

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

RECEIVED
JUL 29 2019
SC Court of Appeals

Case No. 2016-CP-18-1706
Appellate Case No. 2018-002185

Molly M. Morphew

Appellant

v.

Stephen Dudek, Doreen Cross, Carolina One,
Carolina One, Susan Nicholson, Woody Law
Firm, Carrie Boyer, First Federal, Allison
Williams, David A. Collins, Michael Scarafile

Respondents

APPELLANT'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Molly M. Morphew, pro se
45 Lullwater Dr. #1416
Richmond Hill, GA 31324
(843) 514-7299

On July 1, 2019, Respondents filed a motion to dismiss Appellant's appeal based on the reason that Appellant has failed to comply with the requirements of the South Carolina Appellate Court rules, specifically Rule 208 and an order of this court dated May 30, 2019 and March 22, 2019. For reasons below, Appellant respectfully opposes and asks this Court to deny said Motion.

PROCEDURAL HISTORY

On October 24, 2012, Stephen Dudek and Doreen Cross (herein "Dudeks" or "Respondents Dudek") entered into a real estate sales contract with the seller, a non-party to this lawsuit. After the Dudek contract had expired, Morphew (or "Appellant") entered into a contract regarding the same property with the same seller. Such ability to close escrow was dependent on the Dudek's signing the termination notice. Several weeks later, and the moment the Dudeks discovered the sellers had another buyer, they initiate litigation against sellers for breach of contract and to compel specific performance. Shortly after, Appellant initiated litigation to enforce her contract, claiming the Dudeks were legally obligated or liable to sign the termination notice in order for the Morphew contract to be performed. During trial, the Dudeks, their loan officer, sales agent and/or attorney testified and offered evidence that the Dudeks performed or met all conditions of their sales contract, were ready, able and willing to tender payment (i.e., met the requirements to compel specific performance) but it was the sellers that prevented them from closing. After trial, the sellers (pro se) discovered valid, documented and critically material evidence proving the Dudeks and their witnesses gave false testimony/evidence. The clear and unquestionable evidence proved the Dudeks failed to meet the lawful requirements to compel specific performance. Such newly discovered evidence was filed as a petition and presented to

the Honorable James E. Chellis, Master-in- Equity, Dorchester County. The petition also served as the sellers' response to the Judge's request for closing statements months before his decision.

The evidence was ignored, specifically, the judge chose not to consider the sellers' closing statement/evidence but only to consider the represented party's closing statements. In November 2014, the Master issued an Order granting specific performance to both the Dudeks and Morphew, but the Dudeks first. If they failed to perform or terminated their sales contract, Morphew was to perform her sales contract. Both Appellant and sellers appealed that decision in appellate case number 2014- 002633 and though the evidence clearly showing the Dudeks failed all rules, statutes and precedents of law and equity was presented to this Court on appeal, this Court ultimately affirmed the decision of the Master-in-Equity but without its own view of the preponderance of the evidence; instead stating their "broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." Several months later, the Dudeks filed a Motion for Closing and Attorney Fees. Though again the fraudulent evidence and failure of the Dudeks ability to compel specific performance was presented at the hearing, the trial court awarded a "closing order" and attorney fees to the Dudeks. Morphew appealed that decision in pending appellate case number 2017-001393. Shortly after the Dudeks closing, Appellant filed a complaint for Constructive Trust alleging the Dudeks had obtained the property unlawfully or fraudulently and with express notice of Morphew's claim to same property, therefore were not bona fide purchasers. The trial court dismissed action stating the Said action is pending appeal in appellate case number 2018-000507.

