

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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JUL 28 2016

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY

Administrative Law Court

The Honorable John D. McLeod, Administrative Law Judge

Appellate Case No. 2016-001028

South Carolina Department of Motor Vehicles ..... Respondent,

v.

Ashby Hiser ..... Appellant.

**MOTION TO DISMISS**

Pursuant to Rule 260, SCACR, the Respondent South Carolina Department of Motor Vehicles (SCDMV) moves for dismissal of this appeal due to Appellant's failure to timely file his initial brief and designation of matter to be included in the record on appeal and failure to pay the required filing fee for his Motion for Extension of Time.

The Notice of Appeal in this case was filed on or about May 12, 2016. On or about June 2, 2016, Appellant filed Motion for Extension of Time to file his initial brief. At the time of the filing of this motion, Appellant failed to include the \$25 filing fee for his motion. Rule 240(d), SCACR requires all motions to the Court of Appeals and

1 

Supreme Court to be “accompanied by the filing fee set by order of the Supreme Court.”<sup>1</sup> On June 10, 2016, Clerk of Court Jenny Abbott Kitchings notified Appellant’s Counsel of his failure to include the required filing fee with the Motion for Extension of Time and advised Appellant’s Counsel the “deficiency must be corrected within ten (10) days of the date of this letter.” On July 11, 2016, Deputy Clerk of Court V. Claire Allen again notified Appellant’s Counsel of his failure to include the \$25 filing fee for his motion and again advised Appellant’s Counsel the “deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed.” As of the filing of this motion to dismiss, Respondent has received no correspondence indicating that Appellant has complied with the requirement to pay the filing fee for his June 2, 2016 Motion for Extension of Time.

Rules 208 and 209, SCACR requires the Brief of Appellant and Designation of Matter to be Included in the Record on Appeal (hereinafter, “Designation”) to be filed within thirty (30) days after service of the notice of appeal in cases in which no transcript needs to be ordered. In this case, that means Brief of Appellant and Designation were due to be filed by no later than June 13, 2016.<sup>2</sup> Although Appellant filed a Motion for Extension of Time, as of the filing of this motion to dismiss, no order has been issued granting Appellant an extension. Rule 240(b), SCACR specifically states, in part, “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.”

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<sup>1</sup> By order dated October 2, 1985, the filing fee for motions and petitions was set at twenty-five (\$25.00) dollars.

<sup>2</sup> The Notice of Appeal was served on May 12, 2016. The month of May has 31 days. Thus, normally the Brief of Appellant and Designation would have been due on June 11, 2016, but June 11, 2016 was a Saturday. So, pursuant to Rule 263, SCACR the time to file the Brief of Appellant and Designation automatically extended to Monday, June 13, 2016.

Further, Rules 240(g), SCACR states "Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition."

Thus, due to Appellant's failure to timely file Brief of Appellant and Designation, and due to Appellant's failure after two (2) notices from the Clerk of Court's Office to pay the filing fee required for his Motion for Extension of Time, Respondent SCDMV moves for dismissal of this appeal with prejudice.



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Counsel for the Respondent

July 25, 2016

Blythewood, South Carolina

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**PROOF OF SERVICE**

I HEREBY CERTIFY that I have served the Respondent SCDMV's Motion to Dismiss by depositing a copy of same in the United States Mail, postage prepaid, on this 25th day of July, 2016, addressed to the Respondent and the South Carolina Administrative Law Court as follows:

Sean Francis Cronin, Esquire  
Post Office Box 1025  
Rock Hill, South Carolina 29731

As Attorney for Appellant Ashby Hiser



Jeanine (Nina) Moore, Paralegal  
Office of General Counsel

July 25, 2016  
Blythewood, South Carolina

Nikki R. Haley  
Governor



Kevin A. Shwedo  
Director

State of South Carolina  
Department of Motor Vehicles

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The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

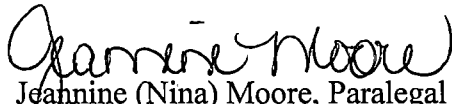
**RE: South Carolina Department of Motor Vehicles v. Ashby Hiser  
Appellate Case No. 2016-001028**

Dear Ms. Kitchings:

Enclosed for filing please find an original and one copy of the South Carolina Department of Motor Vehicles' Motion to Dismiss in the above-referenced matter. Please file the original and return the extra copy to us with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,

  
Jeannine (Nina) Moore, Paralegal  
Office of General Counsel

Enclosures

cc: Sean Francis Cronin, Esquire



# South Carolina Department of Motor Vehicles

P.O. Box 1498  
Blythewood, S.C. 29016

Form 103

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