

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

RECEIVED
JAN 06 2020
SC Court of Appeals

J. Morgan Kears, Personal Representative of the Estate of G.H. KearsAppellant,

v.

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

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

By orders dated December 3, 2019, the Deputy Clerk of Court for the South Carolina Court of Appeals granted extensions for Respondents Elizabeth Kears Gooding and Julia Kears Sharp (the "Respondents") to file their respective initial appellant briefs in this matter by January 2, 2020. To Appellant's knowledge, the January 2, 2020 deadline has passed without either Respondent filing their initial brief, but rather each has file a Second Motions for Extension. In addition, it should be noted that Respondents did not file their first Motions for Extension until December 2, 2019, after the deadline to file their initial appellant briefs had passed.

Appellant filed his Initial Brief on October 7, 2019, after which one of Respondent Elizabeth Kears Gooding's two attorneys of record in this appeal filed a Motion to Withdraw as Counsel. To that end, Rule 240(b), SCACR 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."

Accordingly, at most, the deadline for Respondent Elizabeth Kears Gooding's initial brief was tolled during the 14 days from when the Motion for Withdrawal as Counsel was filed on October 16, 2019 and the Court's October 29, 2019 decision on that Motion. This meant that Respondent Elizabeth Kears Gooding's initial brief was due no later than November 20, 2019, or 44 days after Appellant's Initial Brief was filed. See Rule 208(a)(2), SCACR; Rule 240(b), SCACR. Moreover, the deadline for Respondent Julia Sharp Kears's initial brief was not tolled at all because her attorney did not file a Motion for Withdrawal, making her initial brief due on November 6, 2019. See Rule 208(a)(2), SCACR.

Pursuant to Rule 208(a)(4), SCACR, "[u]pon the failure of respondent to timely file a brief, the appellant court may take such action as it deems proper", 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”).

According, on the basis that Respondents have each missed the deadline to file their initial briefs in this matter for a second time and without reasonable cause, Appellant hereby asks the Court of Appeals to 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 and great expense to all concerned. See Rule 208(a)(4), SCACR.

Respectfully submitted,



Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

Columbia, South Carolina

January 6, 2020

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all are named individually and as Trustees of the Kears Family
Education Trust U/A/D Nov. 05, 1992..... Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Second Motion for Extension of Respondents by depositing a copy of same into the United States Mail, First-class postage prepaid, on January 6, 2020, addressed to the respondents or their attorneys of record as follows:

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

Whitney B. Harrison
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201
Attorney for Respondent Julia Kears Sharp

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

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Hampton, SC 29924
Attorney for Respondent Julia Kears Sharp

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

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

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

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

I certify that the Kears 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 Second Motion for Extension of Respondents with the Clerk of Court for the South Carolina Court of Appeals on January 6, 2020, pursuant to Rule 262, SCACR(b).



Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803) 256-2233
Attorneys for Appellant

S·W·B

SWEENEY WINGATE & BARROW P.A.

January 6, 2020

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 Kears, Personal Rep. v. The Kears 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 Second Motions for Extension and Proof of Service
- One copy of each to clock and return with the courier
- Six copies of the Return to Second Motions for Extension pursuant to Rule 240(e), SCACR.
- An additional copy of the Return to Second Motions for Extension for service upon Respondent Kears 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,

SWEENEY, WINGATE & BARROW, P.A.



Matthew J. Myers

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Enclosures

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