

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2018-000641

RECEIVED

OCT 26 2018

SC Court of Appeals

John DoeAppellant.

vs.

Beaufort-Jasper Academy for Career ExcellenceRespondent.

**RESPONDENT'S REPLY IN OPPOSITION TO
APPELLANT'S MOTION TO REINSTATE**

Respondent Beaufort-Jasper Academy for Career Excellence (hereinafter "Respondent" or "BJACE"), by and through its undersigned counsel, hereby submits its Reply in Opposition to Appellant's Motion to Reinstate his appeal. As discussed more fully below, Appellant fails to show good cause why his appeal should be reinstated. Accordingly, Respondent respectfully requests that Appellant's Motion be denied.

INTRODUCTION

Appellant filed the Notice of Appeal with this Court on April 6, 2018, appealing the Order entered by the Honorable Judge Kristi L. Harrington on August 24, 2017, in the Court of Common Pleas for Jasper County, South Carolina. Pursuant to Rule 207, SCACR, Appellant requested a copy of the transcript from the court reporter. Appellant received a copy of the transcript on July 14, 2018, thereby making Appellant's brief due on or before August 14, 2018.

On August 14, 2018, Appellant filed a motion requesting a one-time 30-day extension of time to file his Initial Brief and Designation of Matter with the Court due to counsel's preparation for trial in the Jasper County Court of Common Pleas. The Court granted Appellant's extension on August 21, 2018, thereby extending Appellant's time for serving and filing his Initial Brief and Designation of Matter until September 13, 2018.

On September 17, 2018, the South Carolina Supreme Court issued an Order declaring Monday, September 11, 2018, through Friday, September 21, 2018, statewide holidays for the purpose of computing time under Rule 263 of the SCACR due to the impact of Hurricane Florence across the State. Accordingly, the deadline for Appellant to file his Initial Brief and Designation of Matter was modified from September 13, 2018 to September 24, 2018. Appellant did not file his Initial Brief and Designation of Matter, neither did he take any action to request an extension of time to make such filing.

Thereafter, by letter dated September 28, 2018, the Court advised Appellant of the expiration of the time for filing his Initial Brief and Designation of Matter. The letter required Appellant to serve and file his Initial Brief and Designation of Matter with the Court within ten (10) days from the date of the letter, along with a motion requesting permission to serve and file these pleadings outside of the filing deadlines. The deadline for Appellant to take such action was

October 8, 2018. Appellant did not serve or file his Initial Brief and Designation of Matter by the October 8, 2018 date, nor did he request an extension.

Accordingly, on October 16, 2018, in the absence of any filing by or correspondence from Appellant, the Court issued an Order dismissing Appellant's appeal for failure to serve and file the Initial Brief and Designation of Matter as required by the SCACR and the Court's correspondence dated September 28, 2018. On October 19, 2018, Appellant filed the present Motion to Re-instate his Appeal and requested leave to file his Initial Brief and Designation of Matter.

ARGUMENT

Appellant has not shown good cause why his appeal should be reinstated for failure to comply with the Court's filing deadlines.

Rule 208, SCACR provides the deadline for appellants to submit initial briefs to the Court. Rule 208(a)(4) provides in part that "upon the failure of the appellant to file and serve his initial brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260." Rule 260(a), SCACR, states in relevant part that "[w]henver it appears that an appellant or a 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." An appeal may not be reinstated except upon good cause shown. Rule 260(a), SCACR. "The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 415 S.E.2d 794 (1992).

The sole basis for reinstatement cited in Appellant's motion is the failure of counsel to appropriately calendar the deadline to file the Initial Brief and Designation of Matter based on the

Supreme Court's Order 2018-09-17-01 regarding the computation of time for deadlines under the SCACR as a result of Hurricane Florence. Appellant's counsel is responsible for the timely response to, and compliance with, the Court's Orders. Additionally, it is well-settled law that "the neglect of the attorney is the neglect of the client, and . . . no mistake, inadvertence, or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client." Rouvet v. Rouvet, 388 S.C. 301, 309-10, 696 S.E.2d 204, 208 (Ct. App. 2010).

Further, while Appellant's counsel offers a reason for not filing the Initial Brief and Designation of Matter based on the extension granted generally by the Supreme Court, counsel does not offer any explanation for not complying with this Court's September 28, 2018 letter.

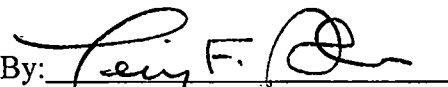
Accordingly, Appellant cannot show good cause why his appeal should be reinstated.

CONCLUSION

For these reasons, Respondent respectfully requests that Appellant's Motion to Reinstate be denied.

RESPECTFULLY SUBMITTED

BOYKIN & DAVIS, L.L.C.

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Attorneys for Respondent

October 26, 2018
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA

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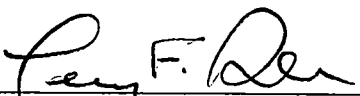
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CERTIFICATE OF SERVICE

The undersigned of Boykin & Davis, LLC., hereby certifies that he has served the following counsel of record with the foregoing **RESPONDENT'S REPLY IN OPPOSITION TO APPELLANT'S MOTION TO REINSTATE**, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 26th day of October, 2018.

Matthew V. Creech, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

Re: John Doe v. Beaufort Jasper Academy for Career Excellence
Appellate Case No.: 2018-000641


Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of Respondent's Reply in Opposition to Appellant's Motion to Reinstate in the above-referenced case. Please return the time-stamped copies to our courier.

By copy of this letter, we are today serving a copy of the same on counsel for Appellant, John Doe.

Thank you for your assistance with this matter.

Sincerely yours,



Tierney F. Duker

/clm

Enclôtures

cc: Matthew V. Creech, Esq. (w/encls.)
Charles J. Boykin, Esq. (w/o encls.)
Kenneth A. Davis, Esq. (w/o encls.)