

**RECEIVED**  
**Jun 18 2026**  
**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

Appellate Case No. 2025-001494

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

RECORD ON APPEAL  
VOLUME II

C. Daniel Atkinson (S.C. Bar #72721)  
Emma L. Allison (S.C. Bar #107944)  
Wilkes Atkinson & Joyner, LLC  
127 Dunbar Street, Suite 200  
Spartanburg, SC 29306  
(864) 591-11 13  
datkinson@wajlawfirm.com  
eallison@wajlawfirm.com  
**Attorneys for Respondent**  
**Delta Air Lines, Inc**

Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
(864) 752-0911 (facsimile)  
josh@hjlsc.com  
helena@hjlsc.com  
**Attorneys for Appellant**

## INDEX

### **VOLUME I**

#### **Orders**

|                                                                      |   |
|----------------------------------------------------------------------|---|
| Order Dismissing Magistrate Case, executed December 4, 2024.....     | 1 |
| Order Dismissing Appeal, filed May 9, 2025 .....                     | 3 |
| Final Order Regarding Motion to Reconsider, filed July 1, 2025 ..... | 7 |
| Order Denying Motion to Dismiss, filed March 4, 2026.....            | 9 |

#### **Pleadings**

|                                                                                                                                    |     |
|------------------------------------------------------------------------------------------------------------------------------------|-----|
| Initial Magistrate Summons and Complaint, filed September 13, 2023 .....                                                           | 10  |
| Defendant Delta Air Lines, Inc. 's Motion to Dismiss Plaintiff's Complaint, filed December 27, 2023.....                           | 23  |
| Second Amended Summons and Complaint, filed March 15, 2024.....                                                                    | 39  |
| Joint Stipulation of Dismissal Without Prejudice, filed April 9, 2024 .....                                                        | 51  |
| Magistrate Summons and Complaint, filed June 11, 2024 .....                                                                        | 54  |
| Delta's Motion to Dismiss in Lieu of Answer, filed August 15, 2024.....                                                            | 72  |
| Delta's Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer, filed September 25, 2024 .....                        | 81  |
| Plaintiff's Response in Opposition to Delta's Motion to Dismiss, mailed October 1, 2024 .....                                      | 125 |
| Delta's Reply Brief in Support of Defendant's Motion to Dismiss in Lieu of Answer, filed November 21, 2024.....                    | 131 |
| Magistrate's Return, received February 6, 2025 .....                                                                               | 140 |
| Delta's Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction, filed April 4, 2025 .....                                | 404 |
| Delta's Brief in Support of Motion to Dismiss Appeal and in Opposition to Appellant's Notice of Appeal, filed April 21, 2025 ..... | 410 |
| Respondent's Memorandum in Opposition to Respondent's Motion to Dismiss, filed April 21, 2025 .....                                | 415 |

|                                                                                                                                                       |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Appellant's Memorandum in Opposition to Respondent's Motion to Dismiss filed April 21, 2025 .....                                                     | 435 |
| Delta's Reply Brief in Support of Respondent's Motion to Dismiss Appeal and in Opposition to Appellant's Notice of Appeal, filed April 22, 2025 ..... | 441 |
| Plaintiff's Motion to Reconsider, filed May 15, 2025.....                                                                                             | 446 |
| Respondent Delta Air Lines, Inc. 's Brief in Opposition to Appellant's Motion to Reconsider, filed June 6, 2025 .....                                 | 462 |
| Delta's Motion to Dismiss, filed November 24, 2025.....                                                                                               | 478 |

## **VOLUME II**

### **Pleadings - Continued**

|                                                                                                                                           |     |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Motion for Extension of Time to File and Serve Appellant's Initial Brief, filed November 25, 2025.....                                    | 482 |
| Respondent's Return to Appellant's Motion for Extension of Time to File and Serve Appellant's Initial Brief, filed December 3, 2025 ..... | 488 |
| Appellant's Return to Respondent's Motion to Dismiss, filed December 4, 2025 .....                                                        | 493 |
| Delta's Reply in Support of Motion to Dismiss, filed December 5, 2025 .....                                                               | 500 |

### **Transcripts**

|                                                                       |     |
|-----------------------------------------------------------------------|-----|
| Motion Hearing Transcript - April 24, 2025.....                       | 508 |
| Motion to Dismiss - Argument for Defendant - by Mr. Peters.....       | 513 |
| Motion to Dismiss - Argument for the Plaintiff - by Mr. Hawkins ..... | 517 |
| Motion to Dismiss - Argument for Defendant - by Mr. Peters.....       | 520 |
| Motion to Dismiss - Argument for the Plaintiff - by Mr. Hawkins ..... | 522 |
| Taken Under Advisement .....                                          | 522 |
| Appeal - Argument for the Plaintiff - by Mr. Hawkins .....            | 523 |
| Appeal - Argument for Defendant - by Mr. Peters .....                 | 527 |
| Decision of the Court.....                                            | 531 |

### **Other Documents**

|                                                           |     |
|-----------------------------------------------------------|-----|
| Certificate of Transmittal, entered January 26, 2024..... | 536 |
|-----------------------------------------------------------|-----|

|                                                                                                                           |     |
|---------------------------------------------------------------------------------------------------------------------------|-----|
| Notice of Appeal to the Circuit Court, filed with Circuit Court, filed December 26, 2024 and sent December 30, 2024 ..... | 537 |
| Notice of Appeal to Court of Appeals, filed July 21, 2025 .....                                                           | 548 |
| Email showing Plaintiff’s objection to their proposed order .....                                                         | 550 |
| Email showing court only emailed respondent about the order.....                                                          | 553 |
| Emails showing Mr. Hawkins’ inquiry to Mr. Peter’s about whether the court ever delivered the order .....                 | 557 |

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

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

Appeal No. 2025-001494

**MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANT’S INITIAL BRIEF**

The appellant respectfully requests that the Appellate Court grant an extension of time for the appellant to file his Initial Brief, currently due on November 17, 2025. This motion and request are made pursuant SCACR 263(b).<sup>1</sup> The transcripts in this matter were filed with the Court of Appeals on October 16, 2025. The deadline was not properly calendared within the undersigned’s office. The undersigned respectfully submits that his office is currently preparing for two upcoming jury trials, acknowledges the error, and humbly requests that an extension be granted in the interest of justice so that the appeal may be decided on the merits. This oversight was inadvertent, and an extension will not cause prejudice to the parties. The undersigned has consulted

<sup>1</sup> The undersigned believes the motion must be made pursuant to SCACR 263 and not SCACR 260 because the appeal has not been dismissed. Should the Court determine a motion is necessary pursuant to SCACR 260, the undersigned respectfully moves for relief pursuant that Appellate Court Rule.

with counsel for the respondent in an attempt to gain consent to the motion, but has been unable to gain consent as shown by the emails between the parties, attached hereto as Exhibit A.

WHEREFORE, the appellant respectfully requests that this Court grant an extension of Thirty (30) days from the current deadline for the filing of the Appellant's Brief, making it due on December 17, 2025.

Respectfully submitted,

s/Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
(864) 752-0911 (facsimile)  
josh@hjlsc.com  
helena@hjlsc.com

November 25, 2025  
Greenville, SC

**Attorneys for Appellant**

CC:

Brian M. Peters, Jr.  
WILKES, ATKINSON, & JOYNER, LLC  
127 Dunbar Street  
Spartanburg, SC 29306  
(864)-591-2355 (Telephone)  
bpeters@wajlawfirm.com

*Attorney for Respondent*

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

## Paralegal

---

**From:** Judy Saad <jsaad@wajlawfirm.com>  
**Sent:** Tuesday, November 25, 2025 9:25 AM  
**To:** Josh Hawkins  
**Cc:** Sulaiman Ahmad; Brian Peters; Paralegal; Helena Jedziniak; Dan Atkinson  
**Subject:** RE: Hawkins v. Delta Air Lines, Inc. / 2025-001494- Motion to Dismiss

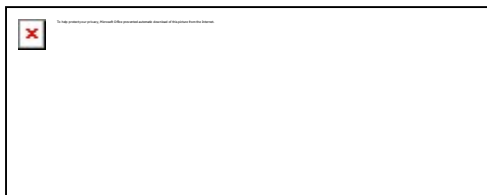
### SENT ON BEHALF OF BRIAN PETERS:

Josh,

I am out of the office this week. We do not have authority to consent at this time. Additionally, we do not believe the issue can be resolved by consent. Under Rule 263, time cannot be extended by consent of the parties. We believe you are required to file a Motion to Reinstate under Rule 260, and the Court must determine whether there is good cause. We will look into this more next week when I return to the office.

Sincerely,  
Brian

**Judy Saad**  
Paralegal



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

jsaad@wajlawfirm.com  
www.wajlawfirm.com

---

**From:** Josh Hawkins <josh@hjlsc.com>  
**Sent:** Monday, November 24, 2025 5:30 PM  
**To:** Judy Saad <jsaad@wajlawfirm.com>  
**Cc:** Sulaiman Ahmad <ahmad@hjlsc.com>; Brian Peters <bpeters@wajlawfirm.com>; Paralegal <Paralegal@hjlsc.com>; Helena Jedziniak <Helena@hjlsc.com>  
**Subject:** Re: Hawkins v. Delta Air Lines, Inc. / 2025-001494- Motion to Dismiss

Brian,

Candie and I have been trying to figure out what happened - this was not on the calendar. I am going to file a motion for extension. Will you consent to that since I consented when you asked for my consent to an extension? We can get the motion filed tomorrow.

Sincerely,

Joshua T. Hawkins  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
p: (864) 275-8142  
f: (864) 752-0911

On Nov 24, 2025, at 4:40 PM, Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)> wrote:

Good afternoon,

Attached please find Respondent's ***Motion to Dismiss*** and ***Proof of Service*** in the referenced case.

Counsel for Appellant is copied on this email. If you have any questions, please advise.

Thank you,  
Judy Saad

**Judy Saad**

Paralegal



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)  
[www.wajlawfirm.com](http://www.wajlawfirm.com)

<11.24.2025 Motion to Dismiss Appeal (Final).pdf><Proof of Service 11-24-25.pdf>

**RECEIVED**  
**Nov 25 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

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

Appeal No. 2025-001494

**PROOF OF SERVICE**

I certify that I have served a copy of the Motion for Extension of Time to File and Serve Appellant's Initial Brief electronically to the Court of Appeals, at [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org), and to the following attorneys of record for the Respondents to the following electronic addresses, on this date November 25, 2025:

Brian M. Peters, Jr.  
WILKES, ATKINSON, & JOYNER, LLC  
127 Dunbar Street  
Spartanburg, SC 29306  
(864)-591-2355 (Telephone)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

*Attorney for Respondent*

CC:

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

s/Joshua T. Hawkins  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
HAWKINS & JEDZINIAK, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)

*Attorneys for Appellant*

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.

---

**RESPONDENT’S RETURN TO APPELLANT’S MOTION FOR EXTENSION OF TIME  
TO FILE AND SERVE APPELLANT’S INITIAL BRIEF**

---

COMES NOW, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”), by and through the undersigned counsel, and pursuant to Rule 240(e), SCACR, files its Return to Appellant’s Motion for Extension of Time to File and Serve Appellant’s Initial Brief, and in support thereof, states as follows:

Appellant Joshua Hawkins, a Greenville county attorney proceeding *pro se*, appeals the Circuit Court’s dismissal of his Magistrate Court appeal based on his untimely filing of his Notice of Appeal with the Magistrate Court in violation of Rule 18(a), SCRMC. Now, Appellant has failed to timely file or serve his Initial Brief in *this* appeal. Appellant asks the Court to extend the expired deadline, merely because he forgot to calendar his own deadline. (Motion for Extension at p. 1, Ex. A at p. 2.) Appellant should know this is not good cause, and the Court should not pass over

the clear language of Rules 208(a)(4) and 260(a), SCACR to rescue Appellant from his own inaction. The Clerk must dismiss the appeal.

