

RECEIVED

Aug 04 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-000306
Trial Court Case No. 2024-CP-42-02781

Carnie Norris, III, Appellant,

vs.

Dr. Gary W. Poliakoff,¹ Respondent.

**RESPONDENT’S MOTION TO DISMISS THE APPEAL
AND SUSPEND TIME TO FILE THE FINAL BRIEF OF RESPONDENT**

Thomas A. Pendarvis (SC Bar #064918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Unit 1-A
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Respondent Gary W. Poliakoff, Esq.

¹ The Appellant improperly identifies Gary W. Poliakoff, Esq. as “Dr. Gary W. Poliakoff.”

MOTION

Pursuant to Rules 208, 210, and 240, SCACR, Respondent Gary W. Poliakoff, Esq., respectfully moves the Court 1) to dismiss the appeal due to Appellant's failure to serve a copy of the Record on Appeal on Respondent as required by Rule 210, SCACR, and other procedural deficiencies, and 2) suspend the time for filing the final Brief of Respondent if the appeal is not dismissed.

Procedural Background

Appellant Connie Noris, III, filed a Notice of Appeal dated February 10, 2025, and received by the Court of Appeals on February 17, 2025. On February 21, 2025, the Clerk for the Court of Appeals sent a letter to Appellant notifying him of deficiencies in the appeal, including a lack of proof of service on counsel for Respondent, and requiring the deficiency be cured within 10 days of the date of the letter. Appellant timely corrected that deficiency.

On March 12, 2025, the Clerk for the Court of Appeals sent a letter to Appellant notifying him that the time to order a transcript from the court reporter had expired and explaining the available alternatives necessary to pursue the appeal, including providing a copy of the letter showing that he had timely order the transcript from the court reporter or filing a motion to request permission to order the transcript outside of the filing deadline set by Rule 207, SCACR. The Appellant did not respond to the letter or comply with the alternatives identified in the letter.

On March 19, 2025, Appellant filed his 78-page Initial Brief of Appellant, which was handwritten and difficult to discern. That same day, March 19, 2025, counsel for Respondent requested an extension of time to file the initial Brief of Respondent. On April 2, 2025, the Court of Appeals kindly granted Respondent's request. On May 13, 2025, counsel for Respondent requested a second extension of time, explaining the difficulties experienced in reviewing

Appellant's handwritten initial Brief of Appellant. On May 16, 2025, the Court of Appeals again kindly granted Respondent's request, granting an extension until June 4, 2025, to file the initial Brief of Respondent.

On June 4, 2025, Respondent filed the initial Brief of Respondent, Respondent's Designation of Matter to be Included in the Record on Appeal, and a Proof of Service.

On June 16, 2025, Appellant filed the Reply Brief of Appellant, which the Court of Appeals received on June 18, 2025.

On July 14, 2025, counsel for Respondent received an unfiled copy of Appellant's 22-page final Brief of Appellant dated July 9, 2025, and a Certificate of Service also dated July 9, 2025, stating that he had "served the below Respondent with a copy of the Initial Brief and *Record on Appeal*" (Emphasis added). There was no Record on Appeal in the materials received from the Appellant on July 14, 2025.

Respondent is unable to comply with Rule 211, SCACR, to file the final Brief of Respondent because no Record on Appeal has been received.

ARGUMENTS

I. Appellant's appeal should be dismissed for failure to comply with the South Carolina Appellate Court Rules.

The South Carolina appellate courts have consistently emphasized the importance of adhering to appellant procedural rules. "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). "It is incumbent upon counsel [or litigants] to provide material that complies with the Rules and facilitates appellate review." *Id.*

Failure to comply with procedural requirements, such as the filing of the Record on Appeal within the time prescribed in Rule 210, SCACR, should result in dismissal of the appeal. For example, in *McPherson v. Anderson*, the Supreme Court of South Carolina dismissed an appeal because the appellant failed to serve the transcript of the record and did not seek an extension of time to perfect the appeal. *McPherson v. Anderson*, 202 S.C. 312, 24 S.E.2d 516 (1943). Similarly, in *Sellars v. Nicholson*, the Supreme Court affirmed the dismissal of an appeal where the appellant failed to file the return within the time required by statute and did not seek an extension. *Sellars v. Nicholson*, 243 S.C. 340, 133 S.E.2d 837 (1963).

