

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

NOV 25 2013

SC Court of Appeals

7049S

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Presiding Judge

Trial Court Case Nos. 2012-CP-04-00288, 2012-CP-04-00290

Appellate Case No. 2013-001842

Gina Wilbanks individually and as the  
Personal Representative of the Estate of Roger Wilbanks .....Respondent,

v.

Ernest C. Martin, M.D. ....Appellant.

**MOTION TO FILE CORRESPONDENCE WITH COURT REPORTER  
ORDERING TRANSCRIPT AND MOTION FOR REINSTATEMENT OF  
APPEAL**

Appellant by and through his undersigned counsel moves before the Court pursuant to South Carolina Appellate Court Rule 260(a) for an Order reinstating this appeal that was dismissed by this Court on November 22, 2013. A copy of the dismissal order is attached. The appeal was dismissed because of failure to comply with South Carolina Appellate Court Rule 207(a)(1) in that the Appellant mistakenly failed to copy the Clerk of Court on correspondence with the court reporter. This motion is made on the following grounds:

On August 19, 2013, the Appellant timely filed his Notice of Appeal of the Order of the Honorable R. Lawton McIntosh, Presiding Judge. On August 21, 2013, Appellant

ordered a copy of the transcript in the lower court as evidenced by letter to court reporter Vivian Cross dated August 21, 2013, a copy of which is attached.

Pursuant to Rule 207(a)(1), a copy of the Appellant's letter was served on the Office of Court Administration and opposing counsel. A copy of the Appellant's letter was inadvertently not sent to the Court. Additional communication via email regarding required language occurred, and a revised letter was sent to the court reporter at her request. A copy of this email communication and letter are attached.

In fact, the court reporter requested additional time to complete the transcript, and on November 19, 2013, the court reporter was granted an extension to prepare and deliver the transcript. A copy of this extension is attached. The extension allowed the court reporter until December 3, 2013, to produce the transcript. The Appellant has not yet received a transcript.

Dismissal of a case is not mandatory upon failure to comply with appellate rules of procedure. Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794 (1992). South Carolina courts prefer to dispose of a case on the merits, rather than dismiss for violation of procedure. Caldwell v. Wiquist, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013); *see also* Choice Hotels Int'l, Inc. v. Goodwin & Boone, 11 F.3d 469, 471-72 (4th Cir. 1993). "Courts are less likely to dismiss an appeal or impose other sanctions when briefing errors do not hamper the ability to dispose of the appeal or otherwise interfere with their review and when the defects do not prejudice the other party." 5 Am. Jur. 2d Appellate Review § 539, *citing* Mullis v. Martin, 615 N.E.2d 498 (Ind. Ct. App. 4th Dist. 1993); Matter of Marriage of Glass, 67 Wash. App. 378, 835 P.2d 1054 (Div. 1 1992);

State of Minn., City of Little Canada v. Rachie, 427 N.W.2d 253 (Minn. Ct. App. 1988);  
In re Marriage of Zeigler, 69 Wash. App. 602, 849 P.2d 695 (Div. 3 1993).

Our failure to copy the Clerk of Court on correspondence with the court reporter was a mistake and not intentional. Other than the mistake in copying the clerk, all other notices, motions, and requests have been correct and timely. There is no prejudice to the Respondent to file the attached correspondence. Once the attached correspondence has been filed with the Court, there is no prejudice to the Respondent to reinstate the appeal. Review by this Court will not be affected, since an extension for preparation of the transcript has already been granted.

The undersigned hereby moves to be allowed to file the attached correspondence between the undersigned and court reporter Vivian Cross with the Court. The undersigned also moves to reinstate the appeal.

By: 

---

Moore, Taylor & Thomas, P.A.  
James Edward Bradley  
John C. Bradley, Jr.  
Post Office Box 5709  
West Columbia, SC 29171  
Telephone: (803) 796-9160  
Attorneys for Appellant

West Columbia, South Carolina

November 25, 2013

# The South Carolina Court of Appeals

Gina Wilbanks, Individually and as Personal  
Representative of the Estate of Roger Wilbanks,  
Respondent,

v.

Ernest C. Martin, M.D., Appellant.