“**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. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR (emphasis added). 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); *see also Swing v. Swing*, 445 S.C. 340, 346, 914 S.E.2d 158, 161 (2025) (“In recent years, the Court has refocused the analysis of our Rules onto their plain language.”). “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).<sup>1</sup>

---

<sup>1</sup> 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” 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.

Here, the Clerk must issue the order of dismissal, because Appellant did not file or serve his Initial Brief or designation of matters “within the time prescribed.” *See* Rule 208(a)(4), SCACR. The Court<sup>2</sup> did not extend Appellant’s initial brief filing deadline before it passed, and therefore the Clerk must dismiss the appeal. Rules 208(a)(4), 260(a), SCACR. Appellant then may file a Motion to Reinstate the Appeal under Rule 260(a) and demonstrate to this Court that his failure to calendar his own deadline constitutes “good cause” to reinstate his appeal.<sup>3</sup> *See* Rule 260(a), SCACR.

“[T]he right to an appeal may be lost through a variety of actions by an appellant, such as:

(1) failure to timely serve a notice of appeal under Rule 203, SCACR; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR; or (3) failure to serve and

---

*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).

<sup>2</sup> Appellant implies the issue of Delta’s consent has any significance to the analysis. (*See* Motion for Extension at pp. 1-2.) It does not. As Rule 263(b), SCACR clearly states: “The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.”

<sup>3</sup> But that cannot be good cause under these circumstances where an attorney—representing himself—fails to even calendar his own deadline. *See Morris v. BB&T Corp.*, 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) (“The failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance.”); *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021) (“Rules are rules, and due dates matter.”); *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (“[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”). Nevertheless, such issue is not ripe unless Appellant timely files a Motion to Reinstate.

file a record on appeal and final brief under Rules 210 and 211, SCACR. *See* Rule 231, SCACR.” *State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). This is a black and white case where Appellant “fail[ed] to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR.” *See id.* Appellant asks the Court to extend this deadline—eight days *after* the deadline expired and only after Delta moved to dismiss the appeal. The Court has no obligation to rescue Appellant from his own inaction. Instead, the Court should allow the clear Appellate Court Rules to operate and address a Motion to Reinstate only if Appellant chooses to timely file one.

WHEREFORE, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”) respectfully requests the Court deny Appellant’s Motion for Extension of Time to File and Serve Appellant’s Initial Brief.

Respectfully submitted,

December 3, 2025

s/ Brian M. Peters, Jr.  
C. Daniel Atkinson (S.C. Bar # 72721)  
[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)  
Brian M. Peters, Jr. (S.C. Bar # 105911)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

**WILKES ATKINSON & JOYNER, LLC**  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306  
(864) 591-1113  
Attorneys for Respondent

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.

**RECEIVED**  
**Dec 03 2025**  
**SC Court of Appeals**

**PROOF OF SERVICE**

I certify that on December 3, 2025, I have served, or caused to be served, the ***Respondent's***  
***Return to Appellant's Motion for Extension of Time to File and Serve Appellant's Initial Brief***  
on the following Counsel for Appellant via Email, addressed as follows:

Joshua T. Hawkins (S.C. Bar #78470)  
[josh@hjlsc.com](mailto:josh@hjlsc.com)  
Helena L. Jedziniak (S.C. Bar #100825)  
[helena@hjlscs.com](mailto:helena@hjlscs.com)  
Hawkins & Jedziniak, LLC  
1225 South Church St.  
Greenville, SC 29605

s/ Brian M. Peters, Jr.  
C. Daniel Atkinson (S.C. Bar # 72721)  
[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)  
Brian M. Peters, Jr. (S.C. Bar # 105911)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

**WILKES ATKINSON & JOYNER, LLC**  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306  
(864) 591-1113  
*Attorneys for Respondent*

RECEIVED

Dec 04 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.

**APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS**

COMES NOW, Appellant, and respectfully requests that the Court deny Respondent’s Motion to Dismiss this appeal.

Although Respondent states repeatedly in its Motion that this Court must dismiss this appeal, Appellant respectfully submits that the Court has the authority and discretion to extend the time for Appellant to file his initial brief and designation of matter. *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992).

Appellant filed a motion to extend the time to file his initial brief on November 25, 2025. If the Court grants the motion pursuant to SCACR 263(b) and *Henning*, then Appellant may timely file his initial brief and designation of matter by December 17, 2025. Appellant apologizes for the need for an extension, and does not take the position that any Appellate Court Rules should be violated. However, the Court does have the discretion and authority to grant extensions, even where multiple violations exist.

Although this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules, we decline to do so and deny the motion to dismiss as to Henning. Instead, Appellant shall, within fifteen (15) days of this order, serve and file an initial brief that does fully comply with Rule 207, SCACR.

*Id.*, 307 S.C. 436, 415 S.E.2d 794 (1992).

Additionally, Respondent has argued that Appellant has not shown good cause. Appellant respectfully submits that the Court may find good cause and grant the extension based on the filings of the parties. In an abundance of caution, Appellant submits herewith an affidavit which confirms the reason for the previous delay – a calendaring error on the part of Appellant's office. Appellant submits that an extension will cause no harm or prejudice to the opposing party. In the past, the undersigned has worked with counsel regarding continuances, and Appellant requested consent before Appellant filed the motion for an extension here. While consent alone does not create the extension, and this Court determines whether an extension will be granted, Appellant hoped to file his motion for an extension with the consent of the opposing party.

Respondent also argues that the proper path forward is for this Court to dismiss the appeal, then for Appellant to move to reinstate the appeal in order to seek the Court's mercy. This does not serve economy, and the Court is required to follow that path if the Court sees fit to grant an extension. As set forth above, this Court has authority and discretion to grant an extension of time to file and serve the initial brief and designation of matter. If the Court is inclined to grant the motion, then Appellant submits it would create an unnecessary complication for the Court to enter a dismissal, and then consider a motion to reinstate the appeal, along with another return.

For the reasons set forth above, Appellant respectfully requests that Respondent's motion to dismiss be denied. Appellant believes an extension will serve justice and that it will cause no prejudice to the opposing party.

Respectfully Submitted,

*s/Joshua T. Hawkins*

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Sulaiman S. Ahmad, S.C. Bar #106665

HAWKINS & JEDZINIAK, LLC

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

*Attorneys for Appellant*

Greenville, SC  
December 4, 2025

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

Dec 04 2025

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-001494

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

**AFFIDAVIT OF CANDIE EDWARDS**

I, Candie Edwards, being duly sworn, depose and state as follows:

1. I am the paralegal for the Appellant in the above-captioned matter.
2. On October 16, 2025, the transcripts for this case were delivered to the Court of Appeals.
3. I mistakenly believed that a letter from the Court regarding briefing deadlines would be forthcoming. Because of this misunderstanding, the thirty (30) day deadline for the Appellant's Initial Brief, calculated from October 16, 2025, and due November 17, 2025, was not entered on the calendar.
4. The failure to calendar the deadline was entirely inadvertent. I deeply regret this oversight and assure the Court that it was not intentional, nor was it a reflection of disregard for the Court's rules.

5. Upon realizing the mistake, I immediately took corrective action. On November 25, 2025, a Motion for Extension of Time to file the Appellant's Initial Brief was filed with the Court of Appeals.
6. I humbly and respectfully ask the Court to accept this affidavit as an explanation of the circumstances. I sincerely apologize for the error and plead for the Court's leniency in granting the requested extension so that the Appellant's case may be heard fully and fairly.

Further affiant sayeth not,

Candie Edwards

Candie Edwards, *Paralegal*  
HAWKINS & JEDZINIAK, LLC

SWORN to before me this

4<sup>th</sup> Day of December 2025.

Malinda Alexander  
Notary Public for South Carolina

My Commission Expires 6/3/2034



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

Dec 04 2025

SC 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.

**PROOF OF SERVICE**

I certify that on this date, December 4, 2025, I filed the foregoing Appellant's Return to Respondent's Motion to Dismiss and the Affidavit of Candie Edwards with the South Carolina Court of Appeals via electronic filing to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org). A copy was also served on Respondents via electronic service by email, addressed to the attorney of record below:

Brian M. Peters, Jr.  
Wilkes, Atkinson, & Joyner  
127 Dunbar Street  
Spartanburg, SC 29306  
(864) 591-2355  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

*Attorney for Respondent*

s/Joshua T. Hawkins  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Sulaiman S. Ahmad, S.C. Bar #106665  
HAWKINS & JEDZINIAK, LLC  
1225 South Church Street

Greenville, SC  
December 4, 2025

Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
(864) 752-0911 (facsimile)

*Attorneys for Appellant*

RECEIVED

Dec 05 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.

---

**REPLY IN SUPPORT OF MOTION TO DISMISS**

---

COMES NOW, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”), by and through the undersigned counsel, and pursuant to Rule 240(f), SCACR, files its Reply in Support of its Motion to Dismiss the appeal, and in support thereof, states as follows:

**INTRODUCTION**

Appellant Joshua Hawkins, a Greenville county attorney proceeding *pro se*, appeals the Circuit Court’s dismissal of his Magistrate Court appeal based on his untimely filing of his Notice of Appeal with the Magistrate Court in violation of Rule 18(a), SCRMC. Now, Appellant has failed to timely file or serve his Initial Brief in *this* appeal. In an effort to avoid dismissal, Appellant presents an affidavit from his paralegal to take the blame for *Appellant’s* failure to monitor this Court’s deadlines, explicitly set forth in the Rules of Appellate Procedure. The Court should not consider Appellant’s efforts to argue good cause at this stage, however. Rather, the Court can only

allow the clear language of Rules 208(a)(4) and 260(a), SCACR to operate. The Clerk must dismiss the appeal.

**I. Appellant’s Excuses for Not Filing an Initial Brief Are Inconsequential Under the Objective Operation of Rule 208(a)(4), SCACR.**

First, Appellant’s reasons, explanations, or excuses for his failure to meet his own deadline are irrelevant to the Motion to Dismiss. Rules 208(a)(4) and 260(a) clearly and simply provide that if an appellant fails to file or serve an initial brief on time, then the Clerk must dismiss the appeal without any additional analysis: “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. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR (emphasis added). 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); *see also Swing v. Swing*, 445 S.C. 340, 346, 914 S.E.2d 158, 161 (2025) (“In recent years, the Court has refocused the analysis of our Rules onto their plain language.”). “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).<sup>1</sup>

---

<sup>1</sup> 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:

Nowhere in the language of Rules 208(a)(4) and 260(a) is this Court (or the Clerk) required to evaluate the reasons *why* an appellant<sup>2</sup> failed to follow the Rules or evaluate whether the untimeliness of an initial brief is justified. Instead, the Court (or Clerk) must simply determine whether the appellant's initial brief was timely filed. "[T]he right to an appeal may be lost through a variety of actions by an appellant, such as: (1) failure to timely serve a notice of appeal under Rule 203, SCACR; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR; or (3) failure to serve and file a record on appeal and final brief under Rules 210 and 211, SCACR. *See* Rule 231, SCACR." *State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). Here, Appellant *never* filed an initial brief or designation of matters, much less before the deadline. Appellant only filed his Motion for Extension of time after Delta

---

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*" 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).

