hereby certify that service of Respondents Dr. Todd Blevins and Blevins Dentistry’s Supplemental Memorandum in Support of Motion to Dismiss Appeal in the above-captioned matter was made upon all counsel of record by US Mail and/or E-mail on this 9th day of January, 2025:

Nicole Betancourt
618 S. Main Street
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Pro Se Appellant

Thomas Betancourt
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/s/ Jon Rene Josey, Esquire

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/s/ Jon Rene Josey, Esquire

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J. René Josey, Esquire

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January 9, 2025

VIA EMAIL ONLY (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Thomas Betancourt, Nicole Betancourt, Jimmy Boatwright, Arnie Boatwright, Norman Whetzle and Kristana Whetzel v. City of Mullins Zoning Board,
Dr. Todd Blevins and Blevins Dentistry
SCCA Action No.: 2024-000868
Civil Action No.: 2023-CP-33-00500
TPGL File No.: 20350.101

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing Respondents Dr. Todd Blevins and Blevins Dentistry's **Supplemental Memorandum in Support of Motion to Dismiss Appeal and Certificate of Service** in the above-referenced matter. In accordance with Section (d)(1) of this same Order, I am hereby serving copies on all counsel of record via electronic mail. As well, please note that I am serving all *Pro Se* Appellants by US Mail.

If you have any questions, please advise.

Sincerely,
TURNER PADGET GRAHAM AND LANEY P.A.

/s/ J. Rene Josey

J. René Josey, Esquire

JRJ:alb/Enclosures

cc: Nicole Betancourt (via US Mail) (w/ enc)
Thomas Betancourt (via US Mail) (w/ enc)
Jimmy Boatwright (via US Mail) (w/ enc)

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Page 2

Arnie Boatwright (via US Mail) (w/ enc)

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