The case underlying this appeal was filed in August 2016 during the pendency of the appeal of the original action and before this court's decision. It arises out of Appellant's

allegations that both before and during trial of the above matter, the Respondents have perpetrated fraud or fraud on the court, by committing perjury, forgery, making false promises [that are extrinsic to the original action], making fraudulent misrepresentations and failing to disclose critically material documentation and facts. Further, that the Respondents, with complete knowledge of, are continuing their fraudulent behavior; currently including but not limited to, Respondent First Federal extending mortgage credit in 2017 on an invalid or non-negotiable sales contract¹ (i.e., possible mortgage fraud); The Dudeks purchasing the property in question-- though appeal to closing order pending or their lack of legal right/claim to the property, with knowledge of Morphew's claim to said property, and with the current fraud case pending; Respondents Carolina One, Michael Scarafile, Susan Nicholson and the Dudeks representing/participating in the 2017 closing transaction, demanding sellers to perform or claiming rights to property when the sales contract was unenforceable/had expired in 2012 or the Dudeks had no legal claim/right to the property since on or about November 30, 2012.

On November 13 and 15, 2018, the Honorable Judge Maite Murphy entered orders granting summary judgment in favor of all Respondents and dismissing the underlying case in full. On December 12, 2018, Appellant filed a notice of appeal in this Court, appealing the orders of the Honorable Judge Jefferson, Judge Dickson and Judge Murphy. Said three (3) judges and seven (7) dates total fifteen (15) orders subject to the appeal. Only ten (10) orders have been included and addressed in Appellant's Brief.

On February 21, 2019, in this appeal, Appellant filed a Motion for extension of time to file her initial brief due to the amount of orders, issues and complexity of the case. On March 15, 2019, after several attempts to write a brief defending ten (10) orders totaling forty-five (45)

¹ Sales contract had expired on November 30, 2012 and was never remedied. Dudeks applied for initial financing on December 5, 2012 (5 days after expiration), therefore was denied lending due to incomplete application or failure to provide a valid and negotiable sales contract.

issues regarding ten (10) respondents into a 50-page, double-spaced document, Appellant filed her first Motion to exceed the 50-page limit and sought, instead, 525 pages, though final page count was unknown at the time. On March 22, 2019, this Court granted Appellant an extension of time to file the initial brief and designation of matter until April 12, 2019 stating that "[n]o further extensions will be granted absent extraordinary circumstances." Its motion to exceed was still pending.

Not ignoring this Court's directive, but finding herself in a dilemma regarding her pending motion to exceed the page limit of her initial brief by 475 pages, Appellant contacted this Court for guidance, as the pending motion severely affected the filing of the content of her Brief and her ability to defend properly and fully. Appellant followed the suggested directive of this court by faxing and filing its letter dated April 11, 2019, stating that 'the pending motion affected the filing of the contents of the brief therefore it appears she is unable to serve the initial brief until said motion [to exceed the page limits] is decided.' On May 30, 2019, this Court entered an Order stating, "Appellant's motion to exceed the page limitations for her initial brief set forth in Rule 208 of the South Carolina Appellate Court Rules is denied. Appellant shall serve and file her initial brief and designation of matter within twenty days of this order or this appeal may be dismissed. ... "Again, not ignoring this Court's directive, Appellant attempted to reduce her brief from the 356 pages she had previously written to 50 pages, without forfeiting significant arguments or hurting clarity of presentation, but that proved impossible. It appeared the minimum size possible was 209 pages; therefore, Appellant in good faith believing such exceedance to be absolutely necessary in order to adequately brief the numerous complex legal issues in this appeal filed a second Motion asking for a 159-page exceedance, and included her 209 page initial brief (229 total pages, including title page, table of contents, table of authorities,

standards of review and facts and history). In its motion, Appellant respectfully requested leave to file the attached 229- total page Initial brief and the designation of matter. Further, Appellant also served all respondents said brief. Both filing and serving of its Brief and the designation of matter was accomplished several days before the due date of her Initial Brief.

ARGUMENT

The Respondents argue Appellant has failed to comply with the requirements of the South Carolina Appellate Court Rules, specifically Rule 208, and Orders of this Court dated May 30, 2019, and March 22, 2019, therefore Appellant's appeal should be dismissed. Appellant objects specifically, as outlined in sections I through VI below.

