

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Case No. 2012-CP-38-0845

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OCT 20 2017
SC Court of Appeals

Ralph C. Williams, Sr., and Linda Williams, Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care — Orangeburg, LLC Respondents.

Jason E. Bring
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**RESPONDENTS' RETURN IN OPPOSITION TO MOTION FOR THE COURT TO
ACCEPT APPELLANTS' INITIAL BRIEF OUT OF TIME**

Pursuant to Rules 208(a)(4) and 260(a), SCACR, Respondents submit this Return in Opposition to the Motion for the Court to Accept Appellants' Initial Brief Out of Time, showing this Court as follows.

SUMMARY OF THE FACTS

Despite having over 150 days to submit their initial brief, Appellants did not to meet their extended deadline. The Court should therefore dismiss this appeal.

Appellants' original deadline to submit their initial brief was May 18, 2017. The day before the expiration, Appellants sought their first extension, which this Court granted and extended the deadline to June 19, 2017. Then, on the new due date of their initial brief, Appellants again requested additional time. The Court granted that extension to July 19, 2017,

but instructed Appellants that “[n]o further extensions will be granted absent extraordinary circumstances.” Thereafter, Appellants sought their third extension, which the Court again granted, issuing the same order requiring “extraordinary circumstances” to permit any additional extensions of time. Finally, on the date of the expiration of the thrice-extended deadline to submit their initial brief, Appellants submitted their fourth Motion for Extension of Time, which the Court again granted, pushing the deadline until September 18, 2017. But Appellants did not meet their fifth and final deadline and instead submitted their Initial Brief on October 12, 2017. Accordingly, Respondents respectfully request that the Court dismiss this appeal.

ARGUMENT

This Court should strike Appellants’ out-of-time filing of their Initial Brief and dismiss this appeal. Since the inception of this appeal, Appellants delayed their pursuit on four occasions. And despite having had over 150 days to file their brief, they failed to meet the fourth extended deadline set by this Court.

Under Rule 208(a)(1), SCACR, the appellant must file and serve its initial brief within thirty (30) days after serving his/her notice of appeal. Under these Rules, if the *Respondent* fails to file its response brief, the appellate court “may take such action as it deems proper.” Rule 208(a)(4), SCACR (emphasis added). But where, as here, the *Appellant* fails to submit its initial brief, the Court is left with no such discretion and “the appeal will be dismissed.” Roberts v. LaConey, 375 S.C. 97, 100 (2007) (citing Rule 208(a)(4), SCACR) (emphasis added); see also State v. Serrette, 375 S.C. 650, 652 (Ct App. 2007) (“[T]he right to an appeal may be lost through a variety of actions by an appellant, such as: . . . (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR.”). Thus, “[w]herever it appears that an appellant . . . 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.” Rule 260, SCACR; see also Martin v. Halverson, 2008-UP-152, 2008 WL 9837328, at *3 (S.C. Ct. App. Mar. 10, 2008) (declining to address issue on appeal as the appellant did not file a brief on the issue, and thus the matter was not properly before the Court of Appeals).

Appellants contend that Respondents have suffered no prejudice as a result of this delay. But the extensive amount of time has unduly delayed these proceedings and has provided Appellants with an unfair advantage. Assuming that Respondents are not afforded the same duration of time to prepare their response brief, they will indeed be prejudiced by this delay.

It is undisputed that Appellants seek to submit their brief out-of-time. Accordingly, based on the foregoing and the lack of discretion afforded by the South Carolina Rules of Appellate Procedure, Respondents respectfully request that this Court dismiss this appeal due to Appellants’ lack of timely pursuit.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court strike Appellants’ out-of-time filing of its Initial Brief and dismiss this appeal. Alternatively, Respondents request that the clerk issue an order of dismissal.


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October 2, 2017

THE STATE OF SOUTH CAROLINA
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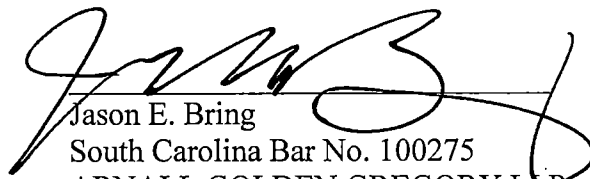
SC Court of Appeals

Ralph C. Williams, Sr., and Linda Williams, Appellants,
v.
Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care — Orangeburg, LLC Respondents.

PROOF OF SERVICE

The undersigned counsel hereby certifies that on the date indicated below he served counsel for the Appellants with a copy of the *Respondents' Return in Opposition to Motion for the Court to Accept Appellants' Initial Brief Out of Time* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

John S. Nichols
BLUESTEIN NICHOLS THOMPSON & DELGADO
P.O. Box 7965
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Attorney for Respondents

October 19, 2017

VIA UPS NEXT-DAY DELIVERY

Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

Re: *Ralph C. Williams, Sr., et al. v. Patricia A. Johnson, et al.*
Appeal from Orangeburg County Case No. 2012-CP-38-0845

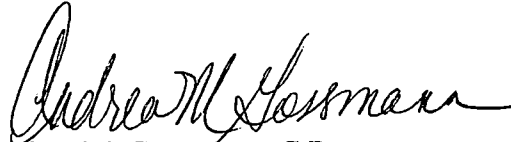
Dear Sir or Madam:

Enclosed please find the original and seven copies of Respondents' Return in Opposition to Motion for the Court to Accept Appellants' Initial Brief Out of Time. Kindly file the same, returning a file-stamped copy to me in the enclosed envelope.

Thank you for your assistance in this matter, and please contact me with any questions.

Sincerely,

ARNALL GOLDEN GREGORY LLP



Andrea M. Gossmann, C.P.
Certified Paralegal to Jason E. Bring

/amg

Enclosure

cc: Jason E. Bring, Esq.
John S. Nichols, Esq.

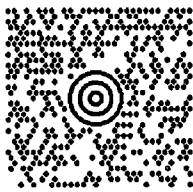
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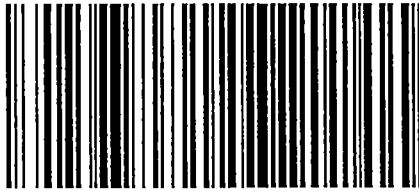
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Reference No.1: 25875.5.2308
Reference No.2: South Carolina Court of Appeals/ CI
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