Appellate Case No. 2013-001842

The Honorable R. Lawton McIntosh  
Anderson County  
Trial Court Case No. 2012CP0400290, 2012CP0400288

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## ORDER

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Appellant has failed to provide proof of ordering the transcript and/or has failed to serve and file the appellant's initial brief and designation of matter, as required by Rules 207, 208 and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *V. Claire Allen, Deputy*  
CLERK

Columbia, South Carolina

**FILED**

*11/22/13 EAC*

cc:

James Edward Bradley, Esquire

John Calvin Bradley, Jr., Esquire

Jennifer Spragins Burnett, Esquire

Andrew F. Lindemann, Esquire

S. JAHUE MOORE  
J. MARK TAYLOR\*  
DAVID L. THOMAS†  
C. VANCE STRICKLIN, JR.  
JAMES EDWARD BRADLEY  
SHEILA McNAIR ROBINSON  
ROBERT D. HAZEL  
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C. DAVID SAWYER, JR.††  
WILLIAM H. EDWARDS  
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AMBER L. FULMER  
SARAH TAYLOR CASSIDY  
MARGARET "MEG" HAZEL

RETIRED:  
BILLY C. COLEMAN††

††SALUDA OFFICE:  
(864) 445-4544 OR (866) 604-4544  
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August 21, 2013

Vivian H. Cross  
P. O. Box 704  
Belton, SC 29627

Re: Gina Wilbanks individually, and as the Personal Representative of the Estate of Roger Wilbanks v. AnMed Health and Ernest C. Martin, M.D.  
C/A Nos. 2011-CP-04-00288 and 2011-CP-04-0290

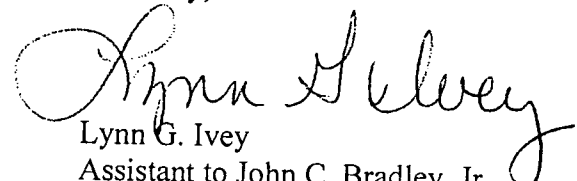
Dear Ms. Cross:

I trust this letter finds you well. I am writing today to request a copy of the hearing transcript in the above referenced matters which took place before Judge McIntosh on June 4, 2013, at the Anderson County Courthouse.

Please feel free to contact me to confirm arrangements if necessary to fulfill this request.

Thank you in advance for your assistance in this matter.

Sincerely,

  
Lynn G. Ivey  
Assistant to John C. Bradley, Jr.

cc: The Honorable Rosalyn W. Frierson, SC Court Administration  
Jennifer S. Burnett, Esquire

\*Fellow of the American Academy of Matrimonial Lawyers  
\*\*Certified Specialist in Bankruptcy & Debtor/Creditor Law

## John Bradley

---

**From:** Lynn G. Ivey  
**Sent:** Wednesday, September 11, 2013 8:07 AM  
**To:** John Bradley  
**Cc:** Nancy Hazelwood; Ward Bradley  
**Subject:** FW: Gina Wilbanks individually, etc. v. AnMed Health, etc.

RE: Transcript request in Martin still in processing...

-----Original Message-----

**From:** Cross, Vivian [mailto:VCross@sccourts.org]  
**Sent:** Tuesday, September 10, 2013 11:31 PM  
**To:** Lynn G. Ivey  
**Subject:** RE: Gina Wilbanks individually, etc. v. AnMed Health, etc.

Ms. Ivey,

Thank you for your amended letter. Your request for transcript is acknowledged for September 3, 2013 and has been placed in order of receipt for transcription.

Vivian H Cross, Ct. Rptr.  
8th Circuit at Large  
PO Box 704  
Belton, SC 29627

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**From:** Lynn G. Ivey [lynn@mttlaw.com]  
**Sent:** Tuesday, September 03, 2013 11:44 AM  
**To:** John Bradley; Cross, Vivian  
**Subject:** RE: Gina Wilbanks individually, etc. v. AnMed Health, etc.

Vivian,

Please find attached a revised letter including the requested statement.

Please contact me should you need anything further to process our request.

Thank you!

-----Original Message-----

**From:** John Bradley  
**Sent:** Tuesday, September 03, 2013 11:15 AM  
**To:** 'Cross, Vivian'  
**Cc:** Lynn G. Ivey  
**Subject:** FW: Gina Wilbanks individually, etc. v. AnMed Health, etc.

Vivian:

Thank you for your email dated August 28th. For some reason this was caught by my spam folder. We will pay for the Transcript pursuant to Rule 607.

Again, sorry for the mix up.

-----Original Message-----

**From:** Cross, Vivian [mailto:VCross@sccourts.org]  
**Sent:** Wednesday, August 28, 2013 3:20 PM

To: John Bradley  
Subject: Gina Wilbanks individually, etc. v. AnMed Health, etc.

Mr. Bradley/Ms. Ivey:

I am in receipt of your letter dated and postmarked August 21, 2013. Please be advised that your letter has omitted the required language agreeing to pay for the transcript pursuant to Rule 607. Please amend your letter to include that language and upon receipt of the amendment your request will be placed in order of receipt for transcription.

You may do this by mail or email, whichever you prefer. Should you prefer to send a deposit rather than an amended request letter, I estimate this transcript at 38 pages (give or take) plus postage for a deposit of \$130.00.

