

STATE OF SOUTH CAROLINA )  
COUNTY OF DARLINGTON )  
) IN THE MATTER OF: )  
ESTATE OF BROCKIE HOPKINS, JR. )  
(Decedent) )  
) )  
RODNEY BROCK HOPKINS, )  
Appellant )  
vs. )  
) )  
MARY UPTAGRAFFT ON BEHALF OF )  
JOSHUA B. HOPKINS, JACOB T. HOPKINS, )  
JENSEN M. HOPKINS, & JOHANNA S. )  
HOPKINS, )  
Respondent )

IN THE CIRCUIT COURT  
CASE NO. 2019-CP-16-00634

**ORDER**

**Attorneys:**

Richard E. Conner, Jr. for appellant.  
John Keffer for respondent.

**Opinion:**

The Honorable Roger E. Henderson, Fourth Circuit Court of Common Pleas sitting in Appellate Jurisdiction.

This action results from an appeal by Rodney Hopkins (Appellant) of an Order from the Darlington County Probate Court in favor of Mary Utagrafft (Respondent).

The present hearing follows a motion by Respondent to Extend Time for Initial Brief filed and also Motions submitted by Appellant seeking and Order for Default based on failure to timely submit responsive instruments under §62-1-308 and the South Carolina Appellate Court Rules *et al.*

**BACKGROUND**

The background in this matter is somewhat tedious given the various irregularities, but a presentation of the events leading to this Order is useful for general comprehension of the matter as well providing support for this Order.

Brockie Hopkins, Jr. passed on 6 September 2016. On 19 October 2016 Appellant, Decedent's only child, was appointed Personal Representative of his intestate estate. Respondent, Appellant's former wife, brought an action for formal testacy of a handwritten document she alleges to be Brockie Hopkins, Jr.'s, Last Will and Testament. Her Petition also seeks her appointment as Personal Representative. This action was filed in the Probate Court for Darlington County on 19 April 2017.

Later, in what appears to be a second, independent action, served 8 January 2018, Respondent filed a Petition for Removal of Personal Representative.

In her Petition, Respondent asserted Appellant should be replaced as Personal Representative because he had:

- “failed to perform a required duty,”
- “mismanaged the estate,” and
- “committed fraud, misrepresentation and misappropriation of assets.”

Within Appellant’s Response were Motions which sought to have the matter decided based upon failure to observe the requirements of the South Carolina Rules of Civil Procedure. These Motions included the following:

1. Judgment on the Pleadings under Rule 12 (SCRCP);
2. Summary Judgment under Rule 56 SCRCP;

Appellant’s Motions explicitly incorporated by reference Rules 8(a)(2) and 12(b)(6) SCRCP in that:

- a. Appellant denied Respondent’s assertions;
- b. That Respondent lacked authority to bind her children in either law or fact and therefore lacked standing to petition on behalf of her children (all of which were, at the time this hearing took place, above the age of 18 years):
  - i. Joshua B. Hopkins;
  - ii. Jacob T. Hopkins
  - iii. Jenson Hopkins; or
  - iv. Johanna S. Hopkins

*these children are all children of both Appellant and Respondent.*
- c. The Petition contained only legal conclusions, which conclusions could not be sustained without any allegation of facts as the Rules require “*a short, plain statement of the facts in order to demonstrate entitlement to relief.*”

A hearing on the Motions was conducted in the Probate Court of Darlington County on 12 December 2018, the Order for which was executed by the Probate Judge on 20 May 2019. The Order read:

1. *In conclusion, as a matter of law, this matter is properly before the Court and that this Court has jurisdiction of the parties and the subject matter hereto, and*
2. *Respondent filed a Motion for Summary Judgment based on pleadings previously submitted to this Court on February 9, 2018.*

*Now, therefore based upon the foregoing it is hereby Ordered that [Appellant’s] Motion for Summary Judgment is hereby denied.*

It is this Order, itself having cited no facts upon which to base findings, from which Appellant appeals.<sup>1</sup>

### APPEAL

The current action before this Court was initiated by Respondent who seeks an Extension of Time within which to file her brief. The hearing upon this action included oral arguments on behalf of Appellant whose responses included related counter motions. The record demonstrates the following:

### FILINGS

1. Appellant's **Notice of Intent to Appeal** was filed (electronically) 10 June 2019. Proof of Delivery was filed with the Darlington County Probate Court on 13 June 2019 indicating service upon Respondent's attorney of record by mail on 11 June 2019. The timing of these filings are consistent with the requirements of the South Carolina Probate Code §62-1-308(a), §62-1-304 and SCRCF 6(a). This is not in dispute.
2. All **intermediate filings** required of Appellant were filed (electronically) in a timely manner consistent with §62-1-308(b-d), §62-1-304 SCACR 208(b)(1) and SCRCF 6(a) *et al* without incident. This is not in dispute.
3. On 14 August 2019 Appellant filed (electronically) his **Designation of Matter on Appeal** and **Initial Brief** consistent with §62-1-308(e), §62-1-304 SCACR 208(b)(1) and SCRCF 6(a)

Based on the above cited timeline and references, Respondent's Brief should have been filed no later than Friday, 13 September, 2019. This is not in dispute.

4. The next filing in the matter occurred on Wednesday, 18 September 2019 when Respondent's counsel filed a **Notice of Appearance**.

On the same day, Appellant filed a **Response to an unfiled, hardcopy document** which appeared to have been a Motion to Extend Time Limit to File Initial Brief stating "*Respondent does not believe Appellant would object to this request.*" This document was not, at the time of the Response, electronically filed. Appellant's Response sought to protest such a request if, in fact, such a request had been then properly submitted.

5. Two days later, on Friday, 20 September 2019, one week following the time limit for filing such, Respondent filed (electronically) her **Motion to Extend Time for Initial Brief** citing SCACR 240 as authority, and alleging counsel's initial effort had been rejected due to clerical error.<sup>2</sup> On Monday, 23 September 2019, Appellant submitted a **Second Response** noting the deadline for Respondent's Initial Brief was already six days beyond the time limit. This Second Response also indicated Appellant's objection to the Motion as the deadline for filing had passed.

---

<sup>1</sup> Rule 52(a) SCRCF: "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58."

<sup>2</sup> It is noted that no such attempted filing is reflected in Public Index.

6. Two weeks later, on 7 October 2019, Appellant submitted (electronically) an **Affidavit of Default**.<sup>3</sup>
7. On 14 October 2019 Appellant filed (electronically) his **Notice of Motion and Motion for Default**. Two days later the Clerk of Court entered an **Order for Default** as against Respondent. On the same day, the Clerk of Court withdrew the Order indicating Respondent's Motion to Extend Time must first be heard before an Order of Default could be considered.

The hearing on the parties' Motions was held on 14 November 2019, The Honorable Roger Henderson presiding.

On 25 November 2019, 102 days following Appellant's Initial Brief, and 72 days following Respondent's deadline, the Clerk of Court accepted for filing Respondent's Initial Brief.

### DISCUSSION

Several issues were presented for the Court's determination. A discussion of each is provided below.

#### I. Whether Respondent's Motion to Extend Time for Initial Brief Should Be Granted.

In support of his position seeking an expansion of time Respondent cites SCACR 240.

The rules governing appeals from a Probate Court are established by *The South Carolina Probate Code* §62-1-308. Relating in particular to a Responding party's filing of his Initial Brief, subsection (e) of the referenced code indicates the Brief shall be filed within 30 days following Appellant's filing his Statement of Issues on Appeal and Initial Brief. The undisputed deadline then, was 13 September 2019.

However, §62-1-308 references the South Carolina Rules of Appellate Court which could serve to validate Respondent's reliance on *Rule 240*. Subsection (a) of this Rule makes it clear that a Motion for Expansion is contemplated within the Rules. However, subsection (b) of this Rule informs, "the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition." *Rule 240(b) SCACR*.

When asked why neither the Motion nor the Brief were timely filed, counsel responded that he had been suffering under a heavy workload and was not aware Darlington County was an E-file county. That an attorney is straining under his own workload and is unfamiliar with the State's E-file requirements seems insufficient for granting an expansion if such were within the Court's authority, but as the Motion was filed six days *after the deadline* for having filed the Brief, and because the Rule's time limits are so firmly set, the Motion cannot be granted. It is also noted that the time limit, as of the date of this hearing, was 60 days past.

---

<sup>3</sup> The record does not indicate Appellant's Affidavit of Default was removed as was the Order for Default.

Following Respondent's Motion, Appellant filed Motions seeking to deny Respondent the ability to file an Initial Brief and for Respondent's case to be deemed by this Court as abandoned as a result of her default.

## II. Whether Appellant's Motion that the Court Deny Respondent the Filing of his Initial Brief.

Appellant seeks to have Respondent denied reception of any brief which was to then be forthcoming based on her failure to file within the time limit established by the Rules.