Pro se litigants, like Appellant, are held to the same procedural standards as lawyers. For example, in *Brown v. Coe*, a non-lawyer as Personal Representative of a probate estate filed an appeal. *Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (2005). The South Carolina Supreme Court allowed the appellant 30 days to identify a lawyer who would be representing her in the appeal; otherwise, it would be dismissed. 365 S.C. at 144, 616 S.E.2d at 709. This ruling emphasizes that compliance with procedural rules is mandatory, regardless of the appellant's status as a *pro se* litigant.

II. Appellant's failure to comply with the South Carolina Appellate Court Rules has compromised Respondent's ability to advocate his response to Appellant's meritless appeal.

In this appeal, Appellant's failure to comply with the procedural requirements mandated by the South Carolina Appellate Court Rules has directly compromised Respondent's ability to present the issues supporting his response to the appeal clearly.

First, *Appellant failed to order the transcript from the lower court proceedings*, as required by Rule 207, SCACR. The Clerk of the Court of Appeals notified the Appellant of this deficiency and provided clear instructions to either file proof of a timely transcript order or seek permission

to file the transcript order outside the prescribed deadline. The Appellant failed to take any corrective action within the time allowed, further demonstrating a disregard for the procedural rules governing this appeal. The missing transcript from the motion hearing would demonstrate the trial court's careful compliance with procedural rules and correct application of South Carolina law to the Appellant's meritless claims against the Respondent.

Next, *Appellant failed to serve the Record on Appeal*, as required by Rule 210, SCACR. Pursuant to Rule 210, SCACR, the Appellant is required to serve the Record on Appeal on the Respondent within the prescribed time. Despite the clear mandate in Rule 210 and opportunities to cure this deficiency, the Appellant has failed to comply with this fundamental procedural requirement. The failure to serve the Record on Appeal has prejudiced the Respondent's ability to file a complete and responsive final Brief of Respondent, as required by Rule 211, SCACR. The South Carolina appellate courts have consistently held that adherence to procedural rules is not a mere technicality but a critical component of the appellate process. *See Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992). Without a Record on Appeal, the Respondent is unable to file and serve his final Brief of Respondent with the appropriate cites to the places in the Record supporting his positions and arguments.

The Appellant's repeated failure to comply with the South Carolina Appellant Court Rules, including missing and incorrect Proof of Service forms, failure to file a timely transcript order, and failure to serve the Record on Appeal, constitutes a pattern of procedural noncompliance that warrants dismissal of the appeal. The Appellant's status as a *pro se* litigant does not excuse his repeated procedural deficiencies.

III. The Appellant's appeal is meritless.

In addition to the Appellant's repeated and egregious failures to comply with the South

Carolina Appellate Court Rules, the appeal itself is wholly without merit and lacks any legitimate arguable validity. The Appellant's claims are predicated on unfounded allegations and speculative assertions that are unsupported by the record or applicable law. The trial court's dismissal of the underlying action was firmly grounded in well-established legal principles, including the expiration of the statute of limitations, the absence of any legal duty owed by Respondent to Appellant, and the failure to state a cognizable claim. Moreover, the Appellant's reliance on the South Carolina Rules of Professional Conduct as a basis for civil liability is entirely misplaced, as these rules do not create independent causes of action.

The Appellant's continued pursuit of this baseless appeal not only wastes judicial resources but also imposes unnecessary burdens on the Respondent. For these reasons, Respondent respectfully requests that this Court dismiss the appeal in its entirety and affirm the trial court's well-reasoned decision.

CONCLUSION

The Respondent, Gary W. Poliakoff, Esq., respectfully requests that the Court of Appeals issue an Order dismissing the appeal based on Appellant's failure to comply with the South Carolina Appellate Court Rules.

Respectfully submitted,

/s/ Thomas A. Pendarvis

Thomas A. Pendarvis (SC Bar #064918)

PENDARVIS LAW OFFICES, P.C.

710 Boundary Street, Unit 1-A

Beaufort, SC 29902

Telephone: (843) 524-9500

Email: Thomas@PendarvisLaw.com

Counsel for Respondent Gary W. Poliakoff

August 4, 2025

Beaufort, South Carolina

Pro Se Appellant:

Carnie Norris, III, #227226

Perry Correctional Institution Q4B-220

430 Oaklawn Road

Pelzer SC 29669