

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No.: 18-ALJ-30-0181-CC

Appellate Case No. 2018-001740

Clara L. Brockington, Appellant,

v.

South Carolina Department of Employment and
Workforce, Respondent.

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OCT 16 2019

SC Court of Appeals

**MOTION TO DISMISS FOR FAILURE TO TIMELY
FILE AND SERVE THE RECORD ON APPEAL**

Respondent South Carolina Department of Employment and Workforce (the Department) submits this motion to dismiss Appellant Clara L. Brockington's appeal due to her continued failure to timely file and serve the record on appeal in accordance with Rule 210 of the South Carolina Appellate Court Rules, as well as this Court's letters dated August 6, September 16, and September 27, 2019.

The procedural history of this case at the Court of Appeals is torturous, but warrants recitation to demonstrate the egregious nature of Appellant's repeated refusal to comply with basic deadlines and rules. Appellant filed her appeal with this Court on September 21, 2018. On November 15, 2018, this Court advised Appellant that she had to serve and file her initial brief and designation of matter by December 5, 2018. After Appellant failed to submit her initial brief and

designation of matter, this Court sent a letter on December 18, 2018, advising Appellant that she had to serve and file her initial brief and designation of matter by December 28, 2018. Additionally, the Court informed Appellant that her brief would not be considered without a motion requesting permission to file her brief and designation of matter outside of the standard filing deadlines.

On December 22, 2018, Appellant served only a motion requesting thirty (30) additional days to file her initial brief and designation of matter, citing “the holidays and plans to be away from home to visit the sick....” This Court granted Appellant’s motion for extension by order filed January 11, 2019, giving Appellant until February 11, 2019, to file her initial brief and designation of matter.

On February 11, 2019, Appellant filed a second motion for extension. Appellant cited a variety of personal ailments and did not request a specific timeframe for her extension. The Department filed a Return on February 20, 2019,¹ consenting to an extension, but requesting that the extension be limited to no more than twenty (20) days from the Court’s order.

This Court issued an Order on April 16, 2019, requiring Appellant’s initial brief and designation of matter be filed within ten (10) days, and advising Appellant that no further extension requests would be granted absent extraordinary circumstances. Consequently, Appellant’s initial brief and designation of matter was due to be filed and served no later than April 26, 2019.

On May 2, 2019, the Department received Appellant’s initial brief and designation of matter. Appellant included a proof of service form alleging that she filed her initial brief and designation of matter by placing it with the United States Postal Service on April 19, 2019. However, Appellant’s envelope to the Department was postmarked April 29, 2019. Court’s

¹ The Department filed an amended Return on February 28, 2019, due to a copying error that omitted pages from its February 20, 2019 Return.

Appellate Case Management System (C-Track) showed that Appellant filed her initial brief and designation of matter with the Court on April 30, 2019.

The Department filed a motion to dismiss on May 15, 2019, arguing that Appellant failed to timely file and serve her Appellant's Brief and Designation of Matter. The Court issued an order June 20, 2019, denying the Department's motion to dismiss and requiring the Department to file the Respondent's initial brief and designation of matter within thirty days. The Department filed its initial brief and designation of matter on July 19, 2019. Pursuant to Rule 210(a), Appellant had thirty days, or until August 19, 2019, to file the record on appeal with the Court and serve a copy on the Department.

On August 6, 2019, the Court sent the parties a letter advising Appellant that the deadline for filing and serving the record on appeal was approaching. The Court further provided Appellant with detailed instructions on the required content and composition of the record on appeal. Nonetheless, Appellant failed to file and serve the record on appeal by the August 19, 2019, deadline. The Court sent the parties a letter dated September 16, 2019, advising Appellant that her appeal would be dismissed if she did not file and serve the record on appeal, along with a motion requesting permission to file the record late, by September 26, 2019.

Appellant filed the required motion and a document purporting to be the record on appeal on September 26, 2019. While the proof of service identifies the document as the record on appeal, the actual document was simply Appellant's initial designation of matter, previously submitted on April 30, 2019, and was titled as such. The Court granted Appellant's motion to file late, but sent the parties a letter September 27, 2019, detailing the myriad deficiencies in Appellant's record on appeal. Most notably Appellant's record on appeal did not contain any of the matter designated by the Department, as required by Rule 210(c), SCACR, or a proper title page as required by Rule

210(d), SCACR. The Court informed Appellant her appeal would be dismissed if she did not correct these deficiencies within ten days, or by October 7, 2019.