Respondents argue:

- I. *“Appellant failed to comply with Rule 208 initially by failing to file her initial brief within thirty days of receiving the transcript. Rather, Appellant filed a Motion to Exceed Page Limits and a Motion for Extension of time approximately one month apart.”*

Appellant contends this argument is moot, as this Court has already decided this issue and stayed the time limit imposed by the rules as allowed by Rule 240(b) (reference this Court's Order of March 22). Regardless, Appellant has only acted in good faith and honesty and has only attempted to adhere to the rules without compromising its due process or ability to defend fully and properly. Moreover, when Appellant was faced with a dilemma regarding the rules and processes, she has never failed to respectfully communicate to this court asking for permissions or guidance.

II. *“Appellant failed to comply with this Court's March 22 Order by failing to file an initial brief and designation of matter by April 12. Instead, Appellant filed a letter seeking clarification on her Motion to Exceed Page Limits.”*

Respondents' argument is moot as it has already been decided by this Court. Even so, Appellant (first) corrects respondents' misstatement, *“...filed a letter seeking clarification on her Motion to Exceed Page Limit.”* Appellant did not file a letter seeking 'clarification', but instead was a letter seeking *guidance* to her dilemma. (Second) Appellant contends its pending motion to exceed the page limit substantially affected the filing of the contents of her initial Brief and sought guidance from this court on Thursday, April 11 at 1:23pm and followed its directive by submitting a letter via fax and hardcopy. All respondents were CC'd.

“My dilemma is that the pending motion affects the contents of the filing; therefore it appears I am unable to serve the initial brief until said motion is decided.

If my assumption is incorrect, then I'll be happy to file another motion if required.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.”

It appeared Appellant could not file the contents of its initial brief until the content of its brief was decided by this Court.

III. *“Appellant failed to comply with this Court's May 30 Order by failing to file a compliant initial brief and designation of matter on or before June 19. Instead, Appellant filed her Second Motion and attached thereto a 229 page initial brief. The filing of Appellant's Second Motion does not affect the deadline to file a compliant initial brief. South Carolina Appellate Court Rule 240 states, "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." Rule 240, SCACR."

This court's Order of May 30 directed the Initial Brief and designation of matter be filed and served on or before June 25. Appellant filed and served her Second Motion to exceed the page limit as allowed by Rule 208(b)(5) and included its 209-page initial brief and designation of matter on or before June 25. The Motion respectfully requested permission to file the completed and included Initial Brief, explaining substantial reasons why she would be prejudiced if not allowed to exceed. Brief and designation of matter was filed with this court June 20, 2019.

IV. "Respondents respectfully request that this Court dismiss Appellant's appeal because of her repeated failure to comply with the time and page limitations imposed by the South Carolina Appellate Court Rules and this Court's orders as detailed above. Additionally, the Respondents are and will continue to be burdened and prejudiced by Appellant's failure to prosecute this appeal."

As it appears on record with the Appellate court, there has been no "failure" by any party to this appeal of the Rules or of this court's Orders, specifically Appellant in regards to its initial brief. Even so, Respondents have not demonstrated or made any showing how they've been, or continue to be, burdened and prejudiced in this instance, therefore its argument lacks merit and Appellant is unable to defend properly.

V. "Despite appearing pro se, Appellant should not be permitted to abuse the leniency granted such petitioners. Appellant is or has been involved in four other appeals; all regarding the subject property and all involving Respondents Stephen Dudek and Doreen

Cross. It is clear from her routine application to this Court that Appellant has significant experience in appellate court procedure.”

Whether Appellant is pro se or represented, or has had prior experience or not with appeals, that should have no affect or be grounds supporting dismissal of its appeal; especially when at no time and nowhere on the record is there any indication that Appellant has been afforded any “special” leniency or considerations due to being pro se, or that if special considerations were given that they were specific to pro se parties and would not be extended to represented parties. Maybe more importantly, the Respondents have produced no evidence that indicates Appellant has “abused” the leniency of this court. To date, Appellant has only seen equal impartiality and fairness by this Court in its dealings with *all* parties (represented or not) during this case.

