

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Honorable Marvin H. Dukes, III

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Appellate Case No.: 2014-000636  
Beaufort County Case No.: 2013-CP-07-00918

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**RECEIVED**  
OCT 01 2015  
SC Court of Appeals

MARE BARACCO.....Appellant,

vs.

BEAUFORT COUNTY, SOUTH CAROLINA.....Respondent.

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RETURN TO APPELLANT'S MOTION TO HOLD APPEAL IN ABEYANCE  
PENDING RULING REGARDING SUBJECT MATTER JURISDICTION

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Appellant has filed, yet again, a dilatory motion designed purely for the purpose of avoiding or delaying prosecution of this appeal. Because the current motion is improper and Appellant has engaged in a continuous and sustained pattern of filing frivolous and improper motions for the purpose of delaying the resolution of this appeal, Respondent respectfully requests this Court deny this motion and dismiss the appeal with prejudice.

This appeal arises out of an order (First Order) from the magistrate's court finding Appellant possessed a "dangerous animal," as defined by statute, after her dog viciously and fatally attacked another dog on a public sidewalk. Appellant appealed the magistrate's court's order to the circuit court, and the

circuit court affirmed. Appellant appealed the circuit court order to this Court. In her initial brief, Appellant argued the magistrate's court lacked subject matter jurisdiction to issue the First Order.

The magistrate's court also issued a separate order (Second Order) requiring Appellant to comply with the statutory requirements for having a dangerous animal while the appeal was pending for public health and safety reasons. Appellant did not appeal the Second Order.

Subsequently, and while the appeal of the First Order was pending before this Court, Beaufort County determined Appellant was violating the Second Order. Beaufort County filed a rule to show cause motion with the magistrate's court requesting the court hold Appellant in contempt for violating the Second Order. The magistrate's court granted Beaufort County's motion and again ordered (Third Order) Appellant to comply with the dangerous animal requirements. Appellant is currently seeking further review of the Second and Third Orders at the magistrate's court level based on a subject matter jurisdiction challenge.

Appellant's current motion seeks to hold this appeal of the First Order in abeyance until her challenge to the Second and Third Orders is resolved. Appellant asserts the rule to show cause motion was based on the same order that is on appeal to this Court. This is patently inaccurate. This appeal is based on the First Order, and the rule to show cause motion was based on the Second Order. In challenging the Second and Third Orders based upon subject matter jurisdiction, Appellant is challenging the subject matter jurisdiction of the

magistrate's court to issue the Second Order. However, as noted above, the appeal before this Court is based upon the First Order. Thus, even if the magistrate's court found it had no subject matter jurisdiction to issue the Second Order, the First Order would still be in effect. The appeal to this Court of the First Order would not be resolved by the magistrate's court's ruling on the Second Order. Therefore, Appellant's assertion that this appeal may be rendered moot is incorrect.

Moreover, Appellant raised the issue of whether the magistrate's court had subject matter jurisdiction to issue the First Order in her initial brief to this Court, and thus, the issue is before this Court. Respondent respectfully submits this Court should not postpone its ruling on the First Order to await a magistrate's court decision regarding the Second and Third Orders. Accordingly, this Court should deny Appellant's motion to hold the appeal in abeyance.

Furthermore, this motion was filed by Appellant purely as another delay tactic to avoid having to file the record on appeal. This appeal is already close two years old and the record has not been filed due to Appellant's many motions, typically filed close to or on the day a brief or the record was due.

Appellant's first request for extension of time to file her initial brief was dated December 21, 2013. Appellant voluntarily dismissed the appeal before this Court could grant or deny the extension. She reinstated the appeal on April 16, 2014, and requested her second extension of time to file her initial brief on May 16, 2014, approximately thirty days after reinstating the appeal. By order dated June 2, 2014, this Court extended the deadline for the initial brief to June 23,

2014. Appellant requested her third extension on June 17, 2014. This Court granted the request and extended the deadline for the initial brief to July 23, 2014. This Court specifically instructed Appellant that “[n]o further extensions will be granted absent extraordinary circumstances.”

Fearing she could not obtain an additional extension, Appellant filed a wholly improper motion to dismiss the First Order, which is the underlying order on appeal, dated July 16, 2014, rather than filing her initial brief. This Court denied the motion to dismiss and properly recognized it was an attempt by Appellant to have the merits of the appeal heard without briefing. This Court further instructed Appellant to file her initial brief by October 10, 2014.

Next, on October 9, 2014, coincidentally the day before her initial brief was due, Appellant moved to dismiss the appeal to allow her to file a writ of mandamus. This Court dismissed the appeal per Appellant’s request, and Appellant filed a petition for rehearing requesting clarification of the dismissal order. In an order dated February 13, 2015, this Court reinstated the appeal after construing the petition for rehearing as a request to reinstate the appeal. The Court also included a letter instructing Appellant that she must file her initial brief by March 13, 2015.

