

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Judicial Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2015-000049

RECEIVED

JUL 31 2015

SC Court of Appeals

Carolina Center for
Occupational Health,

Respondent,

v.

Jack Powell,

Appellant.

RESPONDENT'S REPLY TO APPELLANT'S RESPONSE

The Respondent, Carolina Center for Occupational Health, pursuant to Rule 240, SCACR, files this Reply in response to Appellant's Response which admits that "Appellant was not able to follow the required rules" in his appeal. Appellant's Response, p. 2. Accordingly, Respondent's Motion to Dismiss should be granted.

"A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003). The clerk shall dismiss the appeal of a party who fails to comply with the Rules, and the case "shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Camp v. Camp, 378 S.C. 237, 240, 662 S.E.2d 458, 459 (Ct. App. 2008) rev'd, 386 S.C. 571, 689 S.E.2d 634

(2010)(citing former Rule 231, SCACR); Rule 260, SCACR.

“Where a transcript of the proceeding must be prepared by the court reporter, appellant **shall**, within the time provided for ordering the transcript, make satisfactory arrangements, in writing with the court reporter for furnishing the transcript.” Rule 207, SCACR (emphasis added). “In appeals from the court of common pleas . . . the transcript **must** be ordered within ten (10) days after the date of service of the notice of appeal.” *Id.* (emphasis added).

On December 22, 2014, Appellant filed a Notice of Appeal with the Court of Common Pleas for Charleston County. According to Appellant’s Certificates of Service, Respondent was served via hand delivery on December 22, 2014. Pursuant to the Rules, Appellant has ten days from December 22, 2014, to order the transcript. Based on Appellate’s Certificate of Service of hand delivery, the deadline to order the transcript was on January 2, 2015 (actual deadline fell on New Year’s Day).

V. Clarie Allen, Deputy Clerk for the Court of Appeals, wrote Appellant on January 26, 2015, notifying Appellant that the time for ordering a transcript expired, and notified Appellant that within ten days of the date of the letter, Appellant “must file a copy of the letter showing that you have ordered the transcript from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR.” The Deputy Clerk’s letter to Appellant further notified Appellant that “[y]our appeal will be dismissed if no motion is made within ten days of the date of this letter.”

In response to the Deputy Clerk’s letter, Appellant filed a copy of his Form 11 Letter Ordering Transcript From Court Reporter dated January 29, 2015. This letter requesting the transcript was sent 27 days **after the deadline** for requesting the transcript under the Rules.

Appellate has filed several other letters corresponding with the court reporter; however, no are dated prior to January 29, 2015. Furthermore, Appellate has never filed a motion requesting permission to order the transcript outside of the filing deadline.

Pursuant to Rule 260, SCACR, “[w]henver it appears that an appellant or a petitioner 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.” In this matter, Appellate has failed to order the transcript within the time allowed under the rules, and he has failed to move for additional time to order the transcript. Appellate has failed to comply with the Appellate Court Rules, and admits this in his Response. Therefore, this appeal should be dismissed.

WHEREFORE, Respondent request that the clerk issue an order dismissing the appeal for failure to comply with the Rules, and for such other and further relief as the court deems just and appropriate.

July 28, 2015



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PROOF OF SERVICE

The undersigned hereby certifies that on this 28th day of July 2015, she mailed a copy of **Respondent Carolina Center for Occupational Health's Reply to Response** by placing a copy in a postpaid envelope for collection and processing for mailing. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the following, which is the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

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*Co-counsel for Carolina Center for
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AMY R. EVERSOLE
Paralegal to Peden Brown McLeod, Jr.

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SC Court of Appeals

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Jack Powell vs. Carolina Center for Occupational Health, et al*
Appellate Case No.: 2015-000049
Insured: Carolina Center for Occupational Health, LLC
Claim No.: 72-444-2014

Dear Ms. Allen:

Enclosed please find an original and seven copies of Respondent's Reply to Appellant's Response. Please return a file-stamped copy of the Reply to this office in the enclosed, self-addressed, stamped envelope.

Should you have any questions, please feel free to contact me.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Peden Brown McLeod, Jr.

PBM,jr.:are
Enclosures


cc: Mr. Jack Powell (w/ enc.)
G. Wade Cooper, Esq. (w/ enc.)

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