On October 7, 2019, Appellant filed a document purporting to be the record on appeal. Once again, while the proof of service accompanying this document claims that the document is the record on appeal, the document is simply Appellant's initial designation of matter, previously submitted on April 30 and September 26, 2019. Appellant again failed to include any matter designated by the Department, and again failed to include a proper title page.

While the Department recognizes that Appellant is proceeding *pro se*, a *pro se* litigant is responsible "for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003); *State v. Policano*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013). Rule 208(a)(4), SCACR, provides that an appellant's appeal shall be dismissed if an appellant fails to file and serve her brief within the time prescribed. Further, pursuant to Rule 260(a), SCACR, this Court "shall" dismiss an appeal whenever an appellant fails to comply with the requirements of the Court's rules.

Our courts have consistently held that deadlines have meaning and are designed to promote the orderly and efficient disposition of cases. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("There would be no purpose in establishing deadlines if failure to meet them was of no consequence." (brackets removed)); *Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794-95 (1992) ("Counsel is advised that 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."). At some point, a party must bear the consequences of their undue delay and failure to comply with rules. Simply put, "there is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong

unnecessarily time, effort, and costs to defending parties.” *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990).

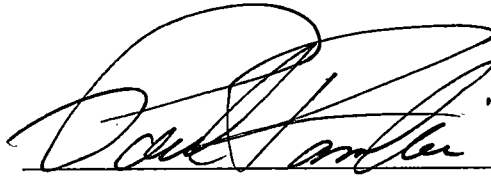
This Court has given Appellant ample opportunity to fully and timely comply with Court rules and deadlines. At every juncture, this Court has granted Appellant multiple extensions and multiple opportunities to correct deficiencies. Nonetheless, Appellant continues to refuse to comply with basic rules and deadlines. As of the date of this motion, it is now nearly two months after the record on appeal was initially due. In that time, Appellant has filed two records that fail to comply with Court rules, despite explicit and clear instructions from the Court. Accordingly, pursuant to Rule 260(a), SCACR, this Court should dismiss Appellant’s appeal due to her repeated failure to comply with the requirements of Rule 210, SCACR. Moreover, this Court should dismiss Appellant’s appeal because her continued refusal to comply with rules and timelines is unduly burdensome and places an unreasonable demand on the Department's and this Court's limited resources.

II. Conclusion

Appellant has failed to timely file and serve the record on appeal in accordance with Rule 210, SCACR, despite the best and reasonable efforts of the Court to afford her additional time and instructions. This failure is but the latest in a long and unbroken pattern of failures to adhere to Court rules and deadlines. Accordingly, the Department respectfully requests that this Court dismiss Appellant’s appeal pursuant to Rule 260(a) due to her failure to comply with Rule 210. The Department further respectfully requests that all deadlines be held in abeyance pending the Court’s resolution of this motion.

SIGNATURE APPEARS ON NEXT PAGE

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Famolari", written over a horizontal line.

Paul Famolari (SC Bar # 076723)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone); 803.737.0124 (fax)
Legal@dew.sc.gov

October 14, 2019

**Attorney for Respondent SC Department of
Employment and Workforce**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No: 18-ALJ-22-0181-CC

Appellate Case No. 2018-001740

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Clara L. Brockington,

Appellant,

v.

South Carolina Department of Employment and
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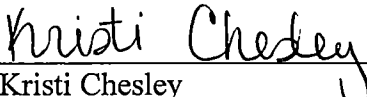
Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss for Failure to Timely File and Serve the Record on Appeal of the South Carolina Department of Employment and Workforce on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on October 14, 2019, addressed to the parties at their addresses of record:

Clara L. Brockington
PO Box 3232
Florence SC 29502

October 14 2019



Kristi Chesley
Administrative Legal Assistant
South Carolina Department of Employment and
Workforce
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October 14, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: Clara L. Brockington v. South Carolina Department of
Employment and Workforce
Appellate Case No: 2018-001740

Dear Ms. Kitchings:

Enclosed are the original and six copies of a Motion to Dismiss for Failure to Timely File and Serve the Record on Appeal of Respondent South Carolina Department of Employment and Workforce. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Paul Famolari
Attorney for Respondent South Carolina
Department of Employment and Workforce

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
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