

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas

Honorable Judge George M. McFaddin, Jr., Circuit Court Judge

Honorable Judge Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000201

Cheryl Carter, Pro Se..... Appellant,

v.

McElveen Buick GMC, Inc. Respondent.

**APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL, OR IN THE ALTERNATIVE, FOR SANCTIONS AND TO COMPEL
COMPLIANCE**

INTRODUCTION

This is Respondent's third attempt in four months to end this appeal on procedural grounds rather than on the merits. This Court has already denied Respondent's original Motion to Dismiss and granted Appellant leave to order the transcript out of time by Order dated March 30, 2026, and denied Respondent's Motion for Reconsideration of that Order on May 6, 2026. Respondent's present motion recycles the same theme, that Appellant's diligent, if imperfect, efforts to obtain a

transcript and prosecute this appeal pro se amount to grounds for dismissal, and it should be denied for the same reasons the prior motions were denied.

Dismissal is the most severe sanction available to this Court and is reserved for a demonstrated pattern of willful disobedience or gross indifference to the rights of the opposing party, not for a self-represented litigant's good-faith, ongoing efforts to comply with transcript-ordering procedures complicated by third-party delay. See Orlando v. Boyd, 320 S.C. 509, 511-12, 466 S.E.2d 353, 355 (1996) (sanction having the effect of dismissal requires some showing of willful disobedience or gross indifference to the rights of the adverse party). The record here reflects the opposite of indifference: repeated transcript orders, a status update filed in direct response to this Court's May 6 directive, and a timely Designation of Matter incorporating the transcripts into the record.

To the extent any technical gaps remain, Appellant is curing them immediately, as set out in the contemporaneously filed Notice of Compliance and Re-Service of Initial Brief. As explained below, Appellant's Certificate of Service, already on file, establishes that service on Respondent's counsel was complete under Rule 262(c)(2), SCACR, when Respondent's counsel mailed her copy of this motion, and no curable, non-prejudicial procedural issue warrants dismissal of an appeal that this Court has already found has enough merit to proceed.

STATEMENT OF FACTS

Appellant has pursued the transcript(s) needed for this appeal since shortly after filing her Notice of Appeal, ordering transcripts on multiple occasions (February 10, March 3, March 5, March 10, March 20, March 25, April 12, and May 5, 2026) as she worked through delays with the court reporter and Court Administration that were outside her control.

By Order dated March 30, 2026, this Court denied Respondent's motion to dismiss and granted Appellant's motion to order the transcript out of time, expressly noting that documentation on file showed Appellant had already ordered the transcript. Respondent moved for reconsideration of that Order on April 10, 2026, and separately moved to dismiss the appeal as frivolous the same day. This Court denied reconsideration on May 6, 2026, leaving the March 30 Order, and its finding that Appellant was diligently pursuing the transcript, undisturbed.

With respect to the most recently ordered transcript, of the August 12, 2025 hearing (Transcript Request ID 142497386), Appellant has since confirmed that no such transcript exists. Upon ordering it, Appellant received an out-of-office reply from the court reporter. Upon the reporter's stated return date, Appellant followed up and was told that, due to the reporter's backlog, the matter would be assigned to a co-worker; Appellant was never contacted by that co-worker.

On June 8, 2026, Appellant filed a Notice Regarding Status of Transcript Request, describing this history and her ongoing correspondence with the court reporter and Court Administration, in direct response to this Court's transcript-notification directive. Respondent's Counsel was provided a copy of this Notice with Certificate of Service. The Court did not respond.

Appellant made a further attempt to contact the court reporter and received a written response confirming that there is no record of a transcript for the August 12, 2025 hearing. Appellant's further inquiry, corroborated by the record of the Court of Common Pleas, established the reason: Respondent's counsel had filed a Motion for Leave due to a death in counsel's immediate family, which was granted the day before the August 12, 2025 hearing. The Honorable Judge McCutchen, who presided at that hearing, confirmed this to Appellant directly, as she was not informed of the Counsel's Motion for Leave. Because no transcript of that hearing exists, and

because it is not necessary to the issues on appeal, Appellant did not include it in her Designation of Matter.

On July 10, 2026, the Clerk sent Appellant a letter addressing the status of the transcript and stating that the Court had not yet received Appellant's Initial Brief. Appellant responded promptly: she mailed a copy of the Initial Brief to Respondent's counsel by U.S. Mail on July 12, 2026, two days after the Clerk's letter, and mailed a copy to the Court of Appeals by UPS, with tracking, on July 13, 2026, three days after the Clerk's letter. The Court received and docketed the Initial Brief on July 15, 2026.

