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Aug 25 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

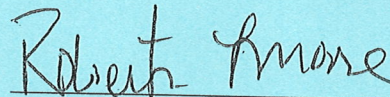
Appellate Case No. 2024-000557

Roberta Moore, Appellant,

v.

Rebecca Giesler, Respondent.

RESPONSE TO RESPONDENT'S MOTION TO DISMISS



Roberta Moore
3194 Pine Bluff Way
Fort Mill, SC 29707
(803) 524-1842

NOW COMES the Appellant, Roberta Moore, in response to the Respondent's Motion Dismiss filed in the SC Court of Appeals on August 14th, 2025. The Respondent states the grounds for dismissal based on South Carolina Appellate Court Rules ("SCACR" or the "Rules") 210, 240, and 260 and pursuant the Court Order dated June 20, 2025.

RESPONSE TO INTRODUCTION

Appellant filed with the court on April 2, 2024 and April 19, 2024, the court sent a deficiency letter and the deficiency was corrected and submitted on April 26, 2024. As indicated by the Respondent, the notice of appeal could not be considered at the time because it had to be reformatted and it was not until the deficiency corrected was submitted that it was considered. The Notice of Deficiency for the expired transcripts was sent to the Appellant on April 29, 2024 based on the April 2, 2024 filing and not the date of April 26, 2024 and the Appellant submitted a Motion to Allow Late Ordering of Transcript on May 8, 2024. On June 5, 2024, the Court documented that there was No Return from the Respondent in reply to the Motion to Allow Late Ordering of Transcript. On June 6, 2024, the Court made a Non-Dispositional Decision and granted the Motion to allow the late ordering of transcript.

On July 5, 2024, the Appellant filed Initial Brief. On July 17, 2024 a Notice of Deficiency was sent to the Appellant which was corrected and filed on July 26, 2024. On July 19, 2024 the Respondent filed a Motion To Dismiss. On July 23, 2024, the Respondent was sent a Notice of Deficiency which was corrected and filed on July 25, 2024.

On July 29, 2024, the Appellant filed a Return to the Respondent's Motion to Dismiss. On July 29, 2024, the Appellant filed correspondence to the Court regarding Respondent's ex parte communications as noted in Respondent's Initial Brief, Page 12, "...after realizing a formal

order had not been signed, counsel forwarded the proposed orders to the Clerk of Court, at which point counsel was instructed to file the proposed orders...”. At no point was the Appellant ever included in “proposed” orders that were filed. The Respondent admits to “proposing” orders, whereby presenting “options” for consideration to the Honorable Judge Brian Gibbons which directly affects the disposition of the case.

On August 19, 2024 the Appellant filed Motions to Accept Amended Initial Brief and Designation of Matter, along with A Motion To Deny Respondent’s Motion to Dismiss and Overturn Lower Court Decision. On August 20, 2024, a Deficiency Letter was sent because court filing fees had not been received. On August 26, 2024 the Deficiency was corrected. On August 27, 2024, the Court recorded that there was No Reply from the Respondent to the Appellant’s Return to Motion to Dismiss. On September 24, 2024, the Court Recorded that there was No Return from the Respondent to the Appellants Motion to Accept Amended Initial Brief, Motion to Accept Designated Matter, or to Deny Motion to Dismiss and Overturn Lower Court Decision. On January 28, 2025, the Court filed a Non-Dispositional Decision – Order to deny the Motion to Dismiss filed by the Respondent and to accept the Amended Initial Brief from the Appellant and the Designation of Matter.

On February 27, 2025, the Respondent filed her Initial Brief and Designation of Matter. On March 10, 2025, the Appellant filed her reply to the Respondent’s Initial Brief. On March 31, 2025, the Appellant filed Final Brief and Record on Appeal.

On March 31, 2025 the Respondent filed a Motion To Dismiss, or in alternative, an Order striking the Record don Appeal because the Record on Appeal was not organized properly. On April 8, 2025, Appellant filed a Motion to Deny Respondent’s Motion to Dismiss and Allow

Appellant to Correct the Record on Appeal and on the same day, the Appellant filed a Reply to Respondent's Motion to Dismiss.

