

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2018-001606
CIVIL ACTION NO. 2018-CP-23-3544

RECEIVED

NOV 27 2019

SC Court of Appeals

Dwight Gray,

APPELLANT,

versus

Kimbrells Furniture,

RESPONDENT.

**RESPONDENT'S RETURN TO
APPELLANT'S MOTION TO REINSTATE APPEAL**

Following this Court's dismissal of the above-captioned appeal on October 16, 2019, Appellant Dwight Gray has moved to reinstate the appeal. Respondent Kimbrells Furniture objects to the reinstatement of this appeal and states as follows:

This action arises out of a Claim and Delivery filed by Respondent on or about January 9, 2018 in the Magistrate's Court for Greenville County against Appellant with respect to Appellant's failure to pay as contractually obligated for furniture ordered from Respondent. Respondent prevailed in the Magistrate's Court, which judgment was then affirmed on appeal by the Circuit Court.

Appellant subsequently filed the Notice of Appeal of the Circuit Court's Order in this Court over a year ago on approximately September 1, 2018. Following this Court's letter dated September 5, 2018 to Appellant regarding deficiencies with the Notice of Appeal, Appellant served the Notice of Appeal upon Respondent on September 21, 2018.

Pursuant to Rule 207(a)(1) of the South Carolina Appellate Court Rules, Appellant was required to have ordered the transcript of the proceedings below within ten (10) days of the date of service of the notice of appeal, or by October 1, 2018. Rule 207(a)(1) also required Appellant to "make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript."

Despite being advised by this Court on September 28, 2018 and March 6, 2019 of the rules for ordering a transcript, Appellant never complied with the requirements of Rule 207(a)(1) for ordering a transcript, including making arrangements with the court reporter for the payment of and furnishing of the transcript and copying counsel for Respondent on any correspondence with the court reporter. This Court sent an additional letter to Appellant on June 19, 2019 advising Appellant that he needed to advise the Court of the status of the transcript. Appellant never responded to the June 19, 2019 letter by the Court. To Respondent's knowledge, Appellant never made any contact with the court reporter to order the transcript as required by the South Carolina Appellate Court Rules.

Based upon Appellant's failure to order the transcript from the court reporter, Respondent moved to dismiss the appeal for lack of prosecution on June 28, 2019. Respondent served a copy of the Motion to Dismiss upon Appellant at his address on file

with this Court. Appellant did not respond to the Motion to Dismiss. This Court granted the Motion on October 16, 2019 and dismissed the appeal.

Appellant now moves to dismiss the appeal, contending that he has made efforts to order the transcript. Appellant, however, has presented no evidence that he has made contact with the court reporter and made satisfactory arrangements, including agreement regarding payment for the transcript, in writing with the court reporter for furnishing the transcript.

This appeal has been pending for over a year and to date, the transcript has still not been ordered by Appellant as required by the South Carolina Appellate Court Rules. The fact that Appellant is proceeding *pro se* does not relieve him of the responsibility of complying with all procedural and substantive requirements. State v. Burton, 356 S.C. 259, 589 S.E.2d 6, 9, n.5 (2003).

Appellant's failure to comply with the South Carolina Appellate Court Rules has significantly delayed this appeal and has hindered the ability of Respondent to move forward with the relief granted by the Magistrate's Court for Appellant's default on payments owed to Respondent. Accordingly, Respondent Kimbrells Furniture respectfully requests this Court to deny Appellant Dwight Gray's Motion to Reinstate the Appeal for the reasons set forth herein.

[signature on following page]

Respectfully submitted,



S. Nelson Weston, Jr.
Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR RESPONDENT
KIMBRELLS FURNITURE**

November 26, 2019.

CERTIFICATE OF SERVICE


I, the undersigned, attorney for Respondent Kimbrells Furniture do hereby certify that I have this date served the foregoing the Return to Appellant's Motion to Reinstate Appeal, dated November 26, 2019, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

Dwight Gray
209 Mountain Gap Rd.
Taylors, SC 29687
Appellant *Pro Se*

RECEIVED

NOV 27 2019

SC Court of Appeals



Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR RESPONDENT
KIMBRELLS FURNITURE**

Dated: November 26, 2019.

Reply to: Carmen V. Ganjehsani
Direct Dial: 803-253-8692
cganjehsani@richardsonplowden.com

November 26, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

NOV 27 2019

SC Court of Appeals

Re: *Dwight Gray v. Kimbrells Furniture*
Appellate Case No. 2018-001606
RPR File No.: 236-140

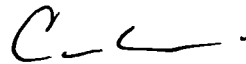
Dear Ms. Kitchings:

I am enclosing for filing the original and six copies of Respondent Kimbrells Furniture's Return to Appellant's Motion to Reinstate Appeal in the above referenced matter, along with our Certificate of Service.

By copy of this letter, we are serving a copy of this Return on Appellant *pro se*.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Carmen V. Ganjehsani

CVG
Encs.
cc: Dwight Gray

Hasler

FIRST-CLASS MAIL

11/26/2019

US POSTAGE \$001.90⁰



ZIP 29201
011E11684119

236-140

RICHARDSON
RICHARDSON PLOWDEN ROBINSON, P.A.
PLOWDEN
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202

RECEIVED

NOV 27 2019

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211