On July 16, 2026, the Court issued a deficiency letter because the brief was not accompanied by a designation of matter, giving Appellant ten days to cure. Appellant filed her Designation of Matter on July 22, 2026, within that ten-day window, listing the transcripts that exist and are relevant to the appeal as part of the record on appeal, consistent with Rule 209(b), SCACR, which limits a designation to matter relevant to the appeal.

Appellant served her Initial Brief on Respondent's counsel by U.S. Mail, first-class postage prepaid, on July 12, 2026. Her Certificate of Service, filed with the Initial Brief, certifies that she deposited a true and correct copy of the brief in the United States Mail, first-class postage prepaid, addressed to Respondent's counsel, Victoria W. Kurtz, Esq., at Johnston Law, LLC. The mailing label reflects postage of \$3.72 paid at the time of mailing. Appellant separately mailed a different copy of the same brief to the Court of Appeals by UPS, with tracking, on July 13, 2026, which the Court received and docketed on July 15, 2026. Since Respondent filed the present motion, Appellant has received back the envelope addressed to Respondent's counsel; it bears a Postal Service notation reflecting a reassessed amount of \$4.18, a difference of \$0.46 from the

postage originally paid, and is endorsed "Refused" and returned to sender. It is the same envelope Respondent's Motion describes as the subject of an attempted delivery at its office on July 21, 2026. Nonetheless, and without conceding any defect in her service on Respondent's counsel, Appellant is re-serving the Initial Brief today by an additional, verifiable method, as set out in her contemporaneously filed Notice of Compliance and Re-Service of Initial Brief, and will provide the Court with proof of delivery.

ARGUMENT

I. Dismissal Is Not Warranted for Any Alleged Violation of the Court's May 6 Order, Because No Transcript of the August 12, 2025 Hearing Ever Existed, Through No Fault of Appellant.

Respondent argues that Appellant failed to "immediately notify the Court" upon receipt of the transcript. That argument assumes a transcript existed to be received. It did not. Appellant has now confirmed, after months of diligent effort documented in the record, including enduring the court reporter's backlog, a promised reassignment to a co-worker that never materialized, and a formal status filing that went unanswered, that no transcript of the August 12, 2025 hearing was ever produced. The reason, as Appellant later learned directly from the Honorable Judge McCutchen, who presided at that hearing, and as corroborated by the record of the Court of Common Pleas, is that Respondent's own counsel obtained a Motion for Leave, and the Order of Protection was granted the day before the hearing due to a death in counsel's immediate family.

Appellant cannot be found to have violated a directive to notify the Court "upon receipt of the transcript" by failing to report the receipt of something that was never produced, particularly where Appellant filed a status update on June 8, 2026, in direct response to the May 6 Order, and where the ultimate reason no transcript exists traces back to circumstances involving Respondent's own counsel by failing to notify the Appellant of the Notice of Leave. This is a

record of sustained, good-faith effort to comply with the Court's directives in the face of a transcript that could not be obtained because it never existed, not the kind of willful disobedience or gross indifference that Orlando v. Boyd requires before a sanction with the effect of dismissal may be imposed.

Under Rule 260(a), SCACR, involuntary dismissal by the clerk is a mechanism for an appellant's failure to comply with the Rules, not a tool to punish a pro se appellant who has repeatedly attempted compliance despite delays attributable to a third-party court reporter and the transcript-production process itself, delays this Court has already recognized once in granting Appellant leave to order the transcript out of time.

II. Dismissal Is Not Warranted for Any Rule 207(a)(1) Correspondence Issue.

Rule 207(a)(1), SCACR, requires contemporaneous service of transcript-related correspondence on the Court, Court Administration, the Clerk, and opposing counsel. Appellant has filed status updates addressing her transcript request, including the June 8, 2026 Notice describing her correspondence with the court reporter, and, as set out in the accompanying Notice of Compliance, is providing the Court with the court reporter's written confirmation that no transcript of the August 12, 2025 hearing exists and will continue to copy Respondent's counsel, the Clerk, and Court Administration on any further transcript correspondence going forward. The Respondent was provided a copy of this Notice with Certificate of Service. Therefore, the Respondent's argument of the Appellant's failure to notify the Court is without merit and bad-faith. Any gap in strict, contemporaneous copying does not rise to the level of willful disobedience warranting dismissal, particularly where the underlying transcript request was itself timely and repeatedly pursued, and where the transcript ultimately proved never to have existed for reasons outside Appellant's control.

III. Dismissal Is Not Warranted for Any Alleged Service Deficiency, Because Appellant's Certificate of Service Establishes Proper Service Was Already Made, and the Returned Envelope Confirms It.

