

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 04 2019
SC Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Circuit Court

Lawton McIntosh, Circuit Court Judge

Case No. 2019-000905

J. Morgan Kearse, Personal Representative of the Estate of G.H. KearseAppellant,

v.

The Kearse Family Education Trust, William Gordon Kearse,
Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse
Best, Joseph Weber Kearse, and John Morgan Kearse, of which
all are named individually and as Trustees of the Kearse Family
Education Trust U/A/D Nov. 05, 1992..... Respondents.

RETURN TO MOTIONS FOR EXTENTION BY RESPONDENTS
ELIZABETH KEARSE GOODING AND JULIA KEARSE SHARP

Respondents Elizabeth Kearse Gooding and Julia Kearse Sharp have each filed a Motion for a thirty-day Extension to file an Initial Brief of Respondent and a Designation of Matter, alleging that these were due on December 2, 2019. Appellant therefore files this Return to their respective Motions to clarify that Respondents' Initial Brief and Designation of Matter were due on November 6, 2019, as Appellant filed his Initial Brief on October 7, 2019. See Rule 208(a)(2), SCACR.

Respondent Elizabeth Kears Gooding's letter to the Court of Appeals dated November 14, 2019 indicates her belief that her prior counsel's Motion to Withdraw tolled the time for her to file an Initial Brief. However, Rule 240(b), SCACR (emphasis added) states that "[u]nless 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. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided."

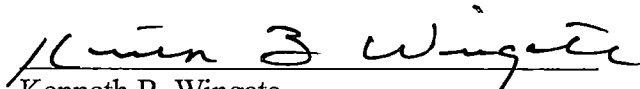
In this case, Appellant already perfected his appeal, thus granting the Court of Appeals with jurisdiction, by virtue of his timely filed Notice of Appeal and Brief of Appellant. Therefore, the deadline for Respondents' Initial Brief was not tolled during the thirteen days between the October 16, 2019 Motion for Withdrawal as Counsel and the Court's October 29, 2019 decision on that Motion. Moreover, even if Respondents' deadline to file an Initial Brief had been tolled during that period, Respondents' Initial Brief would instead be due on November 19, 2019, which date has also already passed.

As such, "[u]pon the failure of respondent to timely file a brief, the appellant court may take such action as it deems proper," Rule 208(a)(4), SCACR, which action may include a reversal of the decision below. See Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981) (stating the respondent's failure to file a brief allows the court to take such action upon the appeal as it deems proper, and this failure alone would justify reversal; however, the court considered it as an additional ground); Robinson v. Hassiotis, 364 S.C. 92, 93 n. 2, 610 S.E.2d 858, 859 n. 2 (Ct. App. 2005) (noting the respondent had not filed a brief and this court may take such action as it deems proper, including reversal); Campbell v. Carr, 361 S.C. 258, 266-67, 603 S.E.2d 625, 629 (Ct. App. 2004) (Goolsby, J., concurring) (explaining that

under Rule 208(a)(4), SCACR, when a respondent fails to file a brief, the appellate court can reverse if it deems proper); see also Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) (stating where the respondent failed to file a brief, “it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm”).

Please note that, insofar as Appellant is concerned, Appellant would be willing to consent to a thirty day, or even sixty day, extension for Respondents if he were able to do so. See Rule 263(b), SCACR. However, as there are other parties to this matter who stand to be harmed by ongoing legal expenses, Appellant requests that the Court of Appeals exercise its discretion to reverse the underlying decisions and void the alleged settlement that was never entered to begin with, without need of further judicial involvement. See Rule 208(a)(4), SCACR

Respectfully submitted,



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Columbia, South Carolina

December 3, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Circuit Court

Lawton McIntosh, Circuit Court Judge

Case No. 2019-000905

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J. Morgan Kearsse, Personal Representative of the Estate of G.H. KearsseAppellant,

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Best, Joseph Weber Kearsse, and John Morgan Kearsse, of which
all are named individually and as Trustees of the Kearsse Family
Education Trust U/A/D Nov. 05, 1992..... Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Motion for Extension Respondents by depositing
a copy of same into the United States Mail, First-class postage prepaid, on December 4, 2019,
addressed to the respondents or their attorneys of record as follows:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Respondent Julia Kearsse Sharp

Kathleen Chewing Barnes, Esquire
Barnes Law Firm, LLC
PO Box 897
Hampton, SC 29924
Attorney for Respondent Elizabeth Kearsse Gooding

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd, Ste. 100
Charleston, SC 29464
Attorney for Respondent Elizabeth Kearse Gooding

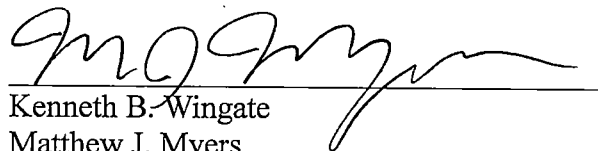
William Gordon Kearse
PO Box 221
Fairfax, SC 29827
Pro se

Rachael Kearse Best
5055 Lakeshore Drive
Columbia, SC 29206
Pro se

Joseph Weber Kearse
6620 Merrill Road
Columbia, SC 29209
Pro se

John Morgan Kearse
Post Office Box 521
Allendale, SC 29810
Pro se in individual capacity

I certify that the Kearse Family Education Trust is heretofore unrepresented in this matter and otherwise has no known address, and I have therefore delivered an additional copy of the Return to Motion for Extension Respondents with the Clerk of Court for the South Carolina Court of Appeals on December 4, 2019, pursuant to Rule 262, SCACR(b).



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S·W·B

SWEENY WINGATE & BARROW P.A.

December 4, 2019

Reply to: Main Office

Matthew J. Myers
(803) 256-2233 x7118
mjm@swblaw.com

SENT VIA HAND DELIVERY

South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings, Clerk of Court
1220 Senate Street, Columbia, SC 29201

RE: J. Morgan Kearse, Personal Rep. v. The Kearse Family Education Trust, et al.
Civil Action No.: 2017-CP-03-00244
Our File: 5330-10329

Dear Ms. Kitchings:

Please find enclosed for filing in the above referenced matter the following:

- An original Return to Motions for Extension and Proof of Service
- One copy of each to clock and return with the courier
- Six copies of the Return to Motions for Extension pursuant to Rule 240(e), SCACR.
- An additional copy of the Return to Motions for Extension for service upon Respondent Kearse Education Trust as provided in Rule 262(b), SCACR.

Thank you for your assistance, and please let me know if you need anything further at this time.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.



Matthew J. Myers

Enclosures

cc: Kathleen Barnes, Esq.
Rachael Kearse Best
Gordon Kearse
Joseph Kearse
Morgan Kearse, Esq.
Steven Slotchiver, Esq.
Daniel Speights, Esq.