

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

RECEIVED
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SC COURT OF APPEALS

APPELLANT CASE NO.: 2013-000807

Jane Doe, as Guardian for John Doe.....Appellant

v.

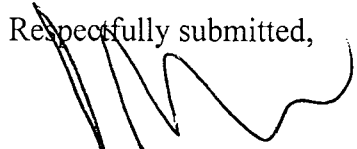
Doni RhinehartRespondent

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the Defendant hereby moves to dismiss the appeal of the Plaintiff as Plaintiff has not complied with the instructions of the clerk dated December 5, 2013 requiring her to submit to the court the Record of Appeal within 10 days. Upon information and belief, the Plaintiff has still not filed the Record on Appeal.

This motion is based upon the South Carolina Rules of Appellate Procedure, South Carolina case law and the attached Memorandum to the Court.

Respectfully submitted,



James P. Walsh (S.C. Bar No. : 15180)

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ATTORNEY FOR RESPONDENT

December 27, 2013

THE STATE OF SOUTH CAROLINA
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The Honorable J. Derham Cole, Circuit Court Judge

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v.

Doni RhinehartRespondent

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

PROCEDURAL BACKGROUND

This is an appeal from the order of the Honorable J. Derham Cole filed March 14, 2013 granting Respondent’s motion for summary judgment. Appellant filed a Notice of Intent to Appeal on April 18, 2013.

On June 26, 2013, Appellant filed a motion to be allowed to file her initial brief out of time¹. On July 2, 2013 this Court issued an order allowing the Appellant until July 12, 2013 to file her brief. The Appellant missed this deadline, and the Appellant filed a second motion to file her brief late on July 22, 2013, which was granted by the Court. Appellant ultimately filed her initial brief on July 25, 2013, along with her designation of matter. Respondent timely filed her initial brief and designation on August 27, 2013. On September 23, 2013 the Appellant again filed a motion to be allowed to file her initial

¹ According to the motion filed by Appellant, her brief was due June 5, 2013.

reply brief out of time. Appellant filed her initial reply brief with the motion, but did not file a Record on Appeal.

On November 14, 2013, the court issued an order dismissing the appeal on the grounds that the Appellant had failed to serve a Record on Appeal. On November 25, 2013 Appellant filed a motion to reinstate the appeal which was granted by order of this court dated December 5, 2013. In that order, the Court gave the Appellant 10 days to file his Record on Appeal. To date, the Appellant has not filed a Record on Appeal.

LEGAL ARGUMENT

SCRAP 210 provides that within 30 days after service of the last brief, the appellant shall serve a copy of the Record of Appeal on each party who has served a brief. It is undisputed that the Appellant did not serve the Record on Appeal within 30 days of her initial reply brief filed September 23, 2013. Despite Appellants failure to timely file his initial Appellant's brief and his initial reply brief, or to ever file a Record on Appeal, the court gave the Appellant until December 16, 2013 to file the Record on Appeal. As of the date of this motion, Respondents have still not received the Record on Appeal.

CONCLUSION

The Appellant has missed every deadline set forth in the South Carolina Appellate Court Rules. The Respondent requests that this case be dismissed for failure to prosecute the appeal and that the costs of this appeal be awarded in her favor.

Respectfully submitted,

Clarkson, Walsh, Terrell & Coulter, P.A.

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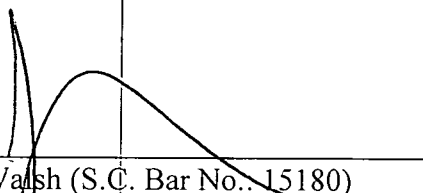
v.

Doni Rhinehart.....Respondent

PROOF OF SERVICE

I certify that I have served a copy of **Respondent's Motion to Dismiss and Memorandum in Support of Motion to Dismiss** upon all counsel of record by depositing a copy of the same in the United States mail, First Class, in an envelope with due and proper postage affixed thereto, addressed as shown below this 27th day of **December, 2013**.

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