<sup>2</sup> An inquiry into the reasons for a late filing, however, may be needed under the last sentence of Rule 208(a)(4) in the event a *respondent* misses the deadline. *See* Rule 208(a)(4), SCACR ("Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.").

moved to dismiss the appeal. Any inquiry into the reasons for missing the deadline should be reserved for a timely filed Motion to Reinstate, as both Rule 208(a)(4) and Rule 260(a), SCACR, direct. A good cause inquiry is not ripe under this Motion to Dismiss.

**II. The Court Should Not Interrupt the Operation of Rule 208(a)(4), SCACR to Rescue Appellant for His Own Inattentiveness to His Own Deadline.**

Second, contrary to Appellant's implication, *Henning v. Kaye*<sup>3</sup> does not stand for the proposition that the Court should intervene to rescue Appellant from forgetting his own deadline. (See Appellant's Return to Motion to Dismiss at p. 1.) Rather, the *Henning* Court addressed an appellant whose attorney (ostensibly timely) filed an initial brief albeit with multiple formatting and organizational errors. See *Henning*, 307 S.C. at 436, 415 S.E.2d at 794. The *Henning* Court did not even address Rule 263(b), SCACR, as Appellant implies. Much less did the Court grant itself expansive power under Rule 263(b), SCACR to step into Rule 208(a)(4) to save an appellant from his own failure to timely file an initial brief, without the presence of a pending Motion for Extension of Time filed *prior to* the expiration of the original deadline. Here, Appellant asks the Court to extend this deadline—eight days *after* the deadline expired and only after Delta moved to dismiss the appeal. The Court<sup>4</sup> did not extend Appellant's initial brief filing deadline before it passed, and therefore the Clerk must dismiss the appeal. Rules 208(a)(4), 260(a), SCACR. Appellant then may file a Motion to Reinstate the Appeal under Rule 260(a) and demonstrate to this Court that his failure to calendar his own deadline constitutes "good cause" to reinstate his

---

<sup>3</sup> *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992).

<sup>4</sup> Appellant implies the issue of Delta's consent has any significance to the analysis. (See Appellant's Return to Motion to Dismiss at p. 2; Motion for Extension at pp. 1-2.) It does not. As Rule 263(b), SCACR clearly states: "The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties."

appeal.<sup>5</sup> See Rule 260(a), SCACR. The Court has no obligation under *Henning* to rescue Appellant from his own inaction.

### **III. Appellant Alone Bears the Responsibility for Missing His Own Deadline Because He Is a South Carolina Attorney.**

Third, Appellant—a licensed South Carolina attorney and named partner at his law firm—is proceeding as his own attorney. Appellant has the responsibility (to himself as the client) to know this Court’s Rules and deadlines,<sup>6</sup> and he cannot completely outsource that responsibility to his non-attorney staff,<sup>7</sup> as he has done here. Appellant is responsible for ensuring compliance with court deadlines. Instead, he presents the affidavit of his paralegal, who writes as if *she* were the responsible attorney:

3. I mistakenly believed that a letter from the court regarding briefing deadlines would be forthcoming. Because of this misunderstanding, the thirty (30) day deadline for the Appellant’s Initial Brief, calculated from October 16, 2025, and due November 17, 2025, was not entered on the calendar.

---

<sup>5</sup> Based on the facts presented, Appellant cannot demonstrate good cause where an attorney—representing himself—fails to calendar or comply with his own deadline. See *Morris v. BB&T Corp.*, 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) (“The failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance.”); *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021) (“Rules are rules, and due dates matter.”); *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (“[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”). Nevertheless, such issue is not ripe unless Appellant timely files a Motion to Reinstate.

<sup>6</sup> See Rule 1.1, RPC, Rule 407, SCACR (“Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

<sup>7</sup> See Rule 5.3(a), RPC, Rule 407, SCACR (“[A] partner . . . shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer[.]”); Rule 5.3(b), RPC, Rule 407, SCACR (“[A] lawyer having direct supervisory authority over the nonlawyer. . . shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer[.]”)

4. The failure to calendar the deadline was entirely inadvertent. I deeply regret this oversight and assure the Court that it was not intentional, nor was it a reflection of disregard for the Court's rules.

5. Upon realizing the mistake, I immediately took corrective action. On November 25, 2025, a Motion for Extension of Time to file the Appellant's Initial Brief was filed with the Court of Appeals.

6. I humbly and respectfully ask the Court to accept this affidavit as an explanation of the circumstances. I sincerely apologize for the error and plead for the Court's leniency in granting the requested extension so that the Appellant's case may be heard fully and fairly.

(Appellant's Return to Motion to Dismiss, Affidavit of Candie Edwards at pp. 1-2, ¶¶ 3-6 (emphasis added).) The fault does not lie with Appellant's paralegal for not understanding Rule 208 and/or missing this deadline. The fault, and responsibility for knowing this deadline, is with Appellant: the attorney, his *own* attorney. Attorneys are responsible for knowing how this Court's Rules operate, and Rule 208(a)(1) clearly states that the thirty-day deadline begins to run from the date the transcript is received. Rule 208(a)(1), SCACR. Non-lawyer staff are essential to attorneys and the practice of law—but they are not responsible for determining deadlines.

### **CONCLUSION**

Ultimately, “the 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.” *Henning*, 307 S.C. at 436, 415 S.E.2d at 794. The Rules, and the procedures outlined therein, must be followed. Appellant's after-the-fact Motion for Extension of Time should not interrupt the clear procedure in Rule 208(a)(4), SCACR: “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.” Appellant Hawkins has not filed an initial brief. The Clerk must dismiss the appeal.

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,

December 5, 2025

s/ Brian M. Peters, Jr.  
C. Daniel Atkinson (S.C. Bar # 72721)  
[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)  
Brian M. Peters, Jr. (S.C. Bar # 105911)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

**WILKES ATKINSON & JOYNER, LLC**  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306  
(864) 591-1113  
Attorneys for Respondent

**RECEIVED**

**Dec 05 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.

**PROOF OF SERVICE**

I certify that on December 5, 2025, I have served, or caused to be served, the Respondent's

***Reply in Support of Motion to Dismiss*** on the following Counsel for Appellant via Email,  
addressed as follows:

Joshua T. Hawkins (S.C. Bar #78470)  
[josh@hjlsc.com](mailto:josh@hjlsc.com)  
Helena L. Jedziniak (S.C. Bar #100825)  
[helena@hjlscs.com](mailto:helena@hjlscs.com)  
Hawkins & Jedziniak, LLC  
1225 South Church St.  
Greenville, SC 29605

s/ Brian M. Peters, Jr.  
C. Daniel Atkinson (S.C. Bar # 72721)  
[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)  
Brian M. Peters, Jr. (S.C. Bar # 105911)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

**WILKES ATKINSON & JOYNER, LLC**  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306  
(864) 591-1113  
*Attorneys for Respondent*



**Hawkins &  
Jedziniak, LLC**

**RECEIVED**

**Oct 16 2025**

**SC Court of Appeals**

**Joshua T. Hawkins**

*josh@hjlsc.com*

**Helena L. Jedziniak \***

*helena@hjlsc.com*

*\* also licensed in North Carolina*

1225 South Church Street, Greenville, SC 29605  
P: (864) 275-8142 ▪ F: (864) 752-0911 ▪ [www.hjlsc.com](http://www.hjlsc.com)

October 16, 2025

-via electronic mail to: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Hawkins v. Delta Air Lines, Inc. / 2025-001494

To whom it may concern:

Please see the attached transcript received by our office today.

Should you have any questions, concerns, or need anything further, please do not hesitate to contact our office.

Sincerely,

Candie Edwards  
Senior Paralegal

Enclosures

DOCKET NUMBER  
2024-CP-23-07485

A P P E A R A N C E S:

JOSHUA THOMAS HAWKINS, Esq.  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, SC 29605

Attorney for the Plaintiff

BRIAN PETERS, Esq.  
Wilkes Atkinson & Joyner, LLC  
127 Dunbar Street, Suite 200  
Spartanburg, SC 29306

Attorney for the Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

| <u>DESCRIPTION</u>                          | <u>PAGE</u> |
|---------------------------------------------|-------------|
| <u>THURSDAY, APRIL 24, 2025</u>             | <u>4</u>    |
| DEFENDANT'S MOTION TO DISMISS               |             |
| Argument for Defendant - by Mr. Peters      | 5, 12       |
| Argument for the Plaintiff - by Mr. Hawkins | 9, 14       |
| Taken Under Advisement                      | 14          |
| APPEAL                                      |             |
| Argument for the Plaintiff - by Mr. Hawkins | 15          |
| Argument for Defendant - by Mr. Peters      | 19          |
| DECISION OF THE COURT                       | 23          |
| RECESS                                      | 24          |
| CERTIFICATE OF TRANSCRIBER                  | 25          |

P R O C E E D I N G S

(Whereupon, the following proceedings started at 1:10:10.)

THE COURT: Joshua Hawkins versus Delta Airlines, Inc.,  
2024-CP-23-07485. This is an appeal. (Bad audio.)

(Pause.)

THE COURT: It looks like, based on my notes, there was a  
dismissal entered by the magistrate court on December 3rd,  
last year.

(Pause.)

THE COURT: Tell me what the status is, then we'll  
(indiscernible). Have you-all worked this out?

MR. HAWKINS: We have not, Your Honor. And I was  
assuming, because he had filed a Motion to Dismiss, that --  
but I'm happy to I'm happy to go. I don't mind at all.

MR. PETERS: Well --

THE COURT: (Bad audio) want to be heard on Motion to  
Dismiss?

MR. PETERS: Yes, Your Honor. And to --

MR. HAWKINS: I guess, technically, if it's like motions,  
then the appeal would be heard first, because it was first  
filed, I guess. So I guess that does make sense. But I  
don't -- I'll do it however the Court wants.

THE COURT: I mean, I don't -- however you-all want to do  
it. But if he's -- he'd already (indiscernible), he can hear  
it.

1 MR. HAWKINS: Sure.

2 MR. PETERS: Sure. Your Honor, may it please the Court.  
3 Brian Peters for Delta Airlines.

4 This case is very simple, Your Honor. And to clarify,  
5 we're not -- the Court does have subject matter jurisdiction  
6 to hear appeals from the magistrate court.

7 To more accurately state the Motion, it's a Motion to  
8 Dismiss, because this Court does not have appellate  
9 jurisdiction in this case, because Mr. Hawkins did not file  
10 his appeal with the magistrate court within the 30 days of the  
11 written judgment. And he admits that in his pleadings, that  
12 he -- that the Notice of Appeal did not arrive at the  
13 magistrate court within the 30 days.

14 So if the appeal is untimely, then this Court doesn't  
15 have jurisdiction. If there's no jurisdiction, then this  
16 Court's actions have no effect, and this Court must dismiss  
17 the appeal.

18 So under Rule 74 of the Rules of Civil Procedure, the  
19 procedure on appeal adopts the time limits of the magistrate  
20 court or of just whatever appellate procedure there is.

21 Rule 18 of the South Carolina Magistrate Court Rules says  
22 that "Within 30 days after delivery of written notice of  
23 judgment to the parties or their attorneys, a party wishing to  
24 appeal shall serve on the respondent and file a Notice of  
25 Appeal containing a Statement of the Grounds for the appeal

1 with the magistrate rendering the judgment and with the  
2 circuit court of the county where the judgment was rendered."

3 So Mr. Hawkins admits that he did file within this  
4 circuit court timely. He served our office timely. However,  
5 he says in his Memorandum in Opposition that he mailed his  
6 Notice of Appeal to the magistrate court within the 30 days.  
7 However, it did not -- it was not delivered until three days  
8 after. And under South Carolina, in order to file something  
9 with the Court, it must be given to the appropriate officer --  
10 it must be delivered.

