

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Sep 18 2025
SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2024-002049
Civil Action Nos. 2020-CP-36-00382 & 00384

Jefferson Davis, Jr. Appellant,

v.

Chad Connelly, Dave Wilson, Stephen Kirkland, Tom Persons, Neil Mellen, E3
Software, LLC, Endurance International Holdings, Inc., John Doe #1, John Doe
#2 & John Does 3-40 Respondents.

AND

Jefferson Davis, Jr. Appellant,

v.

Chad Connelly, Tom Persons, Geoffrey Chambers, Esq., and South Carolina
Educational Credit for Exceptional Needs Children Fund Respondents.

**RESPONDENTS CHAD CONNELLY, DAVE WILSON, TOM PERSONS, AND
NEIL MELLEN’S RETURN TO APPELLANT’S MOTION TO VACATE THE LOWER COURT
JUDGMENT AND DISMISS**

Respondents Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen (“Respondents”) hereby respond to Appellant’s Motion to Vacate the Lower Court Judgment and Dismiss filed on September 9, 2025 (“Motion to Vacate”), and request that this Court deny the motion to vacate the lower court order. As set forth below, Appellant’s request to vacate the trial

court's order is, in essence, a request that this Court rule on the merits of Appellant's appeal without briefing or the compilation of a Record on Appeal. Respondents do not take a position on Appellant's request to withdraw his appeal. See Rule 260(c), SCACR ("An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court."). Respondents, however, object to vacation of the lower court order as a term or condition to Appellant's withdrawal of the appeal. See Rule 261(d), SCACR ("The vacation of a prior order constitutes extraordinary relief.").

Motion to Vacate the Lower Court Judgment

In the Motion to Vacate, Appellant requests that this Court summarily—and without the filing of briefs on the merits or presentation of a record in support of his argument—vacate the circuit court's Orders of Civil Contempt filed on November 25, 2024 ("Orders of Civil Contempt"), from which Appellant filed Notices of Appeal on December 2, 2024.¹ Appellant, instead, asks the Court to rule in his favor outside the normal course of the appellate set forth in the South Carolina Rules of Appellate Procedure. This Court should deny Appellant's motion because there is not a proper record to permit meaningful appellate review of the lower court's orders or to substantiate a decision on the merits of the appeal.

"[T]he appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. "The appealing party has the burden of furnishing a sufficient record from which [the appellate] court can make an intelligent review." Hamilton v. Greyhound Lines E., 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984); see also Conran v. Joe Jenkins Realty, Inc., 263 S.C. 332, 210 S.E.2d 309 (1974). Moreover, a party to an appeal must comply with the South Carolina Appellate Court Rules. Rule 203, SCACR; see also Toomer v. Toomer, 244 S.C. 399, 403, 137 S.E.2d 406, 408 (1964) ("The right of appeal is a matter of grace and is not an inherent or vested right, and the rules of court and statutes must be followed in perfecting an appeal."). "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the

¹ Appellant's two notices of appeal have been consolidated for consideration by the Court pursuant to Rule 214, SCACR.

parties and this Court with an orderly mechanism through which to guide appeals in this State.” Henning v. Kaye, 307 S.C. 436, 436, 415 S.E.2d 794, 794 (1992). Accordingly, “[i]t is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Id.

Appellant has not served or filed an initial brief identifying the issues presented for review, a statement of the case, the standard(s) of review, Appellant’s argument(s), or the precise relief requested. See Rule 208, SCACR. As a result, Respondents have not had the opportunity to respond. Appellant also has not served or filed either a Designation of Matter to be Included in the Record on Appeal setting forth the materials which he proposes to include in the record on appeal or a copy of a Record on Appeal. See Rule 210, SCACR. Respondents also have not been able to designate matter that should be in the record. Consequently, there is not a record for this Court to engage in meaningful appellate review of properly preserved arguments concerning the lower court’s orders or to substantiate a decision on the merits of the appeal. Accordingly, this Court should deny Appellant’s request to vacate the lower court orders on the grounds that there is not a record to permit meaningful appellate review of the lower court’s orders or to substantiate a decision on the merits.

Motion to Dismiss

Respondents do not take a position on Appellant’s request to withdraw his appeal. See Rule 260(c), SCACR (“An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.”). Respondents, however, object to vacation of the lower court order as a term or condition of the withdrawal of the appeal. See Rule 261(d), SCACR (“The vacation of a prior order constitutes extraordinary relief.”). If the Court dismisses this appeal, it should do so without ruling on the merits of Appellant’s appeal and without vacating the trial court’s order.

Respectfully submitted,

s/Justin P. Novak _____

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PROOF OF SERVICE

I, the undersigned employee of Barnwell Whaley Patterson & Helms, LLC, herby certify that pursuant to Rules 240 and 262(b), SCACR, I have served the **Respondents Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen's Return to Appellant's Motion to Vacate the Lower Court Judgment and Dismiss** in this matter upon the Clerk of the South Carolina Court of Appeals, all counsel of record, and all pro se parties by electronic mail on September 18, 2025, to the following addresses:

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September 18, 2025