

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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OCT 09 2019

APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2019-001540

Churchill Park,

Respondent,

v.

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

Defendants,

Of which Alan G. Nix is the

Appellant.

**RESPONDENT’S MOTION TO DISMISS APPELLANT’S
PETITION FOR WRIT OF CERTIORARI**

The Respondent, Churchill Park, respectfully moves the Court for an order dismissing the Petition for Certiorari filed by the Appellant because it fails to comply with Rule 242, SCACR. In support of the motion, the Respondent shows the following unto the court:

This appeal arises out of a foreclosure action initiated by Churchill Park against Alan Nix and Norma J. Nix 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 Churchill Park and issued its final order on November 9, 2017. Alan Nix (“Nix”) timely filed a motion to reconsider pursuant to Rule 59(e), SCRCP on November 22, 2017. The trial court denied Nix’s

59(e) motion by order dated December 1, 2017. Nix timely served his notice of appeal of that order on January 8, 2018. Three weeks later Nix filed an Amended Notice of Appeal adding six additional orders from which he wishes to appeal. Both appeals were dismissed in April 2018. At Nix's request, the Court of Appeals reinstated Appeal 2018-00056 and reinstated and consolidated Appeal 2018-00174 into Appeal 2018-00056 by orders dated May 9, 2018. Nix raised no issue with either order at the time they were filed and served. Instead, Nix proceeded to file six separate motions with the Court of Appeals as well as a third Notice of Appeal. On November 15, 2018 Churchill Park filed a Motion to Dismiss Nix's appeal for failure to serve his initial brief despite having possession of all transcripts for more than sixty days.

On December 21, 2018 the Court of Appeals entered an Order denying Churchill Park's Motion to Dismiss while also ordering Nix serve and file his initial brief and designation of matter by January 21, 2019. Instead of serving the required brief Nix filed a Motion to Properly Restore on January 11, 2019, arguing for the first time that the appellate cases were not properly restored in May 2018 because they lacked a specific stamp. Nix's motion lacked any citation to legal authority for this position and failed to address why he waited over eight months to raise the issue. The Court of Appeals denied Nix's motion and warned him that his initial brief was overdue and his appeal would be dismissed if not served by March 25, 2019.

On March 25, 2019 Nix filed a Motion to Just Do the Proper and Prudent Thing. This motion essentially repeated the same request for relief contained in the January 11, 2019 motion. Nix also filed a separate motion requesting an extension of time to file his initial brief and designation of matter, requesting the court remand this matter to the trial court to correct transcripts, and for a declaratory judgment regarding the enforceability of the restrictive covenants at issue. By order dated May 16, 2019, the Court of Appeals gave Nix until June 5, 2019 to file and serve his initial brief and denied the remainder of his motions. Nix did not file or serve his initial brief and the Court of Appeals issued an order dismissing the appeal dated June 27, 2019. Thereafter, on July 10, 2019, Nix filed a motion and correspondence which the Court of Appeals construed as a petition to rehear the dismissal of the appeal. The Court of Appeals denied that petition by order dated August 9, 2019. Nix filed the underlying Petition for Certiorari on September 9, 2019. Nix did not file an Appendix with his petition as required by Rule 242, SCRAP. On September 25, 2019 this court granted Nix an extension of time until

September 30, 2019 to file an Appendix. To date Churchill Park has not been served with any Appendix in this matter and the court's online records do not show any Appendix has been filed.

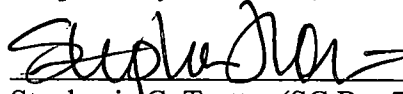
Nix's petition fails substantively and procedurally for several reasons. Primarily, Nix fails to ask the Supreme Court to review the Court of Appeals' dismissal of his appeal. "The Supreme Court . . . may . . . issue a writ of certiorari to **review a final decision of the Court of Appeals.**" Rule 242(a)(emphasis added). While Nix's petition lists seven acts or decisions of the Court of Appeals that he claims were improper, Nix fails to challenge the final decision issued by the Court of Appeals – that dismissing his appeal.

Additionally, Nix's petition fails to comply with Rule 242(d), SCACR. Rule 242(d) requires an appealing party include, among other items, "a concise statement of the case" and "a direct and concise argument in support of the petition." Rule 242(d) further requires that "[t]he argument on each question . . . include citation of authority and specific reference to pertinent portions of the Record on Appeal." Finally, Rule 242(d) provides that failure to present arguments in a manner "essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." Nix's petition in this matter contains seven questions for this court's review, however he does not even attempt to present any argument in support of his claim that the Court of Appeals committed reversible error on any of those seven issues. Instead, Nix relies on a conclusory statement that this court should "review the Court of Appeals conduct, orders, and letters since 5 April 2018 to ensure appropriate conduct and rationale." (Pet. For Cert p. 2). The court and Churchill Park should not be forced to review the record in order to guess the basis for Nix's appeal.

Finally, Nix has failed to serve and file the Appendix as required by Rule 242(e)(2), SCACR. Rule 242(e) required Nix file his Appendix at the same time he filed his petition. Because this appeal resulted from the Court of Appeals dismissing Nix's appeal for procedural reasons, Nix was also required to serve a copy of the Appendix on Churchill Park. Rule 242(e)(2). This court granted Nix an extension until September 30, 2019. As of October 7, 2019 Churchill Park has not received a copy of the Appendix. Upon information and belief Nix has not filed an Appendix with the court either.

“[T]he 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, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Nix’s petition fails to meet the bare minimum procedural requirements required by Rule 242 and fails to explain to this court and opposing party the basis for his appeal. Additionally, Nix’s petition fails to challenge the Court of Appeals’ dismissal of his appeal below. Accordingly, the petition fails to request any relief that be granted by this court. For these reasons, Churchill Park respectfully requests this court dismiss Nix’s petition.

Respectfully Submitted,




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Attorney for Respondent Churchill Park

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 October 8, 2019 as follows:

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



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