11 So we've cited the *Gary* case in our brief that stands for  
12 the proposition that filing -- it's not the date of mailing,  
13 but it's the date of delivery to the proper officer.

14 And I have a copy of that case, if Your Honor would like  
15 a copy.

16 THE COURT: Sure.

17 MR. PETERS: And I have a copy for opposing counsel as  
18 well.

19 (Pause.)

20 THE COURT: You-all, did the magistrate do a return?

21 MR. PETERS: No, Your Honor.

22 MR. HAWKINS: No, Your Honor. (Indiscernible). That's  
23 requirement. (Bad audio.)

24 MR. PETERS: I disagree with that. I -- this -- the  
25 effect of this untimely appeal is that this Court must dismiss

1 it. It must -- it cannot remand it to the magistrate court.

2 The magistrate court's order is final.

3 THE COURT: How is it that if I look at -- if I look  
4 online, it says the magistrate did do a Return dated February  
5 6th, of 2025.

6 Does anybody have a copy of that for me?

7 MR. HAWKINS: I have never seen a Return.

8 MR. PETERS: I have not seen that either, Your Honor.

9 (The Court and clerk confer.)

10 MR. HAWKINS: Well, Your Honor, I can add some clarity --

11 THE COURT: I'm not going to have you do that now, but I  
12 may take it on our advisement. So I need to look at it,  
13 because the way it works --

14 I mean, you know, Mr. Hawkins, the magistrate gets to  
15 weigh in on this. I get to see what the magistrate has to  
16 say.

17 MR. HAWKINS: All right. So that never happened.

18 And just to add clarity to it, they also never sent any  
19 Notice of the Judgment. They never mailed anything out. They  
20 never physically delivered anything. So the clock still  
21 hadn't started running for the appeal. That's the other  
22 thing.

23 MR. PETERS: Well, Your Honor, in his -- in Mr. Hawkins'  
24 briefings to the Court, he admits that he received Notice of  
25 the Judgment on December 4th, which made his deadline to file

1 his Notice of Appeal, January 3rd. Yet the filing of the  
2 Notice of Appeal with the magistrate did not -- it was not  
3 delivered until January 6th. So that is past the 30 days, and  
4 therefore this Court -- even if a return was filed by the  
5 magistrate, this Court is without appellate jurisdiction to  
6 hear the appeal because it's untimely.

7 And a similar case where that has happened is in *In Re*  
8 *Estate of Kretzmeier V. Block*. In this case, it was an appeal  
9 from the probate court, and it was mailed on the day after the  
10 judgment was rendered. However, it was not -- there was no  
11 notification that it was ever delivered to the circuit court.  
12 And therefore, the circuit court found that it did not have  
13 appellate jurisdiction and dismissed the matter because it was  
14 untimely, despite -- the date that the appellant put it in the  
15 mailbox was within the 30 days, because it arrived after it --  
16 well it -- there was no notice that it ever arrived. Because  
17 it was outside of that 30-day window, the Court did not have  
18 appellate jurisdiction.

19 And I have a copy of that case, if Your Honor would like  
20 it, as well.

21 THE COURT: Okay.

22 (Pause.)

23 THE COURT: Mr. Hawkins, tell me why you think that the  
24 clock's not running. Because he's not wrong about this. I  
25 mean, it's a pretty hard and fast rule.

1 MR. HAWKINS: Sure, Your Honor.

2 I'm -- it's actually mathematically impossible for the  
3 appeal not to be timely by any calculation. And I'll tell you  
4 why.

5 He's relying on some cases that have to do with  
6 situations where the Court hearing the appeal did not have the  
7 appeal timely filed within it. There's no dispute by anybody  
8 that this Court -- which is the appellate court for what we're  
9 talking about -- received timely notice in the filing of the  
10 appeal. That's not disputed. His argument is that Rule 18  
11 says you have to also get a copy to the magistrate court, that  
12 that wasn't received in time. And his whole argument is that  
13 it doesn't matter -- it can't be filed when mailed. That's  
14 his argument. It has to be physically in their hands.

15 All right. But if we look at the Magistrate Court Rule  
16 Number 8, it tells you how to do a filing, "Delivery following  
17 of pleadings and other papers." Here's how you make a filing:  
18 Delivery of mail; it's complete upon a mailing.

19 I can hand up the copies, if the Court would like, of the  
20 Rule.

21 THE COURT: Yeah. Let me see it. I'm sorry. I'm trying  
22 to take a look --

23 MR. HAWKINS: I -- if we're going to play by his rules --  
24 which are not the rules that govern, and we're going to say  
25 you have to have something physically in the other person's

1 hand, then that means when it says, the clock starts running  
2 on me, when the magistrate court has delivered me a copy, that  
3 never started running -- if we're playing by his rules and  
4 we're throwing out the Appellate Procedure Rules and all this  
5 other stuff.

6 The earliest possible date it could have been delivered  
7 to my office -- because he emailed them. He wanted a proposed  
8 order or something. So after they dismissed the case on the  
9 3rd, he emails them a proposed order on the 4th. And the  
10 judge signed it. If they put it in the mail that day, it  
11 couldn't have gotten to my office before the 5th. And if it  
12 got to my office -- which it -- again, I want to remind the  
13 Court, it never got there. The clock still ain't running. If  
14 it had gotten to my office on the 5th, then the clock would  
15 start running on the 6th, which would made the 30th day,  
16 January 4th, which is a Saturday, which means the last day to  
17 file it is the 6th. And we all agree, we got it on 6th.  
18 We've got a proof of that. I can get in that up to the Court.

19 (Pause.)

20 But even if you take -- by the way, Your Honor, this is  
21 if you don't apply Rule 6(a) and have five days in the mail.

22 THE COURT: I understand.

23 MR. HAWKINS: By any possible calculation, no matter how  
24 much sweat you took to prepare it, and trying to figure out a  
25 way to not be timely, it's as timely as it gets.

1        Now, if we don't go by this Rule that he's trying to get  
2 the Court to go by -- which, it's timely under that, too -- if  
3 we go by the Rules of Appellate Procedure, which apply to  
4 whether we're talking about the Supreme Court, Court of  
5 Appeals, or in this case, this Court, Rule 262 -- and we know  
6 this because we do a lot of work in the Court of Appeals and  
7 the Supreme Court -- this postmarked on the last day is  
8 timely. They tell you -- we've got emails to that. We do it  
9 all the time in the Court of Appeals.

10       But scrap that anecdotal information, the Rules of  
11 appellate Procedure 262(a)(2) tells you exactly how to  
12 effectuate a filing. Put it in the U.S. Mail. And the date  
13 of mailing is a date of filing. It says that verbatim, black  
14 and white.

15       So it's a creative argument to say that because they went  
16 in -- or the Court went in and administratively did something  
17 on the computer. Yes, I did it within 30 days of that date in  
18 an abundance of caution. But if we're going to apply the  
19 Rules the way he wants to, then one, the clock still hasn't  
20 run. And if we're going to apply the Rules the way they're  
21 written in the statutes and Civil Procedural Rules and  
22 National Court Rules, then it was filed with, I don't know, a  
23 week to spare, by any calculation of the Rules. There's no  
24 way to get to a result that the appeal is untimely. It's  
25 simply impossible.

1 THE COURT: All right. Kim, I'm going to need to see the  
2 magistrate's return. I'm sorry.

3 MR. PETERS: May I briefly respond, Your Honor?  
4 The Yes.

5 MR. PETERS: So Rule 8 of the Magistrate's Court Rule  
6 does not talk about delivery to the Court. It doesn't talk  
7 about putting -- it talks about service of process or service  
8 of a document to another person. It doesn't talk about how  
9 something is filed with the magistrate court itself. And  
10 that's in the -- or, I mean, it doesn't state here in Rule 8b  
11 of the Magistrates Court Rules that delivery upon mailing  
12 equals filing. It only talks about delivery as in terms of  
13 service.

14 In -- so what applies, what the Magistrates Court's Rules  
15 do when there is no direct rule, is that it incorporates --  
16 under Rule 2 of the Magistrates Court's Rule -- it  
17 incorporates what is proper in circuit court, which is the  
18 Rules of Civil Procedure. Rule 5(e) of the Rules of Civil  
19 Procedure state, "That the filing of pleadings and other  
20 papers with the Court, as required by these Rules, shall be  
21 made by filing them with the clerk of court, except that the  
22 judge may permit the papers to be filed with him." So it must  
23 be filed with the Court or the judge.

24 And as far as the Rule for the Circuit Court of Appeals,  
25 that does not apply here. Even in the *Gary v. State* case that

1 talks about whether a mailing constitutes filing, they do when  
2 they cite that general rule: "It is clear under South  
3 Carolina law that mailing does not constitute filing when a  
4 statute requires the filing of a paper or document. It is  
5 filed when delivered to and received by the proper officer."

6 Footnote 1, right after that citation, it does  
7 specifically -- it refers to the old Appellate Court Rule,  
8 which is now -- it has here in Footnote 1, Rule 233(a)(2).  
9 However, now that Rule is 262(a)(2), which is first-class mail  
10 and not certified mail, as Mr. Hawkins did in this case.

11 But regardless, we are in the circuit court, and we  
12 follow the circuit court's rules. And because he had notice  
13 of the judgment, where there was an oral judgment at the  
14 December 3rd hearing, and then the Court signed the -- he  
15 got -- the Court advised both of us by email that it signed  
16 the proposed order on December 4th. And he -- and Mr. Hawkins  
17 replied to the email saying he objected to the Proposed Formal  
18 Order, which we were notified was signed. And he has set  
19 forth in his pleadings that he was -- he had notice of the  
20 judgment on December 4th. And so I think that controls here.  
21 And it's very simple, the magistrate court did not receive a  
22 notice of appeal within the 30 days by delivery to the clerk  
23 of court or the magistrate himself.

24 So because of that late filing and under the Supreme --  
25 the South Carolina Supreme Court's case *DeWitt*, which

1 specifically talked about magistrate court decisions and  
2 appeals, this Court doesn't have appellate jurisdiction to  
3 hear the appeal.

4 THE COURT: All right.

5 MR. PETERS: Thank you.

6 THE COURT: I might take it under advisement, gentlemen.  
7 And I'm going to hear the appeal, and I'm let you-all know.  
8 If I grant his Motion to Dismiss for lack of jurisdiction,  
9 then I will -- it'll render your appeal moot.

10 But I need to go pull the file. I want to see what the  
11 magistrate has to say when they got it, because they will say  
12 it in the Return.

13 MR. HAWKINS: Just -- let me just add one thing, Your  
14 Honor, (indiscernible).

15 THE COURT: Sure.

16 MR. HAWKINS: He's hanging his hat on the word  
17 "delivery." He -- that it -- that means physical in  
18 somebody's hands -- then he cannot get away from the fact that  
19 that was not delivered in my office to start the clock  
20 running. And even if it was, it could not have gotten to my  
21 office before the 5th. That means that by the 3rd, the last  
22 day to file it, which is the Monday after the weekend, is the  
23 6th. There's just -- he can't get away from that. It's  
24 mathematically impossible. I don't know why he's still making  
25 this argument.

1 THE COURT: Okay. That's all right. I'm going to take  
2 that part under advisement, because I gotta pull the physical  
3 file.

4 But let me hear you on your appeal.

5 MR. HAWKINS: Sure.

6 Substantively. So we've got -- and I don't think there  
7 was any contention about this -- he never sought a full  
8 dismissal of the lawsuit. I mean, he said that in magistrate  
9 court. And the magistrate court, sort of, implicitly  
10 acknowledged that in that order that he submitted for  
11 signature. What he wanted was a narrowing of the claims. He  
12 wanted to get rid of the fraud claim, he wanted to get rid of  
13 the DJ action.