On June 20, 2025 pursuant the Court Order, the Court denied the Respondent's Motion to Dismiss and granted Appellant's Motion to Deny Respondent's Motion to Dismiss and granted Appellants Motion to Deny Respondent's Motion to Dismiss and granted Appellant's Motion to Correct the Record on Appeal (June 20, 2025, Non-Dispositional Decision – Order).

RESPONSE TO ARGUMENT

Respondent's argues that the appeal should be dismissed because Appellant has failed to comply with the South Carolina Appellate Court Rules, specifically now with Appellant's erroneous Amended Record on Appeal. The Respondent argues that the Appellant did not comply with rule 210, SCACR, and the Court's June 20, 2025 Order. Pursuant Rule 210(c), "Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, and exhibits and other materials or documents", the Appellant included in the Record of Appeal, the title page, index, orders, judgments, decrees, decisions, pleadings, and exhibits from the Lower Court and Appellate Court in accordance to Rule 210. Appellant submitted Final Record on Appeal digitally and final bound copy was not submitted double sided. Upon submission, the courts did send out a letter of deficiency indicating that the document was deficient.

The Respondent indicated that the Court's June 20, 2025 Order stated that the Adppellant shall file an Amended Record on Appeal and in so doing, to not include any matter not deisgnated by either Respondent or Appellant in their respective designations of matter and any matter that was not presented to the lower court or tribunal. All Matter on the Amended Record

on Appeal was either included in the Respondent's or Appellant's respective Designation of Matter, or presented to the lower court or tribunal in the form of pleadings or submissions to the Honorable Judge Brian Gibbons in court and documented in the transcript of court proceedings.

The Appellant has not failed to comply with the Requirements of the Court Rules and therefore no dismissal should be granted.

2. The Respondent suggests that the Appellant has Erroneously Included Matters in the Amended Record of Appeal that were not included in Appellant's or Respondent's Designation of Matter. However, the court rule indicates that orders, judgments, decrees, and decisions are all to be included.

In accordance to Rule 210(c), the Final Record on Appeal is to include: "the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, and exhibits and other materials or documents", from the Lower Court and the Appellate Court. All documents included in the Final Record on Appeal are allowed based on Rule 210(c).

In the Respondent's Motion to dismiss, she indicates that there are 25 documents that she has listed (whereas, she only listed the following 15 documents) that should have been included the Final Record of Appeal.

- (1) Form 4 Order, dated July 25, 2023
- (2) Form 4 Order, dated February 12, 2024
- (3) For 4 Order, dated March 5, 2024
- (4) Order Granting Summary Judgment in Favor of Respondent, dated March 26, 2024
- (5) Plaintiff Complaint

- (6) Plaintiff's Amended Complaint and Exhibit D; and
 - a. Exhibit D – Addendum to Prior Contract
- (7) Defendant's Amended Answer and Exhibits A-F
 - a. Exhibit A: Email from Appellant, dated January 29, 2023
 - b. Exhibit B: Agreement to Buy and Sell Real Estate Residential
 - c. Exhibit C: Real Estate Contract of Sale
 - d. Exhibit D: Title to Real Estate
 - e. Exhibit E: Promissory Note for Sale
 - f. Exhibit F: Letter from Respondent, dated February 10, 2023, and Updated Check Register
- (8) July 24, 2023, Transcript of Proceedings, pp. 1-20; and
- (9) February 12, 2024, Transcript of Proceedings, pp. 2-7
- (10) Respondent's Memorandum of Law in Support of Summary Judgment and Exhibits A-C
 - a. Exhibit A: Respondents First Set of Interrogatories, Requests for Admission, and Request for Production to Plaintiff
 - b. Exhibit B: Tracking for Respondent's Discovery Requests
 - c. Exhibit C: erroneously listed by Respondent – no Exhibit C
- (11) Appellant's Response to Interrogatories Provided to Judge and Council in Court Listing All Objections
- (12) Additional Correspondence, (Pages 1-5)
- (13) Notarized Statement Regarding Mortgage Payments
- (14) Email to Honorable Judge Gibbons, dated March 8, 2024; and

(15) Email to Clerk of Court, Jennifer Payne, dated March 26, 2024.

