

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAY 20 2015

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Court Judge

Case No. 14-ALJ-30-256-AP

Lake City College Preparatory Academy,..... Appellant,

v.

South Carolina Public Charter School District,..... Respondent.

**RETURN TO MOTION TO REINSTATE APPEAL AND  
TO ALLOW THIRTY DAYS TO FILE FINAL BRIEFS**

Rule 260 of the South Carolina Appellate Court Rules requires that Appellant show good cause for its appeal to be reinstated. It has abjectly failed to do so in this case based on its history of disregard for court deadlines and Orders by both this Court and the Administrative Law Court. Therefore, this Court must deny the petition and remit the appeal to the Administrative Law Court.

**Procedural History**

Appellant was a charter school authorized to operate pursuant to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act"). In accordance with the Act, the South Carolina Public Charter School District Board of Trustees ("Board") issued a Final Decision revoking the Charter on May 23, 2014.

Appellant timely appealed the Final Decision to the Administrative Law Court ("ALC"). Appellant also sought and received an Order from the ALC expediting the appeal. However, Appellant missed its deadline to file its brief before the ALC. The ALC nonetheless allowed the appeal to continue and, following oral argument, affirmed the Final Decision by Order dated October 9, 2014.

Appellant then timely filed the instant appeal from the ALC's Order on November 7, 2014. Contemporaneous with the Notice of Appeal, Appellant filed a Motion to Expedite the Appeal and to Return Funds. Appellant did not notify the Court that no transcript would be required, even though it knew, or should have known, that no court reporter was present at the prior oral argument. Respondent's filed a Return to the Motion on November 21, 2014 taking no position as to the request to expedite and objecting to the request to return funds to Appellant.

Because no transcript was made of the proceedings before the ALC, Appellant's initial brief was due on December 8, 2014 under S.C. App. Ct. R. 208(a)(1). Appellant failed to timely file its initial brief on December 8, even though it had requested an order expediting the briefing schedule.

On December 12, 2014, Respondent filed a Motion to Dismiss based on Appellant's failure to file its initial brief as required by the Rules. On the same date, this Court issued an Order granting the Appellant's request to expedite and denying the request to return funds. The Order stated "[n]o extensions will be granted absent extraordinary circumstances." The Order did not establish a briefing schedule, instead noting a briefing schedule would be set when the transcript was received. However, as

noted in Respondent's Motion to Dismiss, no transcript of the proceedings below was made and Appellant had already missed its deadline to file its initial brief.

On December 23, 2014, approximately forty-five days after the Notice of Appeal and Motion to Expedite was filed, Appellant's counsel wrote the Court to inform it for the first time that no transcript of the oral argument was made. This correspondence was well past the deadline for Appellant to make arrangements regarding the transcript under S.C. App. Ct. R. 207, which provides that the Appellant must make arrangements *in writing* with the administrative tribunal regarding the transcript "within ten (10) days after the service of the notice of appeal."

On January 7, 2015, this Court issued an Order denying Respondent's Motion to Dismiss and establishing deadlines for briefing in this case. Specifically, the Order noted that the following briefing schedule should be followed "to enable this court to hear the case in time to render a decision before the 2015-2016 school year:"

- Appellant's initial brief due: January 22, 2015;
- Respondent's initial brief due: February 23, 2015;
- Appellant's reply brief due: March 2, 2015; and
- Record on appeal due: twenty days after service of last brief.

Appellant timely filed its initial brief, as did Respondent. However, on February 26, 2015, counsel for Appellants sent a handwritten facsimile to this Court stating as follows: "Please be advised that I am I [sic] trial in Federal Court and will be in trial next week as well. I need the scheduled matters in the referenced cases continued for at least 30 days. The other attorneys have consented." The federal court trial referenced by

Appellant's counsel, *U.S. v. Benita Dinkins-Robinson*, began on February 23, 2015 and concluded on approximately March 12, 2015.

Appellant's request for a continuance, which was not served on Respondent, has never been granted or otherwise ruled on. Even if the request had been granted, Appellant's reply brief or, alternatively, the Record on Appeal, would have been due on April 1, 2015. Appellants did not file either a reply brief or the Record on Appeal by this date.

On April 15, 2015, this Court sent a letter to Appellant's counsel advising Appellant that it had failed to timely file the Record on Appeal, and directed Appellant to file it within ten days of the letter. On April 27, 2015, Appellant filed an untimely reply, but failed to file the Record on Appeal as directed by this Court.

On April 29, 2015, this Court entered an Order dismissing the appeal because of Appellant's failure to file the Record on Appeal as required. Appellants filed the Record on Appeal on May 13, 2015, and filed a Motion to Reinstate on May 14, 2015. As set forth below, Appellants have failed to show good cause for reinstating the appeal.