14 There is, under the Montreal Convention, if you have  
15 damage to baggage occasion by delay, you have a claim for  
16 that. You can litigate that in small claims court. There's  
17 no dispute about that.

18 I set forth in a Complaint that was about 71 or so  
19 paragraphs long; I think, Paragraph 7 through, like, 41  
20 includes very specific factual details. There's more facts  
21 and specific details in the Causes of Action. If all that's  
22 assumed to be true, then I can recover, under the Montreal  
23 Convention, for the damage to my baggage by occasioned by  
24 delay. It's not disputed that it was delayed. I have alleged  
25 specific kinds of damage in the lawsuit.

1       And the magistrate seemed to -- I don't really know what  
2 his rationale was, because he seemed to acknowledge, yes, you  
3 have some claims, but I can't keep these claims and dismiss  
4 other claims. I can't sever them, and that would be unfair.  
5 And so this is proper for some court somewhere to hear, but I  
6 don't think it's proper for my court. And he says that. It  
7 is at the -- toward the end of this order, he says something  
8 like the surviving claim. You know, it -- I can't sever  
9 from without a prejudice or something like that. So I don't  
10 think there's any dispute that the Montreal Convention claims  
11 are there.

12       In addition to that -- this has to do with two  
13 international flights and a domestic flight. The domestic  
14 flight, you don't proceed under the Montreal Convention, but  
15 you do proceed under common law where there's a breach of  
16 Delta's terms in its contract. So I would allege that you  
17 very specifically breached your own terms in these ways. You  
18 said a delay was -- because it's undisputed, if they delay a  
19 flight by more than four hours, and it's not due to weather,  
20 they have to compensate you for lodging, food, hotel, all this  
21 stuff.

22       So it also says, in their terms, they have to take  
23 reasonable care. Obviously, what's reasonable is a jury  
24 question. Reasonable care of transporting you and your bags.  
25 Okay. I set forth evidence -- including observations of me

1 and everybody that was in the Delta Sky Lounge -- that other  
2 airlines -- airplanes are coming and going zipping. And it's  
3 a bluebird day outside. We can all see that it's not some  
4 sort of torrential downpour or any kind of weather issues.  
5 We -- I set forth very specific observational facts that, if  
6 assumed true, meaning this was not due to weather. They said  
7 it was due to weather. But that's not the contract term. The  
8 contract term is, "if it is due to weather." Now, they  
9 generally do say this because they don't -- you know, they  
10 want to get out of having to compensate people if they can.  
11 But if our Complaints taken as true, on a common law, we  
12 simply get by the Motion to Dismiss, plain and simple.

13 THE COURT: So what's the error by the magistrate?

14 MR. HAWKINS: I'm sorry?

15 THE COURT: What is the error that the magistrate made?

16 MR. HAWKINS: Well --

17 THE COURT: I'm letting you argue, but I'm gonna cut you  
18 off, you-all.

19 MR. HAWKINS: No, and I'm fine (indiscernible) --

20 THE COURT: And I'm gonna take it under advisement.

21 So what's the error that the magistrate made? Because  
22 that's what the appeal is about. What is the error of law?

23 MR. HAWKINS: It's actually -- I didn't want to -- I was  
24 going to tell you from the ones I remember, because there's so  
25 many -- there's, like, 200 and -- there's a volume of cases

1 that the magistrate ruled a contradiction of. Let me see the  
2 ones I can remember offhand, *Bayer versus Charleston County*,  
3 *Doe versus Greenville County*. There's -- in the very first  
4 part of my appeal, there's about four or five cases listed.  
5 And one of those -- *Hausen versus Ham* (phonetic), the *Oranado*  
6 (phonetic) case. They're coming to me as I'm talking.

7 If you can recover -- under any theory of liability -- if  
8 you set forth facts that allow you to recover under any theory  
9 of liability, the Motion to Dismiss has to be denied. That  
10 was, I mean, if this was a law school question, it would  
11 probably be multiple choice, and that first answer will be  
12 correct. A motion must be -- a motion to dismiss must be  
13 denied if what?

14 If you set forth facts that if a lack -- that assumed to  
15 be true, (indiscernible), you have to dismiss -- you have to  
16 deny the motion. That's not that's not even controversial.

17 Now, I will say this, if the magistrate or any court is  
18 going to consider some facts or some evidence outside of the  
19 pleadings, they're supposed to convert that to a summary  
20 judgment motion under Rule 56. He did consider other stuff --  
21 other evidence, and he didn't convert that to a summary  
22 judgment. So it was procedurally improper if he did that.  
23 Too, there's still a fact question, because if what I said is  
24 true and I put that in assigned pleading, then I recover. You  
25 know, we assume what I said is true. If what I said is true,

1 then they violated the Montreal Convention, they violated  
2 common law and caused -- and violated their own terms. And  
3 I'm entitled to recover for that.

4 THE COURT: All right. I'm not dealing with the merits  
5 of the case. So I'm dealing with -- from what I'm hearing  
6 from him is this: That the magistrate committed reversible  
7 error because the magistrate, Number 1, on a Motion to  
8 Dismiss, considered facts outside of the pleadings, therefore  
9 requiring the magistrate -- whoever it was, since I don't have  
10 a return -- to convert this to a Motion for Summary Judgment  
11 and misapplied the standard. That's the error of law that I  
12 think Mr. Hawkins is arguing.

13 So I'm happy to hear from you.

14 MR. PETERS: Sure. Thank you, Your Honor.

15 Magistrate Judge Hubbard made several rulings. First,  
16 the majority of the rulings have to do with whether the  
17 magistrate court had subject matter jurisdiction to hear Mr.  
18 Hawkins' claims.

19 THE COURT: Okay.

20 MR. PETERS: When a court considers its own subject  
21 matter jurisdiction, it may go outside of the pleadings. It  
22 did not need to do so here, because these are clear, black and  
23 white legal issues.

24 THE COURT: Okay.

25 MR. PETERS: And as much as the Court made Rule 12(b)(6)

1 rulings, which is the only rule under Rule -- or is the only  
2 motion to dismiss under Rule 12. So rule 12 --

3 THE COURT: This is -- you-all -- I don't mean to  
4 interrupt.

5 MR. PETERS: Yes.

6 THE COURT: This is why I need the return -- that -- I  
7 need to have the magistrate's return to tell me what the  
8 magistrate considered and what the -- I need the return.  
9 So --

10 MR. HAWKINS: We do, too, Judge.

11 MR. PETERS: Well, Your Honor -- and that's this is sort  
12 of what sparked the Motion to Dismiss the Appeal, because  
13 there was no return. And why was there no return?

14 THE COURT: There is a return.

15 MR. PETERS: Well, I mean --

16 THE COURT: There's a line. There's a return. I just  
17 can't see -- it won't let me open it.

18 MR. PETERS: Okay, so that's a -- news to, I'd say, both  
19 of us.

20 MR. HAWKINS: Yeah. He's (indiscernible). And that is  
21 correct. THE COURT: Thank you.

22 MR. PETERS: And likewise, what Mr. Hawkins put in his  
23 briefs -- I think he should be bound to -- but nevertheless,  
24 the Court is allowed to consider, under Rule 10(c) of --

25 THE COURT: Okay.

1 MR. PETERS: -- several procedure rules, anything that is  
2 part of the pleadings.

3 And so Mr. Hawkins quoted and referred and incorporated  
4 by reference the alleged contracts at issue -- which the Court  
5 did not make a Rule 12(b)(6), ruling as to those Breach of  
6 Contract Causes of Action, because they were dismissed under  
7 the Airline Deregulation Act and the Montreal Convention,  
8 because those two preempt the kind of Cause of Action that Mr.  
9 Hawkins stated in his Complaint.

10 So the only 12(b)(6) ruling that the magistrate made was  
11 finding that Mr. Hawkins could not bring the inconvenience  
12 damages under the Montreal Convention that he sought to bring  
13 for his mental pain and suffering caused by the alleged delay.  
14 And again, I'd want to clarify that we do not-- we do dispute  
15 that there might have been a delay. We're not admitting any  
16 facts at this point.

17 THE COURT: I'm not -- I'm just looking at --

18 MR. PETERS: Of course, the Court's --

19 THE COURT: -- whether or not the magistrate committed  
20 reversible error on the law.

21 MR. PETERS: No, Your Honor. No, Your Honor. And we've  
22 detailed what Mr. Hawkins might be referring to as external  
23 matters. I know, I, Your Honor, handed up to the magistrate  
24 court several cases, and a copy of the Montreal Convention,  
25 and those obviously may be considered by a magistrate court in

1 making legal rulings, because that's not evidence.

2 Mr. Hawkins refers to weather reports in his Pleadings  
3 and in his Complaint. And I don't believe that that was  
4 referenced, but if it was referenced, it wasn't because of the  
5 truth or the fact issue of whether there were weather reports,  
6 but whether those weather reports triggered the provisions of  
7 the contract that Mr. Hawkins is speaking about.

8 And it doesn't matter -- the central issue there was, it  
9 does not matter whether bad weather materialized. The issue  
10 is, was there threats of bad weather? Because that triggered  
11 the force majeure provisions under the contracts at issue. So  
12 if bad weather was --

13 THE COURT: But I'm not getting into that.

14 MR. PETERS: Yes. Of course, of course, Your Honor.

15 THE COURT: You-all, I'm not getting into that. I am not  
16 going to address the merits. I'm only going to address  
17 whether or not the magistrate committed an error. And you  
18 said "no." They'd properly ruled that the Court did not have  
19 subject matter jurisdiction, based on the law that Mr. Hawkins  
20 was trying to rely on. Is -- am I correct about that?

21 MR. PETERS: Yes, Your Honor.

22 And we did -- we did attach the contracts to our Motion  
23 to Dismiss, and that is allowed under South Carolina law  
24 because a plaintiff cannot get out of Rule 10(c) by quoting  
25 and referring to portions of a document but not attach it to

1 the complaint. And so the defendant is allowed to attach  
2 that.

3 But even so, the Court's rule 12(b)(6) rulings didn't  
4 even consider those outside materials. So it did not even --  
5 in those rulings, those materials did not matter. And so  
6 under Rule 12(b), that talks about converting a Rule 12(b)(6)  
7 Motion to a Motion for Summary Judgment, if the -- even if I  
8 had presented a big weather report or a video, if the  
9 magistrate court decides not to look at it, it does not  
10 need -- if it's not accepted by the Court, then it does not  
11 need to be converted to a Motion for Summary Judgment. So --

12 THE COURT: All right. This is what we're going to do,  
13 gentlemen. You need to see the Return. You need to see the  
14 Return. And I definitely need to see the Return. I can't  
15 make any ruling without it. The magistrate may agree in the  
16 Return that it was timely filed and that the magistrate  
17 received it and here was the reason that magistrate ruled the  
18 way the magistrate ruled.

19 The magistrate could say, nope, Mr. Hawkins failed to  
20 serve me timely, and I take the position that the Court  
21 doesn't have jurisdiction, but nevertheless, this is my  
22 response.

23 So this is what we're going to do. I'm going to leave  
24 the record open. I'm going to get the Return, which is  
25 waiting to be scanned. I'm sending it to you both. I'll have

1 my law clerk do it. I'll leave the record open for 10 days  
2 after you get it to give me anything else you want, and then  
3 I'll rule.

4 Sound good?

5 MR. PETERS: Thank you, Your Honor.

6 THE COURT: All right. Thank you-all.

7

8 (At 1:36 p.m., the hearing concluded.)