Despite the requirement of Rule 210 to include orders and pleadings from the Lower Court and the Appellant Court, the Respondent is requesting to ignore the Form 4 Order dated January 8, 2024; (2) the Orders numbered 1, 3, 4, and 5 in the second “Order” index; (3) the Pleadings indexed numbered 1, 4-6, 8, and 11-29; (4) Appellant’s exhibits numbered 1-3; and (5) letter to Shelly Spencer, Clerk of Court. All of the above Orders, Pleadings, and Exhibits are in accordance to Rule 210 and should be included in The Final Record on Appeal.

3. In Response to Appellant Failing to Include All Matter Designated By Respondent In The Amended Record Of Appeal.

Respondent indicates that the Appellant failed to include the majority of matter as designated by the Respondent. Appellant included all Matter that the Respondent indicated on the Respondent’s previous Motion To Dismiss. The Respondent lists the failure of submission from the Respondent’s Record on Appeal for the following: (1) Respondents Exhibit A of Respondent’s Amended Motion to Dismiss and Answer (E-mail from Appellant, dated January 29, 2023). (2) Respondent’s Exhibit D of Respondent’s Amended Motion to Dismiss and Answer (Title to Real Estate); and (3) Respondent’s Amended Motion to Dismiss and Answer (Letter from Respondent, dated February 10, 2023 and updated check register). The Respondent failed to include dates of these filings and failed to list these items on previously filed motion for dismissal where Respondent outlined all documents that were missing. Appellant did include all Pleadings filed in both the Lower Court and Appellate Court for the Respondent. The Respondent indicated that the full portion of the February 12th transcript of Proceedings

was not included. All pages of designated transcript that were referenced in filed pleadings were included in the Record on Appeal.

The Respondent indicated that the Appellant incorrectly lists the exhibits attached to Respondent's Amended Motion to Dismiss and Answer. All exhibits were listed by the Appellant to avoid duplication. Exhibits in regards to Respondent's Amended Motion to Dismiss and Answer were not listed in Respondent's Motion To Dismiss list of documents that were not included. However, Respondent's Motion To Dismiss was included in the Pleadings.

The Respondent indicated that the Court ordered the Appellant to include all matter as designated by Respondent in its June 20, 2025 order. All matter was included by the Appellant based on the Respondent's filing for Motion To Dismiss in accordance to Rule 210, SCACR and the June 20, 2025, Non-Dispositional Decision – Order.

4. The Respondent indicated that the Appellant again included correspondence that was not reviewed by the Circuit Court.

As documented in the the Court Transcript all documents were received by the Honorable Judge Brian Gibbons during court proceedings with the exception of the letter to Shelly Spencer dated July 28, 2024. The letter to Shelly Spencer was dated after the court proceeding in reference to the Respondent having ex-parte communications with the Honorable Judge Brian Gibbons and the Clerk of Court after the date of the court order was complete in reference to the Respondent requesting changes on the Court Order issued without the inclusion of the Appellant in those communications.

Respondent indicates that disregarding the errors listed on her Motion to Dismiss, that the Appellant's failure to file Designation of Matter on July 5, 2024, failure to file appropriate Record on Appeal on March 31, 2025, and the Appellant's inadequate and erroneous Amended Record on Appeal on July 21, 2025 has led to the delay of the appeal. The Appellant has followed all the guidelines set forth by the court and all of the matters at hand have been ruled on by the court. The Respondent indicates that they cannot move forward with their final brief unless there is a correct record of appeal. The Respondent did not include aforementioned items that are now being said as missing from the Record on Appeal as outlined in the previous Motion To Dismiss. The Respondent's failure to include those items in previous Motion To Dismiss was an erroneous act of the Respondent. All pleadings were included from the Lower Court and Appellant Court.

