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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM THE LEXINGTON COUNTY
Court Of Common Pleas

NOV 03 2015

SC Court of Appeals

Frank R. Addy, Circuit Court Judge

APPELLATE CASE NO.: 2014-000091

James Spencer, individually and on behalf of the Estate of Doris Holt
and on behalf of Southern Holdings, Inc.; and Irene Santacroce, Plaintiffs,

Of whom James Spencer is the Appellant, Appellant,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of
Adrian Falgione, LLC, Defendants,

Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

MOTION TO DISMISS

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned
counsel, hereby moves pursuant to Rules 210, 240 and 260(a), SCACR, for an Order
dismissing this appeal based upon Appellant's failure to serve the record on appeal.

BACKGROUND

This is an appeal from a legal malpractice case. On May 27, 2015, James Spencer
("Appellant") served his initial brief. Falgione and John R. Rakowsky (collectively,
"Respondents") served their respective initial briefs and designations of matter on July
27, 2015. After Respondents served their briefs, Appellant has filed a motion to strike

Falgione's brief, a motion for sanctions against Falgione, and a motion to allow the late filing of his reply memorandum in support of his motions. Appellant filed no reply brief, and he has not prepared and served the record on appeal or filed a proof of service with the Court.

ARGUMENT

Falgione moves this Court for an Order dismissing this appeal on the grounds that Appellant failed to prepare and serve the record on appeal as required by the South Carolina Appellate Court Rules.

An appellant must serve the record on appeal within thirty days of the date of service of the last brief. Rule 210(a), SCACR. Although Appellant had the option to file a reply brief, he did not. See Rule 208(a)(3), SCACR (requiring service of brief in reply within ten days after service of the respondent's brief). Therefore, Appellant's deadline to serve the record on appeal was August 26, 2015, or thirty days after the date of service of the Respondents' initial briefs. However, Appellant has yet to serve Respondents with a copy of the record on appeal. None of Appellant's pending motions automatically stay the time to serve the record on appeal, 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."), nor has Appellant received an extension of time to do so. Appellant has therefore failed to prepare and serve the record on appeal, even more than two months after his deadline expired.

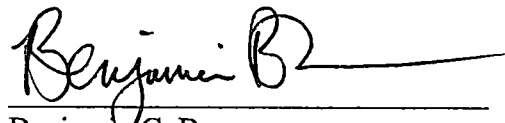
Appellant's repeated failure to comply with the Appellate Court Rules and his failure to prepare and serve the record on appeal warrant dismissal. Rule 210(h), SCACR (explaining ordinarily no point will be considered which does not appear in the record on

appeal); Johnson v. S.C. Dep't of Prob., Parole, and Pardon Servs., 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007) (“South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record for review.”); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339-40, 611 S.E.2d 485, 487-88 (2005) (explaining appellant has burden of presenting sufficient record to allow appellate review); Harkins v. Greenville Cnty., 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (holding court may affirm trial court on any issue where appellant fails to meet its burden of presenting adequate record on appeal).

CONCLUSION

For these reasons, the Court should dismiss this appeal.

November 3, 2015



Benjamin C. Bruner
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PROOF OF SERVICE

I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Adrian L. Falgione, certify that I served a copy of the attached *Motion to Dismiss* and *Affidavit of Counsel* by depositing a copy of it in the U.S. Mail, postage prepaid, on November 3, 2015, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

November 3, 2015


Bridget Steele