VI. *“In addition, “a pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Burton, 356 S.C. 259, 265, 589 S.E.2d 6, 9 n.5 (2003). Appellant's status as a pro se litigant should not be considered a mitigating factor in this instance.”*

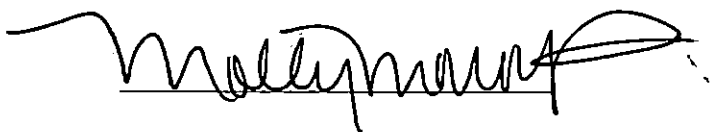
Nothing on record in this appeal indicates Appellant has failed to comply with substantive and procedural requirements of the law, therefore respondents’ argument or Appellant’s pro se status is moot.

Even so, Appellant understands a pro se “assumes full responsibility for complying with substantive and procedural requirements of the law,” and has acted only in good faith and done everything in her power and knowledge to understand and comply with those requirements. Any misunderstanding or question regarding compliance or processes has been immediately communicated to this Court or by this Court in letters or motions or addressed accordingly.

CONCLUSION

The record shows the Appellant has not failed to comply with the Rules of the Appellate Court as alleged, therefore dismissal is an inappropriate action. Even if a failure is found, complete dismissal of Appellant's appeal would be unjust or an inappropriate "sanction", particularly for a heightened case for fraud or fraud on the court. For the reasons above, the Appellant respectfully requests this Court deny the Respondent's Motion to Dismiss.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Molly M. Morpew', written over a horizontal line.

Molly M. Morpew, pro se
45 Lullwater Dr. #1416
Richmond Hill, GA 31324
843-514-7299

July 21, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
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The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

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Williams, David A. Collins, Michael Scarafile

Respondents

CERTIFICATE OF SERVICE

I, Molly M. Morpew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with the APPELLANT'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS, by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

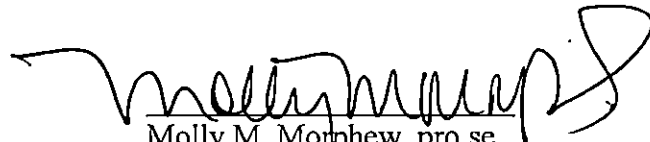
Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents:
Stephen Dudek, Doreen Cross,

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417
Respondent, pro se

Susan Nicholson, Michael Scarafile
and Carolina One

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576
Attorney for Respondents:
Carrie Boyer and Wooddy Law Firm

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368
Attorney for Respondents:
Allison Williams and First Federal Bank
(aka South State Bank)


Molly M. Morphew, pro se

July 25, 2019

July 21, 2019

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

RECEIVED
JUL 29 2019
SC Court of Appeals

Re: Appellate Case 2018-002185
Molly M. Morpew v. Stephen Dudek, Doreen Cross, et al.

Dear Ms. Kitchings:

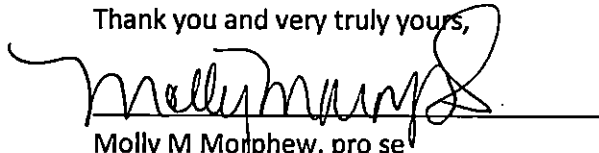
Please find enclosed APPELLANT'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS, to be recorded and filed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Pursuant Rule 240, I understand the response was to be filed within 10 days (15 days including mailing in this instance) of the service date of the motion. Service date was July 1, making the filing due on July 15. Normally I would have met this deadline, but I was tending to a very critical (life and death) family emergency in Tallahassee, FL, starting July 5 and ending July 21. Due to my unavailability to address the court proceeding during this time, and given that this response has been completed and mailed within 3 days of my return, I respectfully ask this Court for leave to file the late response due to good cause shown.

If this Court requires details or additional proof of said good cause I will be happy to do so, but only ask leave to submit the details solely to this Court for review as the situation was very personal and private and neither would the circumstances directly affect, nor does the family member have a connection or affiliation to, these proceedings.

Thank you and very truly yours,



Molly M Morpew, pro se
45 Lullwater Dr. Unit #1416
Richmond Hill, GA 31324
843-514-7299

Cc: Amy L. Neuschäfer, Esq.
Amy B. Hill, Esq.
Steven L. Smith, Esq.
David A. Collins, pro se

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