

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2008-CP-37-0415

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OCT 11 2013
SC Court of Appeals

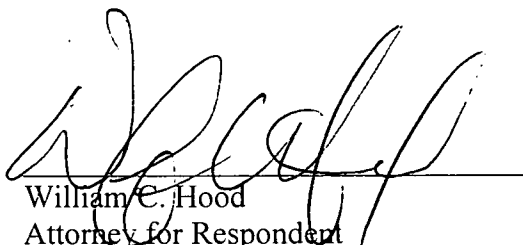
Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation.....Respondent,

v.

Dennis Waldrep.....Appellant

RESPONDENT'S MOTION TO DISMISS

Respondent hereby moves the Court, pursuant to Rule 260(a), SCACR, for an order dismissing the within matter for failure of the Appellant to comply with the South Carolina Appellate Court Rules, more particularly, Appellant's failure to file a Record on Appeal in compliance with the specifications of such Rules, as more specifically noted in the Memorandum submitted in support of this Motion



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October 8, 2013

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MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS

Pursuant to Rule 260(a), an order of dismissal should be issued whenever it appears that the Appellant has failed to comply with the requirements of the Rules. As will appear by reference to the Clerk's records, the Appellant has repeatedly failed to comply with the Rules, despite multiple extensions granted, such that a proper Record on Appeal has yet to be filed even though the Notice of Appeal was filed in February, 2012. Most recently, by letter and Order dated September 13, 2013, the Clerk noted deficiencies in the Record on Appeal filed by Appellant; referred Appellant to the South Carolina Appellate Court Rules, specifically Form 15 in Appendix C and Rule 210; and ordered the deficiencies corrected, with the warning that the appeal would be dismissed if the deficiencies were not corrected. On October 2, 2013, Appellant

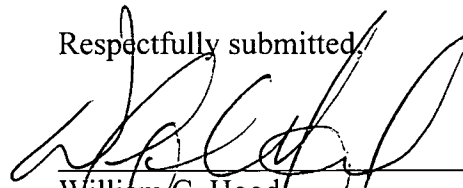
filed a revised Record on Appeal. That revised Record on Appeal, as served on Respondent, still fails to comply with the Rules in numerous respects, including:

- 1) No certificate included (Rule 210(g)).
- 2) Not properly covered and bound (Rule 267 (d) and (e)).
- 3) Content not in required order (Rule 210 (c))
- 4) Pages not numbered (Rule 210 (c)).
- 5) Not properly indexed (Rule 210 (c))
- 6) Contains matter not submitted to the Court , e.g., correspondence between Appellant and counsel and summaries apparently prepared by Appellant (Rule 210 (c))
- 7) Handwritten comments in margins of exhibits and transcript (Rule 210 (c))
- 8) Contains portions of transcript not designated for inclusion (Rule 210 (c)), including pp. 375-402, 418-419, 82-91, 93-94, 96-98, 100-107,109-113, 115-127, 130-140, 81-87, 419, 375-401. Note: Appellant's Designation of Matter to be Included does not differentiate between the trial transcript and the transcript of the motion for reconsideration, making it almost impossible to determine which transcript is intended, but the above pages do not appear to have been designated from either transcript.
- 9) Fails to include a large portion of the matter designated by Respondent (Rule 210 (c)), including:
 - a) Trial transcript, pp. 5-42, 143-155, 182-188, 203-209, 222-242, 246-258, 350-363, 428-457
 - b) Order and Judgment dated July 19, 2011

- c) Order Denying Defendant's Motion for Reconsideration dated February 16, 2012
- d) Reply
- e) Plaintiff's Exhibits 1, 3, 4, 13 and 14

The revised Record on Appeal is so deficient as to make it impossible to prepare a Final Brief which would be in compliance with the applicable Rules. It is nearing two years since this appeal was filed. Due to Appellant's continuing failure to comply with the Rules and to file a proper Record on Appeal, despite repeated instructions and extensions of time by the Clerk, this matter should be dismissed pursuant to Rule 260(a), SCACR.

Respectfully submitted,



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