9

10

11

END OF TRANSCRIPT.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE OF TRANSCRIBER

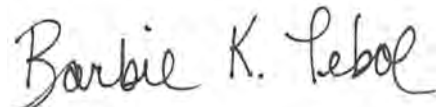
State of South Carolina

County of Greenville

I, BARBIE TEOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, in the Court of Common Pleas for Greenville County, South Carolina, on the 24th day of April, 2025.

I further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 15, 2025

A handwritten signature in cursive script that reads "Barbie K. Teboe". The signature is written in dark ink and is positioned above a horizontal line.

Barbie Teboe,  
Transcriber

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

---

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondent.

---

Appeal No. 2025-001494

---

**PROOF OF SERVICE**

---

I certify that I have served a copy of the transcript, electronically to the Court of Appeals,  
at [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org), and to the following attorneys of record for the Respondent to the  
following electronic addresses, on this date October 16, 2025:

Brian M. Peters, Jr.  
WILKES, ATKINSON, & JOYNER, LLC  
127 Dunbar Street  
Spartanburg, SC 29306  
(864)-591-2355 (Telephone)  
[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)

*Attorney for Respondent*

CC:

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

s/Joshua T. Hawkins  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
HAWKINS & JEDZINIAK, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)

*Attorneys for Appellant*

**CERTIFICATE OF TRANSMITTAL**

**2024-CP-23- 00556**

24 JAN 26 AM 11:11  
Brice Garrett CDC GUL SC

**MAGISTRATES CIVIL CASE NUMBER 2023CV2310304093**

Joshua Hawkins vs Delta Airlines – Filed 09/15/2023

1. Summons and Complaint \_\_\_\_\_
2. Certified Mail receipt for Service on Defendant \_\_\_\_\_
3. Answer from Defendant \_\_\_\_\_
4. Motion for Default Judgment and Damages Hearing or, in the Alternative, for Summary Judgment \_\_\_\_\_
5. Notice of Appearance, Motion to Dismiss, Consent Order to Amend Answer, Exhibit A to Consent Order – Amended Answer, Initial Brief in Opposition to Plt's Motion, Certificate of Service \_\_\_\_\_
6. Offer of Judgment \_\_\_\_\_
7. Notice of Hearing and Certificate of Service \_\_\_\_\_
8. Certified Mail receipt for Amended Complaint \_\_\_\_\_
9. Amended Summons and Complaint \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_

SENT BY: EAST GREENVILLE SUMMARY COURT ON \_\_\_\_\_

BY: Michelle Pegg

RECEIVED BY: \_\_\_\_\_

ON

1/26/24

COURT CLERK FOR \_\_\_\_\_

Greenville County

COMMENTS: \_\_\_\_\_



## Hawkins & Jedziniak, LLC

**Joshua T. Hawkins**

*josh@hjllcsc.com*

**Helena L. Jedziniak \***

*helena@hjllcsc.com*

*\* also licensed in North Carolina*

**Ethan L. Jedziniak**

*ethan@hjllcsc.com*

1225 South Church Street, Greenville, SC 29605

P: (864) 275-8142 ▪ F: (864) 752-0911 ▪ [www.hjllcsc.com](http://www.hjllcsc.com)

December 30, 2024

-via Process Server-

Brian M. Peters, Jr.

127 Dunbar Street

Spartanburg, SC 29306

Re: *Joshua Hawkins v. Delta Airlines*

Magistrate Case No.: 24-2415

Circuit Court Case No.: 2024-CP-23-07485

Dear Brian,

I hope you had a Merry Christmas and enjoyed a few days off. Please see the attached Notice of Appeal to the Circuit Court in the above-mentioned matter, along with the certificate of service of the same.

Should you have any questions, feel free to contact our office.

Sincerely,

Candie Edwards  
Paralegal

|                         |   |                                |
|-------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE MAGISTRATE COURT        |
|                         | ) |                                |
| COUNTY OF GREENVILLE    | ) | CASE NO. 2024CV232415          |
|                         | ) |                                |
| Joshua Hawkins,         | ) |                                |
|                         | ) | <b>NOTICE OF APPEAL TO THE</b> |
| Plaintiff,              | ) | <b>CIRCUIT COURT</b>           |
|                         | ) |                                |
| vs.                     | ) |                                |
|                         | ) |                                |
| Delta Air Lines, Inc.,  | ) |                                |
|                         | ) |                                |
| Defendant.              | ) |                                |

COMES NOW, the plaintiff, pursuant to SCMCR 18, and respectfully submits his appeal to the Circuit Court. The Magistrate Court's dismissal, which is appealed here, was entered on December 3, 2024, and the undersigned received notice the case had been dismissed via email from the Magistrate Court on December 4, 2024. Pursuant to SCMCR 18(a), the plaintiff files this appeal within thirty days of delivery of written notice of the judgment.

### **INTRODUCTION**

"If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. Marion*, 645 S.E.2d 245 (2007); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Because the plaintiff can recover on the allegations and causes of action set forth in the complaint, the Magistrate Court should have denied Delta's motion to dismiss.<sup>1</sup>

---

<sup>1</sup> Delta also moved pursuant to SCRCF 12(b)(1) and 10(c). However, it is undisputed that Delta does business in South Carolina and that subject matter jurisdiction and personal jurisdiction were proper as to at least some of the claims dismissed by the Magistrate Court.

## ARGUMENT

- I. The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to dismiss the entire complaint, which contains facts and causes of action that allow the plaintiff to recover.**

If a plaintiff sets forth allegations and facts, when taken as true, allow him to recover, the Court must deny a motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). At the hearing on the defendant's motion to dismiss, opposing counsel seemed to acknowledge that at least some of the plaintiff's claims would survive a motion to dismiss, and took the position that the complaint should be narrowed. Likewise, the Magistrate also seemed to acknowledge the complaint contained viable causes of action, but asserted the Court should not dismiss some claims and retain others. The Court seemed to indicate the case should be heard in another Court, but did not indicate which Court.

Simply put, the plaintiff stated facts that, if assumed true, allow him to recover. The complaint cites portions of Delta's terms that Delta violated, and certain fraudulent conduct Delta engaged in, which proximately caused the plaintiff to sustain damages. Cases like *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), a whole host of other cases, and the Rules of Civil Procedure all required the Magistrate to deny the defendant's motion to dismiss.

Moreover, the plaintiff set forth facts and allegations that, if assumed true, allow the plaintiff to recover under the Montreal Convention. "A circuit court must deny a motion to dismiss under Rule 12(b)(6) 'if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.' *Flateau v. Harrelson*, 355 S.C. 197, 203, 584

S.E.2d 413, 415 (Ct. App. 2003).”<sup>2</sup> “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). (Emphasis added.)

The plaintiff alleged “damage occasioned by delay,” contract non-performance, and set forth facts that more than sufficiently described the same. (See Montreal Convention Article 19: “The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.” See also, *Paradis v. Ghana Airways Ltd*, 348 F. Supp. 2d 106 (So. Dist. N.Y. (2004).) Because the law – the Montreal Convention and the cases interpreting it – allow the plaintiff to recover for the conduct described and alleged in the complaint, the Magistrate should have denied Delta’s motion to dismiss.

The plaintiff has claimed that Delta violated its own terms and engaged in conduct that proximately caused him to sustain identifiable money damages, which of course allows recovery. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). Delta reveals that it is looking for determination of a disputed fact question with what amounts to summary judgment in its favor by block quoting Delta’s terms. “Delta will exercise reasonable efforts to transport you and your bags...” Delta wants this Court, instead of a jury, to summarily decide the following fact questions:

1. Was it reasonable for Delta – to the plaintiff and thousands of other people – to unilaterally decree the plaintiff and other customers were stuck in New York for days, without any compensation for food lodging, or anything whatsoever, with no visible signs of the mysterious weather described by Delta?
2. Was it reasonable to tell the plaintiff his bags were in one location, when they were in

---

<sup>2</sup> This is a quote from *Watkins v. Hall*, Unpublished Opinion No. 2017-UP-298 (Ct. App. 2017). While *Watkins* has no precedential value, its rationale is based on *Flateau* and other binding authority.

fact on a different continent, so that the plaintiff spent hours searching for bags containing thousands of dollar's worth of equipment?

3. Was it reasonable to give the plaintiff the name of the wrong third party vendor possessing the bags, when in fact another company held the bags, so that the plaintiff spent hours looking for the bags in vain (the plaintiff never even agreed to entrust the bags to a third-party vendor, and in fact had never heard of either the company Delta told him about or the company that actually had the bags)?
4. Is it reasonable for Delta to mishandle the plaintiff's bags, causing damage and delay (which is absolutely covered under the Montreal Convention) while the plaintiff repeatedly calls Delta, trying desperately to find the bags?
5. Is the raft of other outrageous and costly conduct by Delta described in the complaint reasonable?

The reasonableness of a defendant's conduct is a fact question. *Mitchell, Jr. v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). Article I, Section 14 of the South Carolina Constitution and the Seventh Amendment of the United States Constitution **require** that a jury decide disputed facts<sup>3</sup> such as whether "Delta...exercise[d] reasonable efforts to transport [the plaintiff's] bags." Beyond that, Delta's obligation to act reasonably in the transportation of bags like the plaintiff's bags, which Delta damaged and delayed, is contained in its own terms, which must be construed against Delta as the drafter of the terms. *Mathis v. Brown & Brown of SC*, 689 S.E.2d 773 (2010).

---

<sup>3</sup> The Magistrate's dismissal of this case violated the plaintiff's State and Federal constitutional rights, including the right to Due Process, the Equal Protection Clause, specifically, the right to a jury trial under the South Carolina Constitution and the right to a jury trial under the United States Constitution. Although the Seventh Amendment has never been fully incorporated against the States, it is clear from the language of the Amendment that the jury trial guarantee contained in the Seventh Amendment applies to all controversies exceeding twenty dollars, regardless of where they are litigated. The plaintiff preserves all constitutional arguments for further appellate review.

Delta claims, citing its terms, that because cancellations were due to “weather,” it cannot be held responsible, no matter how egregious its conduct. The problem for Delta, legally speaking, is that the plaintiff has alleged the cancellation was *not* due to weather, and the plaintiff’s allegations must be taken as true *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Delta goes on to cite the portion of its terms that reads “when a passenger’s travel is interrupted for more than 4 hours...as a result of flight cancellation or delay on the date of travel other than from force majeure, Delta will provide the passenger with...hotel [and] ground transportation.” The plaintiff has alleged both that Delta did not actually cancel due to weather and that Delta did not compensate for hotel or transportation, which is required by Delta’s terms. Because the plaintiff’s allegations must be taken as true, pursuant to *Baird* and a litany of other cases, the Magistrate should have denied Delta’s motion to dismiss.

At the hearing, Delta argued, in error, that fraud is the same cause of action as breach of contract accompanied by fraudulent act. It is black letter law in South Carolina that the two causes of action are not the same, and our courts have repeatedly articulated the differences between the two. The former has nine elements, while the latter has three. *Conner v. City of Forest Acres*, 560 S.E.2d 606 (2002); *Harper v. Ethridge*, 290 S.S. 112, 348 S.E.2d 374 (Ct. App. 1986); *Sullivan v. Callhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921). If everything the plaintiff alleged is true, all nine elements of fraud are established, and the plaintiff can recover. In an event, *res judicata* requires that an issue be adjudicated in a prior suit. *Plum Creek Development v. City of Conway*, 512 S.D.2d 106 (1999). None of the plaintiff’s claims have been fully adjudicated in any suit.

