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Mar 05 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT, YORK COUNTY

Daniel D. Hall, Circuit Court Judge

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Appellate Case No. 2024-0002719

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Stephanie Kozak  
(Personal Representative for the Estate of John Witkowski),

Appellant,

v.

Chris Cutway,

Respondent.

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RESPONDENT'S RETURN TO  
APPELLANT'S MOTION TO RECONSIDER

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Pursuant to Rule 240, SCACR, the Respondent, Chris Cutway ("Respondent"), hereby submits this *Respondent's Return to Appellant's Motion to Reconsider* ("Return to Motion") in opposition to the Appellant's *Motion to Reconsider* ("Motion") filed on March 5, 2025<sup>1</sup>.

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<sup>1</sup> It appears that said Motion (and the Certificate of Service therefor) is erroneously dated January 15, 2025; however, the Court record should show that it was filed on March 5, 2025.

In support of this *Return to Motion*, Respondent respectfully submits that this Court need not and should not reconsider its *Order* dated March 4, 2025, which properly denied the Appellant’s *Motion to Recall Remittitur and to Allow Late Filing*. In so submitting and opposing the Appellant’s *Motion*, Respondent respectfully incorporates his position set forth in his previously-submitted *Respondent’s Return to Appellant’s Motion to Recall Remittitur and to Allow Late Filing* into this *Return to Motion* by reference and states as follows:

In South Carolina, it is well-established that “[w]henver it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued.” *Wise v. South Carolina Dept. of Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007). “The Clerk of Court shall remit the case to the lower court in accordance with Rule 221, SCACR, unless a motion to reinstate the appeal has been actually received by the court within fifteen days of filing of the order of dismissal.” *Id.*

Importantly, “[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.” *Id.* (citing *Mickle v. Blackmon*, 255 S.C. 136, 177 S.E.2d 548 (1978)); *Thomas v. Lynch*, 87 S.C. 44, 68 S.E. 817 (1910)); *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903); *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893)). Where, as here, “the remittitur . . . was not sent down by mistake, error or inadvertence of the Court of Appeals” and “it was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement[,] this Court no longer has jurisdiction over the matter. *Wise, supra*, 372 S.C. at 174, 642 S.E.2d at 551. “The only exception to this rule is when the remittitur is sent down by

mistake, error or inadvertence of the Court.” *Id.* (citing *Keels, supra*, 39 S.C. 553, 17 S.E. 802 (1893))

Here, the *Remittitur* dated January 8, 2025, was ***not*** sent down by mistake, error or inadvertence of the Court, and its propriety cannot be disputed. In fact, the Appellant’s *Motion* does not even argue that it was sent down by mistake, error or inadvertence of the Court. In essence, the Appellant concedes that the *Remittitur* dated January 8, 2025, was not sent down by mistake, error or inadvertence of the Court.

Accordingly, this Court no longer has jurisdiction over this matter, and no motion can be heard hereafter. *See generally Wise, supra*, 372 S.C. at 174, 642 S.E.2d at 551. Therefore, this Court need not and should not reconsider its *Order* dated March 4, 2025.

Given the foregoing, Respondent respectfully requests that this Court deny the Appellant’s *Motion* in its entirety.

Respectfully submitted,

**AHN LAW FIRM, LLC**

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***Counsel for Respondent***

March 5, 2025

Lake Wylie, South Carolina

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CERTIFICATE OF SERVICE

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The undersigned certifies that on March 5, 2025, a copy of the foregoing *Respondent's Return to Appellant's Motion to Reconsider* was filed with this Court and served upon all counsel of record in this matter, including the following, pursuant to the relevant Order of the Supreme Court<sup>2</sup>:

John Martin Foster, Esq. (S.C. Bar #2086)  
Email: jmfoster340@gmail.com  
*Attorney for Appellant*

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<sup>2</sup> Order, *RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022)*, Appellate Case No. 2020-000447, May 6, 2022.

This 5th day of March, 2025.

**AHN LAW FIRM, LLC**

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