

The Supreme Court of South Carolina

Nationstar Mortgage, LLC, Respondent,

v.

Barbara A. Gibbs, Melvin E. Gibbs, and Westbrook
Phase IV Homeowners' Association, Defendants,

Of whom Barbara A. Gibbs and Melvin E. Gibbs, are
Petitioners.

Appellate Case No. 2016-000580

Lower Court Case No. 2013CP2102795

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SC Court of Appeals

ORDER

After finding that the orders on appeal were not appealable orders, the South Carolina Court of Appeals dismissed the appeal in this matter by order dated December 31, 2015. Although Petitioner Melvin Gibbs attempted to file a petition for rehearing,¹ he did not provide the filing fee required by Rule 240(d) of the South Carolina Appellate Court Rules (SCACR). After giving Mr. Gibbs two opportunities to pay the motion filing fee,² the Court of Appeals sent the remittitur

¹ While both Mr. Gibbs and the Court of Appeals have referred to this document as being a motion for reinstatement, this document is technically a petition for rehearing since the order of dismissal was signed by the Chief Judge of the Court of Appeals. Rule 221(a), SCACR (petition for rehearing may be made after "the filing of the opinion, order, judgment, or decree of the court."); Rule 260(a), SCACR (motion to reinstate may be made after the clerk of the appellate court issues an order dismissing a case for non-compliance with the appellate court rules).

² By letter dated January 22, 2016, the Court of Appeals advised Mr. Gibbs that he had failed to pay the motion filing fee and that the fee had to be paid within ten days. On February 5, 2016, the Court of Appeals received a check in the amount of \$25, but the check was unsigned. By letter dated February 17, 2016, the Court of Appeals returned the unsigned check to Mr. Gibbs, and advised him that the Court of Appeals would not consider the petition for rehearing and would send the remittitur unless he paid the motion filing fee within seven days.

on February 25, 2016. The Court of Appeals did not rule on the petition for rehearing. *Cf.* Rule 240(g), SCACR ("Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.").³

Petitioners have now filed a petition for a writ of certiorari dated March 18, 2016, seeking review of the decision of the South Carolina Court of Appeals in this case.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing or reinstatement has been acted on by the Court of Appeals since the issuance of the order of dismissal, there is no final decision for this Court to review.

Further, when it failed to receive the required filing fee for the petition for rehearing, the Court of Appeals did not rule on the petition for rehearing, and sent the remittitur under Rule 221(b), SCACR. The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, the petition for a writ of certiorari is dismissed.



C.J.

FOR THE COURT
Few, J., not participating.

Columbia, South Carolina
April 8, 2016

cc: Dean Anthony Hayes, Esquire
Vance L. Brabham, III, Esquire
Mr. Melvin E. Gibbs
Ms. Barbara A. Gibbs
The Honorable Jenny Abbott Kitchings

³ Before the Court of Appeals, the Appellate Case Number was 2015-001873.