#### **Discussion**

Rule 260(a), SCACR, provides that “[a] case **shall not** be reinstated except by leave of court, **upon good cause shown**, after notice to all parties.” (emphasis added). Appellants’ petition fails to establish good cause to reinstate the appeal. In the petition, Appellants argue reinstatement is proper because “[a]fter three weeks trial [sic] and months of preparation, attorney Watson, a sole practitioner, had many pending matters to catch up on and he proceeded to resolve those matters until the clerk's letter of April 15,

2015." This is insufficient to establish good cause in this case and is further based on factual and legal inaccuracies.

First, while Mr. Watson is a sole practitioner, Appellant is also represented by a law firm with approximately twelve lawyers, Willcox Buyck and Williams, P.A. Counsel from Willcox Buyck and Williams appeared and participated in the hearing before the Board, the ALC and is counsel of record in this appeal.

Second, Appellant has not offered good cause for failing to meet this Court's deadlines in this case. Even if Appellant's requested continuance had been granted such that either its Reply or the Record on Appeal was due by April 1, Appellants failed to meet this deadline. Further, Appellant admitted in its Motion to Reinstate that it took no action to prosecute its appeal until it received correspondence from this Court on April 15. Appellant's participation in the federal court trial is of no moment here. The referenced trial, in which Mr. Watson was co-counsel with another lawyer, ended on approximately March 13, more than a month before he received correspondence from this Court.

Third, after receiving this Court's April 15 letter directing it to file the Record on Appeal, Appellant refused to comply. Instead, Appellant filed an untimely reply and attempted to unilaterally obtain thirty more days to file the Record on Appeal. Upon receipt of this correspondence flouting this Court's prior Orders and directives, this Court correctly dismissed the appeal.

Fourth, Appellant's actions in this matter are a thinly-veiled effort to delay an appeal that they previously wished to expedite. Not only do they wish to reinstate the

appeal, but Appellants also are asking for an additional thirty days to file Final Briefs, which is ten days longer than the time allowed by Rule 211, SCACR.

At the time Appellant requested to expedite the appeal, it was operating as a private school and still holding all assets it bought using federal and state money. Appellant, funded almost entirely with public money, has steadfastly refused to allow Respondent, who is statutorily charged with oversight of Appellant's activities, to review any of its financial records. Appellant stated its intent to continue operating as a public school if successful on appeal.

After Appellant has filed its appeal, it ceased operating as a school. Respondent became concerned about the waste of government assets during the pendency of these proceedings. Respondent therefore moved the ALC for an Order requiring Appellant to (1) transfer its assets to Respondent to prevent waste during the appeal and (2) allow Respondent to review Appellant's financial records. The ALC has informed the Parties that it will grant Respondents' motion, but has not issued a written order yet. Appellant has transferred substantially all of its tangible assets to Respondent, but Counsel for Appellant has indicated that Appellant will continue to resist turning over its financial records as long as the appeal is pending. If the ALC's Order affirming the decision to revoke the Charter of Appellant is affirmed on appeal, all assets of Appellant, other than certain restricted gifts, become property of Respondent as a matter of law. *See* S.C. Code Ann. § 59-40-120.

The reason Appellant now wishes to delay a final determination of this appeal and continues to resist turning over its financial records is apparent when placed in context of the federal court trial referenced in the Motion to Reinstate. The Defendant in that trial,

Benita Dinkins-Robinson, was director of a former charter school. The jury found Dinkins-Robinson guilty of stealing government funds and found more than \$750,000 of Dinkins-Robinsons' property was subject to forfeiture.<sup>1</sup> Dinkins-Robinson works for Appellant's counsel, and even participated in the administrative hearing before the Board on behalf of Appellant as an assistant to Appellant's counsel. Further, Appellant uses the same accounting service that Dinkins-Robinson used while she was director of a charter school, and which provided testimony adverse to Dinkins-Robinson during the federal court trial regarding the destruction of records by the charter school operated by Dinkins-Robinson. Therefore, it appears Appellant now wishes to delay the appeal in order to avoid or delay disclosing its financial records to Respondent.

Based on the above, Appellant has failed to come forward with good cause as to why it missed court-mandated deadlines in this expedited appeal. As such, Rule 260, SCACR, mandates that this Court deny the Motion to Reinstate and remit this appeal to the ALC.

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<sup>1</sup> Dinkins-Robinson has filed an appeal and sentencing has not yet occurred.

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May 20, 2015.

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**STATE OF SOUTH CAROLINA  
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APPEAL FROM ADMINISTRATIVE LAW COURT

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Case No. 12-ALJ-30-0256-AP

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Lake City College Preparatory Academy (LCCPA)

Appellant,

v.

South Carolina Public Charter School District  
(SCPCSD)

Respondent.

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**PROOF OF SERVICE**

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I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Charter School District, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified.

Document(s):

Return to Motion to Reinstate Appeal and to Allow  
Thirty Days to File Final Briefs

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May 20, 2015