Appellant's Certificate of Service, filed with her Initial Brief, certifies that she served Respondent's counsel by depositing a true and correct copy of the brief in the United States Mail, first-class postage prepaid, addressed to Victoria W. Kurtz, Esq., Johnston Law, LLC, 361 N. Shelmore Blvd., Mt. Pleasant, SC 29464, on July 12, 2026. That certification satisfies Rule 262(c)(2), SCACR, under which service by mail is complete upon mailing. Service on Respondent's counsel was therefore already complete and effective as a matter of law on July 12, 2026.

Respondent's Motion asserts that the certificate is accompanied by UPS labels and delivery information for a package addressed to the Court rather than proof of service on Respondent. Appellant's Certificate of Service, however, contains no reference to UPS or to any mailing addressed to the Court; it certifies only the U.S. Mail service on Respondent's counsel described above. Both mailings were sent within days of each other, on July 12 and July 13, 2026, in direct response to the Clerk's July 10, 2026 letter noting that the Court had not yet received the Initial Brief. To the extent Respondent's Motion refers to UPS or delivery information addressed to the Court, that information relates to the separate July 13 mailing and does not appear in, or undermine, Appellant's Certificate of Service. It is questionable how the Respondent came to the conclusion that the Brief was mailed to the Court via UPS when the Appellant provided no mention of utilizing UPS services. Only the Court would know that information.

Respondent's Motion also describes an attempted delivery at its office on July 21, 2026, in which an employee was asked to pay postage due to receive a piece of mail from Appellant and did not do so, after which the piece was to be returned to sender. Appellant has since received that

envelope back, attached as Exhibit A to Appellant's contemporaneously filed Notice of Compliance and Re-Service of Initial Brief. It is the same envelope described in Respondent's Motion, addressed to Respondent's counsel and endorsed by the United States Postal Service "Refused," not returned as undeliverable or misaddressed. The envelope reflects that Appellant paid \$3.72 in postage at the time of mailing and that the Postal Service later reassessed the piece at \$4.18, a difference of \$0.46, which is the amount Respondent's employee was asked to pay and declined. The reassessment was after the package was mailed and out of the Appellant's control as to any knowledge of insufficient postage, as she paid the total postage due at the time of mailing.

That envelope corroborates Appellant's Certificate of Service rather than contradicting it: it confirms that Appellant paid postage in a good-faith amount at the time of mailing, that the Initial Brief was properly addressed to Respondent's counsel, and that it was physically tendered for delivery by the Postal Service. A \$0.46 shortfall of the kind commonly assessed on hand-addressed or nonmachinable envelopes is not evidence that Appellant failed to attach sufficient postage in any meaningful sense, and it was Respondent's own office, not Appellant, that chose not to pay the difference and accept a filing in its own pending appeal. Respondent cannot rely on its own refusal of a properly addressed, substantially prepaid mailing to establish that Appellant failed to serve it. Unlike service of a summons and complaint by certified mail under Rule 4(d)(8), SCRCp, which requires service to be made by another method where delivery is refused, Rule 262(c)(2), SCACR, which governs service of papers in a pending appeal, contains no comparable requirement; it provides only that the mailing be properly addressed with sufficient postage, and that service is complete upon mailing. That standard was

met on July 12, 2026, and Respondent's subsequent refusal of the piece over a \$0.46 shortfall does not unmake service that was already complete.

Nonetheless, out of an abundance of caution, Appellant is re-serving the Initial Brief on Respondent's counsel today by an additional, verifiable method, as set out in her contemporaneously filed Notice of Compliance and Re-Service of Initial Brief, and will file proof of delivery, along with the returned envelope, with the Court.

Courts do not relax the rules of procedure for pro se litigants, but the severity of the sanction Respondent seeks, dismissal of an appeal this Court has already allowed to proceed twice, cannot rest on a service defect that the record, properly read, does not show, and that Respondent's own office brought about. A party that instructs its own staff to decline a properly addressed, substantially prepaid piece of mail is not well positioned to ask this Court to dismiss the sender's appeal for failing to serve it.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellant respectfully requests that the Court:

1. **Deny** Respondent's Motion to Dismiss Appeal in its entirety;
2. **Deny** Respondent's alternative request for sanctions; and
3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this 20th day of July, 2026.


Cheryl Carter, Pro Se
Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2026, I served a copy of the foregoing Response in Opposition on Respondent's counsel of record, Victoria W. Kurtz, Esq., Johnston Law, LLC, 361 N. Shelmore Blvd., Mt. Pleasant, SC 29464, by USPS Certified Mail and Email: Victoria@JohnstonLawSC.com


Cheryl Carter, Pro Se

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