On March 10, 2015, Appellant filed her second improper motion to dismiss the First Order, which is the underlying order on appeal, rather than filing her initial brief. This Court again denied the motion to dismiss and properly recognized Appellant was attempting to have the merits of the appeal heard without briefing. This Court instructed Appellant to file her initial brief within thirty

days and informed her "no extensions will be granted absent a showing of extraordinary circumstances." Finally, over eighteen months after Appellant initiated the appeal, she filed her initial brief dated May 31, 2015.

After Respondent filed its initial brief, Appellant's dilatory tactics began anew. Appellant filed a motion dated August 7, 2015, to correct the caption of the case. This was purely a delay tactic because it was the second motion to correct the caption in this appeal. A motion to correct the caption was previously filed, and this Court ruled on the correct caption in an order dated September 8, 2014. Thus, a second motion to correct the caption was improper and filed purely for the purpose of delay. This Court noted the previous motion to correct the caption, and denied Appellant's second motion to correct the caption. This Court also reminded Appellant that she was required to file the record on appeal by August 31, 2015.

On August 31, 2015, rather than filing the record on appeal, Appellant filed a motion to "hold submission of the [r]ecord on [a]ppeal in abeyance until the disposition" of the magistrate's court's ruling on the issues regarding the Second and Third Orders. Now, in a motion dated September 23, 2015, Appellant seeks to hold this appeal in abeyance until resolution of the magistrate's court's ruling on the issues regarding the Second and Third Orders.

Appellant's conduct, as outlined above, demonstrates a clear pattern to delay the resolution of this appeal as long as possible. In an apparent attempt to avoid the cost of prosecuting this appeal, Appellant has blatantly failed to comply with the South Carolina Appellate Court Rules. Specifically, on multiple

occasions, Appellant filed a motion to dismiss the underlying order on appeal, rather than filing her initial brief as required by the rules, seeking to have this Court decide the merits of her appeal without briefing.

Now, Appellant apparently has decided not to file the record on appeal, which was due on August 31, 2015, until this Court rules on this motion to hold the appeal in abeyance. However, a motion to hold in abeyance does not stay the time limit to file the record on appeal. See Rule 240(b), SCACR (“Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition.”). Accordingly, Appellant should have filed the record on appeal by August 31, 2015, even though she filed this motion to hold in abeyance. Thus, Appellant has failed to comply with the rules, and this Court may dismiss this appeal with prejudice. See Rule 260(a), SCACR (“Whenever it appears that an appellant or 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.”).

Furthermore, because it is apparent from Appellant’s conduct throughout this appeal that she intends to delay this appeal as long as possible, Respondent respectfully submits this Court should dismiss this appeal with prejudice to discourage like conduct in the future. See Rule 269, SCACR (“Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party . . . impose upon the offending attorneys or parties such

sanctions as the circumstances of the case and discouragement of like conduct in the future may require.”).

Although Appellant is appearing pro se for this appeal, this Court should hold her to the same standard as it would hold an attorney. See Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) (“[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.”); State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”). Additionally, Appellant’s failure to comply with the South Carolina Appellate Court Rules has not been a result of her ignorance of the rules. This Court has instructed Appellant on multiple occasions regarding her obligations to prosecute this appeal, and Appellant refuses to timely comply with this Court’s instructions.

Based on the foregoing, Respondent respectfully submits this Court should deny Appellant’s motion to hold this appeal in abeyance and dismiss this appeal with prejudice.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr  
Post Office Box 40  
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(843) 522-2400

Attorney for Beaufort County

Beaufort, South Carolina

September 29, 2015

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

**RECEIVED**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Honorable Marvin H. Dukes, III

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MARE BARACCO.....Appellant,

vs.

BEAUFORT COUNTY, SOUTH CAROLINA.....Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she has served the foregoing Return to Appellant's Motion to Hold Appeal in Abeyance Pending Ruling Regarding Subject Matter Jurisdiction upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on the 29<sup>th</sup> day of September, 2015 addressed to the following:

Mare Baracco  
1006 Madrid Ave.  
Port Royal, SC 29935

**AND**

Joshua A. Gruber, Esquire  
Allison Collins Coppage, Esquire  
Beaufort County Staff Attorney  
Post Office Box 1228  
Beaufort, SC 29901

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr  
Post Office Box #0  
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Attorney for Respondent

Beaufort, South Carolina

September 29, 2015

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JAMES S. GIBSON, JR \*  
Of Counsel

\* Certified Mediator

September 29, 2015

Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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OCT 01 2015  
SC Court of Appeals

Re: Mare Baracco vs. Beaufort County, South Carolina  
Civil Action No.: 2014-000636  
Our File No: 11369 MBL

Dear Ms. Kitchings:

Please find enclosed herewith for filing an original and six (6) copies of the Return to Appellant's Motion to Hold Appeal in Abeyance Pending Ruling Regarding Subject Matter Jurisdiction with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

  
Mary Bass Lohr  
MBL/ad

Enclosure

cc: Ms. Mare Baracco  
Joshua A. Gruber  
Allison Collins Coppage

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0001786462 SEP 29 2015  
MAILED FROM ZIP CODE 29907

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