CONCLUSION

Based on SC Code of Laws Section 58-3-260, the Appellant hereby requests that the Respondent's Request for Dismissal be denied for the foregoing reasons, and if the courts deem it necessary to include the Exhibits that the Respondent failed to identify in the detailed list on her prior Motion for Dismissal and her Designation of Matter that the Motion to Amend The Record On Appeal be granted.

Although the Appeal has experienced multiple delays in order to correct deficiencies, the Appellant has acted in a bona fide manner without any intention to deceive. The Appellant has responded to all of the Court's requests within specified timelines. The Respondent is not prejudiced by the delay in that the Respondent has no right to evict the Appellant from the home based on South Carolina law. The home is a mortgaged property and all mortgage payments are up-to-date. There are no mortgage arrears. In South Carolina, you cannot be evicted from a

mortgaged property without following the proper procedures for foreclosure. South Carolina is a judicial foreclosure state. As confirmed by the Honorable Judge Brian Gibbons in the transcript from July 24, 2023 court proceedings, the home is under a legal and binding mortgage contract with an Addendum that outlines the process of foreclosure. The home does not qualify for foreclosure proceedings because there are no arrearages in the mortgage payment and based on the Promissory Note, the Appellant is currently in a 35-year mortgage agreement until the house is either refinanced or final closing with no specified dates as to when the house would have to be refinanced or when closing must take place. Therefore, there are no unjust delays in the proceedings because all mortgage payments are up-to-date according to the signed contracts and eviction is not imminent because there are no arrearages in mortgage payments. All timelines specified in all signed contracts and agreements have been met.

The Appellant has complied to all of the court orders to correct deficiencies as identified by the court and has submitted all paperwork by the court mandated deadlines.

Furthermore, South Carolina Rules of Appellate Procedure, inclusive of Rule 203 and Rule 208 identify and determine the timelines of the appeal. As documented prior the Appellate has not failed to comply with the South Carolina Rules of Appellate Court. All paperwork has been submitted in accordance with the Rules and all deficiencies have been corrected by the deadlines specified by the Court. A Motion has been filed by the Appellant to correct the Record on Appeal to include additional matter that was not included in the Respondent's Designated Matter, nor in Respondent's prior Motion to Dismiss, to include Exhibits from lower court. The Appellant has complied to all of the directives of the Court and corrected all aforesaid deficiencies in accordance with the South Carolina Rules of the Appellate Court and according to the deadlines within the specified timeframes as dictated by the Court and therefore Rule 260a

does not apply. The Appellant has met those timelines along with complying with the deadlines issued by the Court. All deficiencies identified by the Court have been corrected, reviewed, and motions ruled upon.

Based on SC Code of Laws Section 58-3-260, the Appellant hereby requests that the Respondent's Request for Dismissal be denied and respectfully requests that the Appellant be allowed to correct the Record on Appeal based on the Motion previously submitted to the Court on July 21, 2025.

August 24, 2025

Respectfully Submitted,

A handwritten signature in cursive script that reads "Roberta Moore". The signature is written in black ink and is positioned above a horizontal line.

Roberta Moore
3194 Pine Bluff Way
Indian Land, South Carolina 29707
(803) 524-1842

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PROOF OF SERVICE

I certify that I have served the on Rebecca Giesler, via e-mail on August 24, 2025, RESPONSE TO RESPONDENT'S MOTION TO DISMISS and by depositing a copy of it in the United States Priority Mail, postage prepaid on August 25, 2025 addressed to her attorney of record, Jennifer M. Cloud, 1467 Ebenezer Road, Rock Hill, South Carolina 29732.

r

August 24, 2025



Roberta Moore

3194 Pine Bluff Way

Indian Land, South Carolina 29707

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