

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2018-000056

Churchill Park,

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix,

Of which Alan G. Nix is the,

Respondent,

Defendants,

Appellant.

**RESPONDENT'S MOTION TO DISMISS APPEAL**

The Respondent, Churchill Park, pursuant to Rule 260(a), SCACR, respectfully moves the Court for an order dismissing the appeal filed by the Appellant for failure to timely file and serve his initial brief as required by Rule 208(a)(1), SCACR. In support of the motion, the Respondent shows the following unto the court:

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NOV 15 2018  
SC Court of Appeals

This appeal arises out of a foreclosure action initiated by Respondent against Appellant for unpaid homeowners' association dues. Trial was held before the Master in Equity for Charleston County on September 26, 2017. The trial court ruled in favor of Respondent and issued its final order on November 9, 2017. Appellant timely filed a motion to reconsider pursuant to Rule 59(e), SCRPC on November 22, 2017. The trial court denied Appellant's 59(e) motion by order dated December 1, 2017. Appellant timely served his notice of appeal of that order on January 8, 2018. Three weeks later Appellant filed an Amended Notice of Appeal adding six additional orders from which he wishes to appeal. On July 16, 2018 Appellant filed a second Amended Notice of Appeal seeking review of several decisions heard by the trial court on May 30, 2018 and filed in an order dated June 1, 2018.

The court reporter provided the final transcript from the May 30, 2018 hearing to Respondent on August 1, 2018. Appellant has previously notified this court that as of August 9, 2018 he had received all hearing transcripts except the transcript for the May 30, 2018 hearing. However, Appellant later wrote the court reporter in this matter acknowledging receipt of the May 30, 2018 transcript sometime between August 7, 2018 and August 9, 2018.<sup>1</sup> See Exhibit A. Appellant's letter indicates that he received the May 30, 2018 transcript and, after five minutes, returned the transcript to the Master in Equity's office because he believed the caption incorrectly omitted Norma J. Nix as a party to the action.

Pursuant to Rule 208(a)(1), SCACR Appellant's deadline to file and serve his initial brief was, at the latest, September 10, 2018. To date Appellant has not filed any brief in this matter or requested any extension of time related to briefing. Appellant has similarly failed to meet the requirements of Rule 207, SCACR related to the supposed failure of the court reporter to timely deliver an accurate transcript.

For these reasons, the Respondent respectfully requests that Appellant's appeal be dismissed

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<sup>1</sup> Appellant's letter states he returned the transcript "last Thursday, 9 May 2018," however, upon information and belief the reference to May 9, 2018 was a typo and should have read August 9, 2018.

with prejudice and for such other and further relief as the court deems just and appropriate.

November 15, 2018



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**Attorney for Respondent**

14 August 2018



Alan Nix  
1401 Densmore Circle  
Mount Pleasant, SC 29466

**RECEIVED**  
AUG 16 2018  
SC Court of Appeals

Sandlapper Reporting, LLC  
c/o Christine Smith  
P.O. Box 30276  
Charleston, SC 29417

Re: Return of Original Transcripts for correction  
Case Number: 2014-CP-10-05407 / 2017-CP-10-04031

Ms. Smith,

As I indicated in my email to you this past Sunday morning, 12 Aug 2018, I am returning the original transcripts from 7 August 2017 to present for correction before submitting to the S.C Court of Appeals. Given I have not received a confirmation from you that you received the 30 May 2018 transcript that I returned to the Charleston County Master in Equity office last Thursday, 9 May 2018, of which I only had possession for approximately five minutes, I do request a response from you confirming you received the original and copy of that transcript from the lady that was working at the Master in Equity office's front desk at approximately 1100.

For proper tracking, I have listed below the original transcripts being returned in this mailing.

1. Hearing date: 7 Aug 2017 / Time: 0936
2. Hearing date: 18 Sep 2017 / Time: 1113
3. Hearing date: 25 Sep 2017 / Time: 1550
4. Hearing date: 26 Sep 2017 / Time: 0426 (excerpt from full transcript)
5. Hearing date: 26 Sep 2017 / Time: 1021
6. Hearing date: 29 Nov 2017 / Time: 0936

I will restate a couple of the previously noted issues:

1. The transcript from August 7, 2017 lists case 2017-CP-10-04031. That case did not exist until the next morning when I paid the \$150 restore fee to properly restore the case. It also does not list defendant Norma J Nix.
2. The transcript from September 18, 2017 lists case 2017-CP-10-04031. That case was not on the Master's docket that morning. It also does not list defendant Norma J Nix.

3. The transcript from 30 May 2018 did not list defendant Norma J Nix.

As communicated in the letter to the SC Court of Appeals dated 9 Aug 2018, I am in the process of compiling a comprehensive list of questions / concerns / additional issues related to the transcripts that need to be investigated and resolved as appropriate. Please let me know if you would prefer me to send one list once I have finished my review or if you would prefer me to send a list per transcript or something similar.

Thank you for your continued support, please let me now if you have any questions, and I will provide you with the USPS tracking number for the transcripts listed in this letter as being returned within 24 hours of sending.

Best regards,



Alan Nix

cc.

Judge Scarborough  
Master in Equity, Charleston County  
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**PROOF OF SERVICE**

I certify that I served Respondent's Motion to Dismiss on Alan G. Nix by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2018 as follows:

Alan G. Nix  
1401 Densmore Circle  
Mount Pleasant, South Carolina 29466



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**Attorney for Respondent**