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Nov 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2025-001494

Joshua Hawkins, Appellant,

v.

Delta Airlines, Inc., Respondent.

MOTION TO DISMISS

COMES NOW, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”), by and through the undersigned counsel, and pursuant to Rules 208(a)(4), 240, and 260(a), SCACR, files its Motion to Dismiss the appeal, and in support thereof, states as follows:

1. On October 16, 2025, Greenville attorney and *pro se* Appellant Joshua Hawkins filed with this Court and served on Respondent the transcript of the proceeding in the Circuit Court.
2. Under Rule 208(a)(1), SCACR, Appellant was required both to serve Respondent with a copy of his Initial Brief and to file a copy of the Initial Brief with the Clerk by Monday, November 17, 2025. *See* Rule 263(a), SCACR.
3. On November 17, 2025, Appellant did not electronically or personally serve Respondent or electronically or personally file with the Clerk a copy of his Initial Brief. *See* Rule 262(a)(1), (a)(3), (c)(1), (c)(3), SCACR.

4. As of the time of this filing, several days after November 17, 2025, Respondent’s counsel (based nearby in Spartanburg) has not received a copy of Appellant’s Initial Brief in the mail, much less one postmarked November 17, 2025. *See* Rule 262(c)(2), SCACR. Likewise, the Court’s electronic docket does not indicate Appellant filed his Initial Brief with the Clerk. *See* Rule 262(a)(2), SCACR.

5. “Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court **shall** sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.” Rule 208(a)(4), SCACR (emphasis added). “Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Rule 260, SCACR (emphasis added).

6. If a court rule is plain and unambiguous, the Court “applies the same rules of construction used to interpret statutes” and must apply the rule as written. *See Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). “The term ‘**shall**’ in a statute means that the action is **mandatory**.” *Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (emphasis added).¹

¹ However, if it is “necessary” to fulfill the intent of the statute or constitutional provision by interpreting “shall” to be permissive, then “shall” may be construed as permissive rather than mandatory. *See Williams v. Benet*, 35 S.C. 150, 158, 14 S.E. 311, 313 (1892). In its 1892 decision, the Supreme Court interpreted whether the Constitution mandated that Supreme Court Justices “shall” complete their six-year terms, without being able to resign:

The view contended for rests largely upon the assumption that the words, “*shall* continue in office until their successors shall be elected and qualified,” must be construed as imperative, and that the effect of these words is to forbid a Justice of the Supreme Court from vacating his office by resignation or otherwise, before the expiration of the term for which he has been elected. But this view ignores the well settled rule that in the construction of a statute or a constitution, the word “shall”

7. Appellant has neither filed with the Clerk nor served Respondent with his Initial Brief in the time prescribed by Rules 208(a)(1) and 263(a), SCACR.

8. Appellant has not filed a motion to extend the time to file or serve his Initial Brief, nor has this Court extended the time for Appellant to file or serve his Initial Brief.

9. The Clerk, therefore, must dismiss the appeal. Rule 208(a)(4), SCACR.

WHEREFORE, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”) respectfully requests the Clerk sign an order dismissing the appeal, pursuant to Rule 208(a)(4), SCACR.

Respectfully submitted,

November 24, 2025

s/ Brian M. Peters, Jr.
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may receive a permissive, rather than an imperative, interpretation, when necessary to carry out the true intent of the provision in which such word is found.

Williams, 35 S.C. at 158, 14 S.E. at 313 (emphasis in original). But when the meaning is unambiguous, the rules of statutory interpretation do not apply. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”); *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (“Under the rules of statutory interpretation, use of words such as “**shall**” or “**must**” indicates the legislature’s intent to enact a **mandatory** requirement.” *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).”) (emphases added).

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PROOF OF SERVICE

I certify that on November 24, 2025, I have served, or caused to be served, the Respondent's

Motion to Dismiss on the following Counsel for Appellant via Email, addressed as follows:

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