**II. The case should be sent back to the Magistrate because it was a reversible error for the Magistrate to consider evidence outside the pleadings without converting the motion to dismiss to a motion for summary judgment.**

Delta styled its motion as a motion to dismiss, but it submitted and relied on materials outside the pleadings. When matters and evidence outside the pleadings are submitted and considered, a motion to dismiss must be converted to a motion for summary judgment. SCRC 12(b); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

The defendant relied on weather reports and other evidence outside of the complaint and even handed up materials at the hearing which were outside of the complaint. The plaintiff, of course, objected to the consideration of materials outside the complaint. Notwithstanding, the Magistrate considered materials outside the complaint and dismissed the plaintiff's entire case. The plaintiff set forth observational evidence in a signed pleading which directly contradicts the evidence outside of the complaint relied on by Delta. To the extent the Magistrate determined the factual disputes related to the weather, that determination is the function of a jury, and it was improper for the Magistrate to decide those disputed facts. *Kitchen Planners v. Friedman*, 892 S.E.2d 297 (2023). If the observational evidence set forth by the plaintiff and alleged in the complaint is true, then the plaintiff may recover, and resolution of fact questions and dismissal were improper.

In its motion, Delta states "Plaintiff refused to take the next available flight Delta offered him, which was scheduled to depart two days later," as if the plaintiff "refused" a valid or reasonable option. Obviously, most people, like the plaintiff, have jobs, responsibilities, and pets. In this case the plaintiff had all three, and waiting for days in New York because Delta refused to follow its own terms and cover lodging, food, or any other expenses is not a reasonable option by any standards. Besides all that, the plaintiff has offered conflicting evidence and allegations that

the Magistrate was required to take as true over Delta's inaccurate and conflicting version of the facts. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

**III. Jurisdiction is proper in the Magistrate Court, there is no requirement to litigate the case in federal court, and the Magistrate should have denied Delta's SCRCP 12(b)(1) motion to dismiss.**

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11." *Dema v. Tenet Physician Services-Hilton*, 678 S.E.2d 430 (2009). Jurisdiction over the plaintiff's claims is proper in Magistrate Court, and there is certainly no exclusive jurisdiction for federal court as to any of the claims dismissed by the Magistrate. The Magistrate Court has subject matter jurisdiction over claims related to international travel pursuant to the Montreal Convention, which does not contain any requirement that the relief it provides be sought in federal court. The Magistrate Court also has subject matter jurisdiction over any other claims which are not preempted by federal law.

The plaintiff's claims that Delta violated its own terms and engaged in conduct which proximately caused identifiable money damages is not barred or preempted. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991). "A federal statute preempts state action in fields of traditional state regulation only if the clear and manifest intent of Congress in passing the federal statute was 'to occupy the field to the exclusion of the States.'" *Medical Park OB/GYN, PA*, 467 S.E.2d 261 (Ct. App. 1996). See also, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209, 105 S.Ct. 1904, 1910, 85 L.Ed.2d 206 (1985); *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S.

707, 719, 105 S.Ct. 2371, 2378, 85 L.Ed.2d 714 (1985); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309-10, 51 L.Ed.2d 604 (1977). Not only are some of the plaintiff's claims specifically created for redress against airlines, but Delta cannot show any congressional intent for federal law to preempt them.

Delta must show a conflict between state and federal law for preemption to apply at all. *Murphy v. Nat'l collegiate Athletic Ass'n*, 584 U.S. 453 (2018); *Mutual Pharmaceutical Co. v. Bartlett*, 570 U.S. 472, 33 S. Ct. 2466, 186 L.Ed.2d 607 (2013); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992). There is no conflict between any of the laws pursuant to which the plaintiff seeks relief and any federal law, and none of the relief sought by the plaintiff has any state-created regulatory effect as to airlines. To its credit, Delta does admit that it can be held liable when it breaches one or more of its own terms. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). Because the plaintiff has alleged this as part of his suit, and because that allegation must be taken as true, that is sufficient to deny Delta's motion.

Lastly, the suggestion that the plaintiff cannot have any relief under the Uniform Declaratory Judgments Act is, honestly, absurd. As Delta knows, the Act gives this Court "the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462 (2004). There is no conflict between a statute allowing the Court to declare the rights of the parties and any federal law on which Delta relies. In fact, there is a federal analogue, which does exactly the same thing as our State Declaratory Judgments statute.

### **Conclusion**

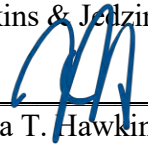
Airlines do not have absolute immunity from suit. Delta asked the Magistrate Court to ignore the fact that it violated its own terms, which is plainly actionable. Delta asked the Magistrate

Court to ignore Delta losing, damaging, and delaying luggage, which the Montreal Convention clearly provides a remedy for, that Delta unilaterally cancelled multiple flights for no contractually allowable reason, and for lying to the plaintiff, causing him to search for and chase luggage the luggage Delta lost through multiple airports with multiple third parties for days.

Neither equity nor the law (including basic contract law and the Montreal Convention) allow dismissal where the allegations of the complaint allow the plaintiff to recover.<sup>4</sup> The plaintiff therefore respectfully requests that the Court remand this case back to the Magistrate Court for trial.

Respectfully submitted,

Hawkins & Jedziniak, LLC



---

Joshua T. Hawkins, S.C. Bar No. 78470  
Helena L. Jedziniak, S.C. Bar No. 100825  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)

December 18, 2024  
Greenville, South Carolina

Attorneys for Plaintiff

---

<sup>4</sup> As previously stated, the law governing motions to dismiss required the Magistrate to deny Delta's motion to dismiss. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Doe v. Marion*, 645 S.E.2d 245 (2007), *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)

|                         |   |                               |
|-------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS  |
|                         | ) |                               |
| COUNTY OF GREENVILLE    | ) | CASE NO. 2024-CP-23-07485     |
|                         | ) |                               |
| Joshua Hawkins,         | ) |                               |
|                         | ) |                               |
| Plaintiff,              | ) | <b>CERTIFICATE OF SERVICE</b> |
|                         | ) |                               |
| vs.                     | ) |                               |
|                         | ) |                               |
| Delta Airlines,         | ) |                               |
|                         | ) |                               |
| Defendant.              | ) |                               |
|                         | ) |                               |

I, the undersigned, do affirm that I served/mailed a copy of the foregoing  
**Notice of Appeal to the Circuit Court**, to the addresses below, via Process Server, on this date,  
December 30, 2024:

**datkinson@wajlawfirm.com; bpeters@wajlawfirm.com**  
**Daniel Atkinson**  
**Brian Peters**  
**127 Dunbar Street, Suite 200**  
**Spartanburg, SC 29306**

HAWKINS & JEDZINIAK, LLC



Candie Edwards  
Paralegal

**RECEIVED**  
**Jul 21 2025**  
**SC Court of Appeals**

ELECTRONICALLY FILED - 2025 Jul 22 4:00 PM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307485

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

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondents.

Case No. 2024-CP-23-07485

**NOTICE OF APPEAL**

Joshua Hawkins appeals the Order of the Honorable Jessica A. Salvini, dated July 1, 2025, denying plaintiff's Motions to Reconsider in this case. The appellant received electronic notice of the entry of Judge Salvini's orders on July 1, 2025.

s/Joshua T. Hawkins  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
(864) 752-0911 (facsimile)  
**Attorneys for Appellant**

July 21, 2025

**RECEIVED**  
**Jul 21 2025**  
**SC Court of Appeals**

ELECTRONICALLY FILED - 2025 Jul 22 4:00 PM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307485

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

Joshua Hawkins.....Appellant,

v.

Delta Airlines.....Respondents.

Case No. 2024-CP-23-07485

**PROOF OF SERVICE**

I certify that I have served a copy of the Appellant's Notice of Appeal, electronically to the Court of Appeals, at ctappfilings@sccourts.org, and to the following attorneys of record for the Respondents to the following electronic addresses, on this date, July 21, 2025:

Wilkes, Atkinson, & Joyner, LLC  
Brian M. Peters, Jr.  
127 Dunbar Street  
Spartanburg, SC 29306  
(864)-591-2355 (Telephone)  
bpeters@wajlawfirm.com  
**Attorney for Respondents**

*s/Joshua T. Hawkins*  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
**Attorneys for Appellant**

July 21, 2025

## Paralegal

---

**From:** Josh Hawkins  
**Sent:** Monday, April 21, 2025 4:04 PM  
**To:** Brian Peters  
**Cc:** Paralegal; Sulaiman Ahmad; Dan Atkinson; Judy Saad  
**Subject:** Re: Hawkins v. Delta: RE: Courtesy NEF RE: 2024CP2307485

I don't think there is a signed proposed order. I thought that you check on that and the court said the court dismissed the case pursuant to the ruling at the hearing. That means, either no signed order exists at all or it was signed after the case was dismissed, which means its not part of the case.

Sincerely,



**Joshua T. Hawkins**  
Partner • Hawkins & Jedziniak, LLC  
Office (864) 275-8142 | Fax (864) 752-0911  
josh@hjlsc.com  
1225 South Church Street | Greenville, SC 29605  
www.hawkinsandjedziniak.com

---

**From:** Brian Peters <bpeters@wajlawfirm.com>  
**Date:** Monday, April 21, 2025 at 4:02 PM  
**To:** Josh Hawkins <josh@hjlsc.com>  
**Cc:** Paralegal <Paralegal@hjlsc.com>, Sulaiman Ahmad <ahmad@hjlsc.com>, Dan Atkinson <datkinson@wajlawfirm.com>, Judy Saad <jsaad@wajlawfirm.com>  
**Subject:** Hawkins v. Delta: RE: Courtesy NEF RE: 2024CP2307485

Good afternoon Josh,

As a reminder, at the December 3, 2024 hearing, the Magistrate Court asked for a proposed formal written Order, which we emailed to the Court on December 4, 2024 and copied you. (You objected to the Order.) Ms. Pegg advised Judge Hubbard signed the proposed Order and she mailed it out. I attach the full email chain from December 4, 2024.

I look forward to seeing you as well. Hope you all had a good Easter weekend.

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com  
www.wajlawfirm.com

**From:** Josh Hawkins <josh@hjlsc.com>

**Sent:** Monday, April 21, 2025 3:48 PM

**To:** Brian Peters <bpeters@wajlawfirm.com>; Paralegal <Paralegal@hjlsc.com>; Sulaiman Ahmad <ahmad@hjlsc.com>

**Subject:** Re: Courtesy NEF RE: 2024CP2307485

Brian,

I look forward to seeing you Thursday.

I don't remember there being a written order by the magistrate. The way I remember it, after the magistrate granted your motion, the court simply dismissed the case without an order. Am I wrong about that?

Sincerely,



**Joshua T. Hawkins**

Partner • Hawkins & Jedziniak, LLC

Office (864) 275-8142 | Fax (864) 752-0911

josh@hjlsc.com

1225 South Church Street | Greenville, SC 29605

www.hawkinsandjedziniak.com

**From:** "efiledonotreply@sccourts.org" <efiledonotreply@sccourts.org>

**Date:** Monday, April 21, 2025 at 11:01 AM

**To:** Josh Hawkins <josh@hjlsc.com>

**Cc:** Paralegal <Paralegal@hjlsc.com>

**Subject:** Courtesy NEF RE: 2024CP2307485

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

**A filing has been submitted to the court RE: 2024CP2307485**

**Official File Stamp:** 04-21-2025 11:00:47 AM

**Court:** CIRCUIT COURT

Common Pleas  
Greenville

**Case Caption:** Joshua Hawkins VS Delta Air Lines Inc

**Document(s) Submitted:** Memo/Memo in Support

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

**Filed by or on behalf of:** Brian Michael Peters, Jr.

This notice was automatically generated by the Court's auto-notification system.