Vivian H Cross, Ct. Rptr.  
8th Circuit at Large  
PO Box 704  
Belton, SC 29627

Moore, Taylor & Thomas, P.A.  
1700 Sunset Blvd.  
Post Office Box 5709  
West Columbia, SC 29171  
Phone: 803-796-9160  
Fax: 803-791-8410

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

S. JAHUE MOORE  
J. MARK TAYLOR\*  
DAVID L. THOMAS†  
C. VANCE STRICKLIN, JR.  
JAMES EDWARD BRADLEY  
SHEILA McNAIR ROBINSON  
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September 3, 2013

Vivian H. Cross  
P. O. Box 704  
Belton, SC 29627

Re: Gina Wilbanks individually, and as the Personal Representative of the Estate of  
Roger Wilbanks v. AnMed Health and Ernest C. Martin, M.D.  
C/A Nos. 2011-CP-04-00288 and 2011-CP-04-0290

Dear Ms. Cross:

I trust this letter finds you well. I am writing today to request a copy of the hearing transcript in the above referenced matters which took place before Judge McIntosh on June 4, 2013, at the Anderson County Courthouse. Pursuant to Rule 607, we agree to pay for the transcript which I understand you have estimated at approximately \$130.00.

Please feel free to contact me to confirm arrangements if necessary to fulfill this request.

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lynn G. Ivey". The signature is written in black ink and is positioned above the printed name and title of the signatory.

Lynn G. Ivey  
Assistant to John C. Bradley, Jr.



## The Supreme Court of South Carolina

( Gina Wilbanks, etc  
(  
(  
(  
TITLE OF ( V. 2011CP0400290  
CASE (   
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(   
( AnMed Health, et al  
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### Notice

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Upon request and for good cause shown, Vivian Cross, Court Reporter, is hereby granted an extension up to and including December 03, 2013 to prepare and deliver the Transcript of Record in the above case.

*Desiree Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
11/19/2013

cc: John C. Bradley, Jr., Esq.  
Jennifer S. Burnett, Esq.  
Vivian Cross

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Presiding Judge

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SC Court of Appeals

Trial Court Case Nos. 2012-CP-04-00288, 2012-CP-04-00290

Appellate Case No. 2013-001842

Gina Wilbanks individually and as the  
Personal Representative of the Estate of Roger Wilbanks .....Respondent,

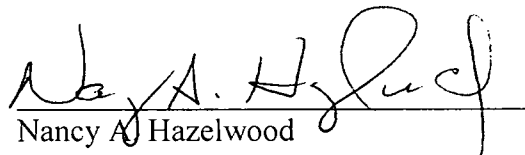
v.

Ernest C. Martin, M.D. ....Appellant.

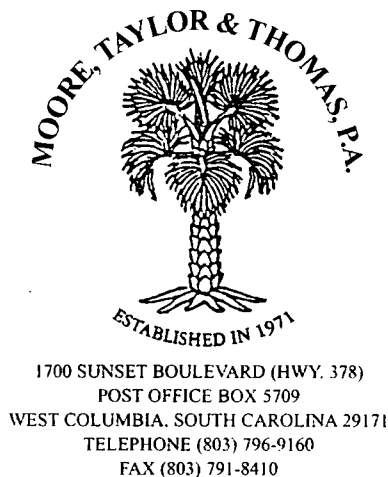
**PROOF OF SERVICE**

I certify that I have served the Motion to File Correspondence with Court Reporter  
Ordering Transcript and Motion for Reinstatement of Appeal by mail to Jennifer Spragins  
Burnett, P.O. Box 35, Anderson, SC 29622-0035 on November 25, 2013.

November 25, 2013

  
Nancy A Hazelwood

S. JAHUE MOORE  
J. MARK TAYLOR\*  
DAVID L. THOMAS†  
C. VANCE STRICKLIN, JR.  
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November 25, 2013

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**

NOV 25 2013

**SC Court of Appeals**

VIA HAND DELIVERY

Re: Gina Wilbanks individually, and as the Personal Representative of the Estate of Roger Wilbanks v. AnMed Health and Ernest C. Martin, M.D.  
C/A Nos. 2011-CP-04-00288 and 2011-CP-04-0290  
Appellate Case No. 2013-001842

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Motion to File Correspondence with Court Reporter Ordering Transcript and Motion for Reinstatement of Appeal in the above captioned matter for filing in the Court of Appeals today. Please have the extra copies clocked in and returned to our courier.

Thank you in advance for your assistance in this matter. Please call me with any questions or concerns.

Sincerely,

John C. Bradley, Jr.

/nh

Enclosures

cc: Jennifer S. Burnett, Esquire (via first class mail)