

91057

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Richland County
Court of Common Pleas
The Honorable DeAndrea G. Benjamin, Circuit Judge

Appellate Case No. 2018-002167

RECEIVED
DEC 13 2019
SC Court of Appeals

Isaac Smith, Jr.,

Appellant,

v.

Johnnie Mae Muller Newton

Respondent.

Respondent's Motion to Dismiss or, in the Alternative, Strike or Correct Record on Appeal; Return to Motion to File Record on Appeal Past Time and Memorandum in Support Thereof

Appellant Isaac Smith, Jr., continues to completely disregard the *Rules of Appellate Procedure* and the directions of this Court, causing harmful delay and expense to Respondent. Respondent therefore moves, pursuant to Rule 240, *SCACR*, for an Order dismissing this appeal or, alternatively, striking or directing Appellant to correct and re-file the record on appeal. The grounds for this motion are as follows:

1. As required by the *SCACR*, Appellant should have filed the Record on Appeal on or before October 9, 2019.
2. No record on appeal was filed or served by that date, and this Court wrote to Appellant more than 30 days later on November 14, 2019, requiring that the record on appeal and proof of service be filed within 10 days of that date.

3. On November 22, 2019, Appellant filed a collection of documents entitled "Record on Appeal," but which failed to include much of the matter designated by the parties and contained an unsigned certificate of compliance. No proof of service was filed therewith.
4. After this Court wrote again, requiring Appellant to include all matter designated by the parties and to include a certificate of compliance and proof of service, Appellant on December 5, 2019, filed a collection of documents entitled "Record on Appellant [sic]."
5. Appellant's most recent attempt at a record on appeal does not correct multiple deficiencies addressed by this Court's previous correspondence. The most recent attempt at a record on appeal is deficient in at least the following ways:
 - a. Appellant fails to include all documents designated by the parties, in contravention of Rule 211(b);
 - b. Appellant has not organized the record in accordance with Rule 211(b), or in any cognizable way;
 - c. Although Appellant has signed a certificate, it is not in compliance with Rule 211(g);
 - d. Although Appellant includes the transcript of proceedings below, said transcript is missing pages 10-13; and
 - e. Appellant includes January and August 2019 motions which were filed below many months after the notice of appeal herein and should not be a part of the record herein.

6. Although Appellant has presented a motion to file out of time, he sets forth no basis for why his flawed filing was more than a month late and filed only after the Court requested it.
7. Respondent notes that virtually every filing Appellant has made in this Court has been untimely and/or deficient, which has substantially delayed this appeal and increased the cost of Respondent's participation herein.
8. On the one occasion when Respondent sought to file a document out of time (based, in part, on the confusion caused by repeated delays in Appellant's filings), Appellant *opposed* Respondent's motion and told this Court that "the respondent should be held the [sic] requirements of the Rules" and that this Court should reverse and remand this case as he requests. [August 5, 2019 Reply to Motion to File Out of Time, p. 2]
9. This appeal has now been pending more than a year, and Appellant's repeated failures to timely or correctly file documents has resulted in the case not yet having been finally briefed.
10. Especially in light of this appeal being from the Circuit Court's orders dismissing Appellant's original appeal as untimely, Respondent submits that allowing Appellant to continue to flout the Rules and force Respondent into further delay and expense will gravely prejudice Respondent.
11. Respondent further notes Appellant's successive meritless appeals continue to prevent the distribution of the Estate of Johnnie Mae Muller Newton to the heirs (who do not include Appellant) while its assets continue to be consumed by the cost of defending Appellant's claims.

For the foregoing reasons, Respondent respectfully asks that this Court dismiss Appellant's appeal for his failure to comply with the Rules and directions of this Court. If the Court does not dismiss the appeal, Respondent asks that the most recent "Record on Appellant [sic]" be struck and Appellant directed to promptly file a record on appeal in compliance with the Rules.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernaillawfirm.com
S.C. Bar No. 80219

Heather M. Cairns
Cairns Law Firm, LLC
2537 Gervais Street
Columbia, South Carolina 29204
803.771.6979 Telephone
803. 462.5797 Facsimile
heather@cairnslawfirm.com

December 12, 2019

Attorneys for Respondent

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Richland County
Court of Common Pleas
The Honorable DeAndrea G. Benjamin, Circuit Judge

Appellate Case No. 2018-002167

Isaac Smith, Jr.,

Appellant,

v.

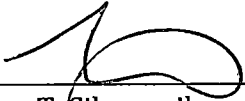
Johnnie Mae Muller Newton

Respondent.

Proof of Service

The undersigned hereby certifies that on the date shown below, he has served a copy of the Respondent's Motion to Dismiss and for other relief al on Appellant by depositing a copy of the same into the United States Mail, first-class postage prepaid, addressed as follows:

Isaac Smith, Jr.
2916 ¼ W. Vernon Avenue
Los Angeles, CA 90008



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernailfirm.com
S.C. Bar No. 80219

December 12, 2019

RECEIVED
DEC 13 2019
SC Court of Appeals