---

**The following people were served electronically:**

Brian Michael Peters, Jr. for Delta Air Lines Inc  
Helena LeeAnn Jedziniak for Joshua Hawkins  
Joshua Thomas Hawkins for Joshua Hawkins  
Charles Daniel Atkinson for Delta Air Lines Inc

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

East Greenville Summary Court for Delta Air Lines Inc

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

## Paralegal

---

**From:** Brian Peters <bpeters@wajlawfirm.com>  
**Sent:** Wednesday, December 4, 2024 1:19 PM  
**To:** Pegg, Denise  
**Cc:** Judy Saad; Dan Atkinson; Josh Hawkins; Helena Jedziniak; Paralegal  
**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

Good afternoon Ms. Pegg,

Thank you for the update. We will be on the lookout for a copy of the signed Order.

(I have copied Plaintiff's counsel to this email.)

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com  
www.wajlawfirm.com

---

**From:** Pegg, Denise  
**Sent:** Wednesday, December 4, 2024 1:17 PM  
**To:** Brian Peters  
**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

I have provided Judge Hubbard with the papers that were emailed. I will mail a copy of the signed Order.

Michelle Pegg  
East Greenville Summary Court  
320 W. Main Street  
Taylors, SC 29687  
864-467-4625

---

**From:** Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>  
**Sent:** Wednesday, December 4, 2024 1:03 PM  
**To:** Pegg, Denise <[DPegg@greenvillecounty.org](mailto:DPegg@greenvillecounty.org)>  
**Cc:** Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>; Dan Atkinson <[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)>; [josh@hjlsc.com](mailto:josh@hjlsc.com); Helen Jedziniak

<[Helena@hjlsc.com](mailto:Helena@hjlsc.com)>; Paralegal <[Paralegal@hjlsc.com](mailto:Paralegal@hjlsc.com)>

**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good afternoon Ms. Pegg,

I understand. We were unsure whether the Judge would still like a formal written Order, given the dismissal entry in the docket (attached). We will be on the lookout for the Judge's entry of a formal Order. Thanks again for your help. Enjoy the rest of your week.

(I have copied Plaintiff's counsel to this email.)

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)  
[www.wajlawfirm.com](http://www.wajlawfirm.com)

---

**From:** Pegg, Denise <[DPegg@greenvillecounty.org](mailto:DPegg@greenvillecounty.org)>

**Sent:** Wednesday, December 4, 2024 12:42 PM

**To:** Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>

**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

I did not tell Judy that the judge would not receive the papers. I just told her that the case was dismissed was reflected in the central index.

Michelle Pegg  
East Greenville Summary Court  
320 W. Main Street  
Taylors, SC 29687  
864-467-4625

---

**From:** Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>

**Sent:** Wednesday, December 4, 2024 11:34 AM

**To:** Pegg, Denise <[DPegg@greenvillecounty.org](mailto:DPegg@greenvillecounty.org)>

**Cc:** Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>; Dan Atkinson <[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)>; [josh@hjlsc.com](mailto:josh@hjlsc.com); Helen Jedziniak <[Helena@hjlsc.com](mailto:Helena@hjlsc.com)>; Paralegal <[Paralegal@hjlsc.com](mailto:Paralegal@hjlsc.com)>

**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good morning Ms. Pegg,

Thank you for the update. At the hearing, Judge Hubbard requested Defendant submit a proposed formal Order. If Judge Hubbard does not intend to enter a formal order, please advise. (Plaintiff's counsel is copied to this email.) Thank you.

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)  
[www.wajlawfirm.com](http://www.wajlawfirm.com)

---

**From:** Pegg, Denise <[DPegg@greenvillecounty.org](mailto:DPegg@greenvillecounty.org)>

**Sent:** Wednesday, December 4, 2024 11:17 AM

**To:** Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>

**Subject:** RE: 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

Judy

This case has already been dismissed and is reflected in the central index.

Thank you,  
Michelle Pegg  
East Greenville Summary Court  
320 W. Main Street  
Taylors, SC 29687  
864-467-4625

---

**From:** Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>

**Sent:** Wednesday, December 4, 2024 11:12 AM

**To:** Pegg, Denise <[DPegg@greenvillecounty.org](mailto:DPegg@greenvillecounty.org)>

**Cc:** Dan Atkinson <[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)>; 'josh@hjlsc.com' <[josh@hjlsc.com](mailto:josh@hjlsc.com)>; 'Helena Jedziniak' <[Helena@hjlsc.com](mailto:Helena@hjlsc.com)>; 'Paralegal' <[Paralegal@hjlsc.com](mailto:Paralegal@hjlsc.com)>; Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>  
**Subject:** 24-2415: Joshua Hawkins v Delta Air Lines, Inc.: Defendant's Proposed Order

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Denise,

Please see attached correspondence to Judge Hubbard from Attorney Brian Peters, Defendant's proposed Order dismissing Complaint in Word format, and Certificate of Service in the above matter.

A hard copy is also being mailed to you and Plaintiff's attorney.

Thank you,  
Judy Saad

**CONFIDENTIALITY NOTICE:** *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

**CONFIDENTIALITY NOTICE:** *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

**CONFIDENTIALITY NOTICE:** *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

## Paralegal

---

**From:** Josh Hawkins  
**Sent:** Friday, December 19, 2025 5:56 PM  
**To:** Brian Peters  
**Cc:** Judy Saad; Jackie Taylor; Dan Atkinson; Helena Jedziniak; Paralegal; Sulaiman Ahmad  
**Subject:** Re: Hawkins v. Delta appeal

Brian did you get an order mailed to you or not? We don't have any record of that ever happening, so I assume you didn't get one in the mail. This isn't a trick or a ploy or anything other than me trying to make sure that is correct. Based on your last email, you didn't get one. If that's wrong, tell me. Otherwise I am going to say it's uncontested that neither party received a copy in the mail, because that's the truth.

Sincerely,

Joshua T. Hawkins  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Phone: (864) 275-8142  
Fax: (864) 752-0911

On Dec 19, 2025, at 5:37 PM, Brian Peters <bpeters@wajlawfirm.com> wrote:

Josh,

Your email is a fundamental mischaracterization of what I wrote. There is no obligation on Delta to set forth any facts/submit evidence in this appeal.

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com  
www.wajlawfirm.com

---

**From:** Josh Hawkins <josh@hjllcsc.com>  
**Sent:** Friday, December 19, 2025 5:29 PM  
**To:** Brian Peters <bpeters@wajlawfirm.com>  
**Cc:** Judy Saad <jsaad@wajlawfirm.com>; Jackie Taylor <jptaylor@wajlawfirm.com>; Dan Atkinson <datkinson@wajlawfirm.com>; Helena Jedziniak <Helena@hjllcsc.com>; Paralegal <Paralegal@hjllcsc.com>; Sulaiman Ahmad <ahmad@hjllcsc.com>  
**Subject:** Re: Hawkins v. Delta appeal

Ok so yall did not get a copy of the judgment mailed to yall either. Thank you for confirming, and if I got anything wrong, or if you find any evidence that the magistrate court ever mailed the filed order to the parties, please let me know.

Merry Christmas!

Sincerely,

Joshua T. Hawkins  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Phone: (864) 275-8142  
Fax: (864) 752-0911

On Dec 19, 2025, at 5:08 PM, Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)> wrote:

Good afternoon Josh,

First, we are unsure the procedural relevance of your questions/requests at this stage of a second level of appeal. Delta's Motion to Dismiss the appeal remains pending, and such Motion to Dismiss is based on your failure to file an Initial Brief before the Court's deadline. Fact questions about the proceedings from which you appeal are not relevant to the Court/Clerk's analysis there. *See* Rule 208(a)(4), SCACR ("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.") (emphasis added). We do not agree that you can raise "new" facts or submit evidence on appeal.

Second, as to the merits, which are not ripe for the Court of Appeals' review, we dispute the premise of your questions. The relevant issue was whether you had "written notice of the judgment" itself under Rule 18(a), SCRMC. You admitted in your filings with the Court that you had written notice of the dismissal as of December 4, 2024. According to the Magistrate's Return, the

Magistrate Court did not receive your Notice of Appeal (to the Circuit Court) until January 6, 2025—days after the deadline. We refer you to Footnotes 2 and 3 of Delta’s June 6, 2025 Brief in Opposition to Appellant’s Motion to Reconsider, filed in the Circuit Court, along with Exhibit A to that Brief. (I attach those filings here for your convenience.)

Last, there is no “discovery” in this appeal. Again, however, please refer to the email we attached as Exhibit 1 Delta’s June 6, 2025 Brief in Opposition to Appellant’s Motion to Reconsider.

Sincerely,  
Brian

**Brian M. Peters, Jr.**



864.591.2355 Spartanburg  
843.737.6229 Charleston

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
320 Broad St. | Ste 220 | Charleston, SC 29401

bpeters@wajlawfirm.com  
www.wajlawfirm.com

---

**From:** Josh Hawkins <[josh@hjlsc.com](mailto:josh@hjlsc.com)>

**Sent:** Friday, December 19, 2025 10:06 AM

**To:** Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>; Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>;  
Helena Jedziniak <[Helena@hjlsc.com](mailto:Helena@hjlsc.com)>; Paralegal <[Paralegal@hjlsc.com](mailto:Paralegal@hjlsc.com)>; Sulaiman  
Ahmad <[ahmad@hjlsc.com](mailto:ahmad@hjlsc.com)>

**Subject:** Re: Hawkins v. Delta appeal

Brian,

I never heard back from you on this.

Do you or anyone in your office have any proof or documentation that the Magistrate ever:

1. Provided any order as an attachment to an email?
2. Mailed a copy of the order to either of us?

I don’t want to misstate anything, but it appears that after you sent a copy of your proposed order, Ms. Pegg at the Magistrate Court emailed back and said that the Court would mail the signed order. We do not see where the Magistrate Court ever delivered that order to either of us.

I don't want to misstate anything, so please let me know if there was ever a time the Magistrate Court emailed an order or mailed an order. If we do not hear back from you on this, we will reference this email in our filings so that the Court of Appeals can see that we did our due diligence on this crucial issue.

Sincerely,

Joshua T. Hawkins  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Phone: (864) 275-8142  
Fax: (864) 752-0911

---

**From:** Josh Hawkins <[josh@hjlsc.com](mailto:josh@hjlsc.com)>  
**Date:** Thursday, December 18, 2025 at 2:06 PM  
**To:** Brian Peters <[bpeters@wajlawfirm.com](mailto:bpeters@wajlawfirm.com)>, Judy Saad <[jsaad@wajlawfirm.com](mailto:jsaad@wajlawfirm.com)>, Helena Jedziniak <[Helena@hjlsc.com](mailto:Helena@hjlsc.com)>, Paralegal <[Paralegal@hjlsc.com](mailto:Paralegal@hjlsc.com)>, Sulaiman Ahmad <[ahmad@hjlsc.com](mailto:ahmad@hjlsc.com)>  
**Subject:** Hawkins v. Delta appeal

Brian,

I hope you are well.

Can you please forward me the email from the Magistrate Court from Dec. 4, 2024, which you contend has a copy of the order attached to it? In searching our emails, neither Candie nor I can find any email where the Court emailed a copy of the order.

We have the email where your office sent the proposed order and we have the email where Ms. Pegg says she will mail the order, but we cannot find, anywhere, an email where the Court emailed the order.

Sincerely,

Joshua T. Hawkins  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Phone: (864) 275-8142  
Fax: (864) 752-0911

<6. Memo in Oppositon to Appellant's Motion to Reconsider 6-6-25.pdf>  
<6a. Exhibit 1.pdf>