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Dec 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2025-001505
Case No. 2025-CP-04-00328

Hubert N. Smith, Jr. and Stanley Hix,

Appellants,

v.

Anderson County Planning Commission and Spano & Associates, Inc.,

Respondents,

RESPONDENT SPANO & ASSOCIATES, INC.'S MOTION TO DISMISS APPEAL

Carter R. Massingill (S.C. Bar No. 101802)
Ronald G. Tate, Jr. (S.C. Bar No. 5475)
William E. Whitney, III (S.C. Bar No. 104292)
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Attorneys for Respondent Spano & Associates,
Inc.

Pursuant to Rules 240, 207, 208, and 260 of the South Carolina Appellate Court Rules, the undersigned, as attorneys for Respondent Spano & Associates, Inc. (“Respondent”), hereby move this Court for an order dismissing the appeal for the failure of Appellants to file an Initial Brief within the time prescribed by the Appellate Court Rules. In support of this Motion and in accordance with Rule 240(c), SCACR, Respondent has incorporated a memorandum of authority hereto.

PROCEDURAL BACKGROUND

Appellants filed their first Notice of Appeal on July 28, 2025 challenging the Form 4 Order entered June 5, 2025, the formal Order entered June 10, 2025, the Form 4 Order entered June 30, 2025, and the formal Order entered June 30, 2025, all by the Honorable R. Lawton McIntosh. On August 8, 2025, the Court sent Appellants’ counsel a letter stating that the time for ordering the transcript had expired and required Appellants to file a letter showing that the transcript had been timely ordered from the court reporter. On the same date, Appellants requested the transcript from the court reporter with expedited delivery within seven days. On August 15, 2025, the transcript was delivered. On August 22, 2025, Appellants filed a motion requesting a 30-day extension of time to file their Initial Brief. The Court sent Appellants’ counsel a deficiency letter on August 29, 2025 because the check for the motion’s filing fee was unsigned. Appellants corrected the deficiency and provided notice to the Court on September 8, 2025. The Court issued an order on September 9, 2025 extending the time for serving and filing Appellants’ Initial Brief and Designation of Matter to be Included in the Record on Appeal until October 8, 2025.

On September 29, 2025, Appellants filed their second Notice of Appeal challenging the Form 4 Order entered August 27, 2025 and the formal Order entered September 4, 2025, both by the Honorable R. Lawton McIntosh. The Court sent Appellants a letter on September 30, 2025

noting that it had “received multiple notices of appeal in this case” and stating that the notices would be “consolidated for consideration by the Court.” The Court stated that the “times for perfecting the appeal will run from the date of service of the last notice of appeal.” On October 9, 2025, Appellants requested the transcript from the August 27, 2025 proceeding. On October 24, 2025, Appellants updated the request to instead ask for the transcript from the August 21, 2025 proceeding and requested expedited delivery within seven days. The court reporting service Legal Eagle Inc. confirmed receipt of the expedited delivery transcript request on October 26, 2025, and requested a response authorizing Legal Eagle Inc. to proceed with processing the request. Appellants’ counsel responded with confirmation to proceed on November 6, 2025.

Based on the seven-day expedited delivery window for the transcript request, which was confirmed by the court reporting service in response to the request, Appellants should have received the transcript no later than November 13, 2025. Pursuant to Rules 208 and 209 of the South Carolina Appellate Court Rules, Appellants were required to serve and file their Initial Brief and Designation of Matter to be Included in the Record on Appeal by December 15, 2025. Appellants have done neither and Respondent now moves to dismiss the appeal to the circuit court for the reasons set forth below.

ARGUMENT

Respondent seeks a dismissal of the appeal pursuant to Rules 240 and 260(a), SCACR. A party may file a motion to dismiss an appeal for any number of reasons. *See McLendon v. S.C. Dep’t of Highway & Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994); *Bowen v. Bowen*, 287 S.C. 188, 337 S.E.2d 1 (1985). Against this procedural backdrop, Respondent submits that the appeal should be dismissed for failure to comply with the requirements of the South Carolina Appellate Court Rules.

Rule 208(a)(1), SCACR, states that “[w]ithin thirty (30) days after receiving the transcript ... appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.” Rule 208(a)(4), SCACR, further provides that “[u]pon 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.” (emphasis added). Rule 260(a), SCACR, states that “[w]henver it appears that an appellant or a petitioner 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.” (emphasis added); *see also Wise v. S.C. Dep’t of Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551 (2007).

The use of the word “shall” in Rules 208(a)(4) and 260(a) indicates that Appellants’ failure to file and serve their brief within the time prescribed requires the dismissal of their appeal. In this case, the time prescribed was thirty days after receiving the transcript. Appellants should have received the transcript no later than November 13, 2025 based on the seven-day expedited delivery window stated in the transcript request, which was confirmed by the court reporting service in response to the request. Pursuant to Rules 208 and 209 of the South Carolina Appellate Court Rules, Appellants were required to serve and file their Initial Brief and Designation of Matter to be Included in the Record on Appeal by December 15, 2025. Appellants did not file a motion requesting an extension of time, even though their previous August 22, 2025 motion demonstrates their awareness of the requirement to do so if they were unable to meet their filing deadlines. *See Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794 (1992) (“[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. It is incumbent upon counsel to provide

material that complies with the Rules and facilitates appellate review.”). Appellants’ failure to serve and file their Initial Brief and Designation of Matter to be Included in the Record on Appeal is in violation of the South Carolina Appellate Court Rules and requires the dismissal of their appeal. *See* Rules 208(a)(4) and 260(a), SCACR.

CONCLUSION

For the reasons stated herein, Respondent respectfully moves for an Order of this Court dismissing the appeal and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



December 17, 2025

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Respondents,

PROOF OF SERVICE

I certify that I have served the Respondent Spano & Associates, Inc.'s Motion to Dismiss Appeal on Hubert N. Smith, Jr. and Stanley Hix by depositing a copy of it in the United States Mail, postage prepaid, on December 17, 2025, addressed to their attorney of record, James G. Carpenter, 819 E. North Street, Greenville, South Carolina 29601.

December 17, 2025



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Via Email

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Re: Hubert N. Smith, Jr. and Stanley Hix, Appellants v. Anderson County Planning Commission and Spano & Associates, Inc., Respondents
Appellate Case No. 2025-001505

Dear Ms. Kitchings:

Enclosed for filing please find Respondent Spano & Associates, Inc.'s Motion to Dismiss Appeal, along with our Proof of Service.

With kind regards, I am,

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

William E. Whitney III
William E. Whitney, III

WEW/meb
Enclosures

cc: James G. Carpenter, Esq.