Though the time limit for Respondent having submitted his Brief may be exceptional, the Rules indicate the time limits established are firmly fixed without prior Order of this Court. The Code and Rules already cited direct that while parties may move for an expansion of time, there will be no stay during the pendency of the decision. Here, Respondent neither filed her Motion or Brief within the time limit established by the cited Code and Rules. Thus, the deadline had passed.

"Upon failure of a respondent to timely file a brief, the appellate court may take such action as it deems proper." *Rule 208(a)(4) SCACR*. Where a party fails to timely file a brief, the failure allows the Court to, "take such action as it deems proper and such failure alone would justify reversal of Order." *Turner v. Santee Cement Carriers, Inc.*, 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981). A court sitting in appeals may, "address issues as presented in Appellant's brief in case in which respondent's did not file brief with appellate court." *Durham v. United Cos. Fin. Corp.*, 326 S.C. 403, 404, 483 S.E.2d 786 (Ct.App.1997).

The Respondent failed to timely file her brief in this appeal which sees the Court having all authority necessary to take such action as it deems proper. Eleven days following the hearing on this matter, Respondent filed his Statement of Issues on Appeal and Initial Brief. As these documents were submitted beyond the time limit established by the Rules, this Court exercises its authority so as to disregard the filing of those instruments and direct the Clerk of Court to withdraw its filing of said instruments in an appropriate manner. In addition, the Clerk's original Order of Default should be reinstated.

## III. Whether the Court Should Consider Respondent as Having Abandoned the Matter.

Appellant urges the Court to treat Respondent as though she has abandoned her defense. Appellant's primary argument is that Respondent has disregarded the Rules and, as of this hearing, done nothing to demonstrate a defense against this appeal other than be present at the hearing. In further support, Appellant ask, rhetorically: *Why do the Rules exist if they are not to be followed?*

Based on the above referenced citations, it is clear this Court has authority to reverse the Order of the lower court, but doing so is not justified in every case. *Turner v Santee Cement Carries, Inc.* Here Respondent disregarded her duties to timely file either a Motion for Expansion or her Initial Brief. The undisputed timeline of the case illustrates Respondent did not file her Initial Brief until 72 days after her time limit had passed. Not only, but her Motion included her assertion of confident assumption that Appellant would be prepared to consent to the requested expansion. The Appellant Court Rules, however, do not permit the parties to agree to an expansion. *Rule 263(b)*. Even if the

Rules did permit such, Appellant had twice indicated, in instruments properly filed, his protest of the proposed expansion.

The Brief, though eventually filed, was not available to the Court at the hearing. It is noteworthy that the hearing was sought by Respondent as such Motions are generally decided without oral arguments. Rule 240(b) SCACR. Submission of the Brief prior to the hearing might have been received as a good faith gesture on behalf of Respondent. This gesture would not have permitted the Court to accept the instrument as such is precluded by the Rules, but it would have demonstrated a commitment by Respondent to defend her Order. The Brief, however, did not appear until the eleventh day following the hearing.

Not only was the Brief not filed prior to the hearing, but in oral arguments, Respondent's counsel argued that there existed in the transcript omissions of significance. Though the very short transcript was reviewed during the hearing, Respondent's counsel could not identify with verifiable specificity the shortcomings to which he was referring.<sup>4</sup> These factors indicate a lack of knowledge or application of the facts, and applicable code and Rules through insufficient filings and a lack of preparation for hearings. These factors are also apparent in the record which led to the Order which is appealed.

The Petition which led to the Order being appealed included no allegation of fact demonstrating Respondent was entitled to relief; and as to this reasonable minds cannot differ. Rule 8(a), SCRCP. Additionally, the file fails to demonstrate any foundation for Respondent's standing. There exists no allegation of fact, no foundation of an agency relationship, nor any other indication of just how Appellant's ex-wife has standing to seek his replacement as Personal Representative. Such elements are necessary to establish a party's standing and, therefore, a court's jurisdiction - these too provide no room for reasonable minds to differ. Rule 17(a) SCRCP.

Taken together, Respondent has, from the very start of the action which leads to this Order, Respondent has repeatedly disregarded or violated Rules of procedure and the South Carolina Probate Code. But by some stroke of her good fortune, and nothing founded in law or procedure, Respondent has been permitted to expose the opposing party to unnecessary cost, delays and frustrations as she seeks relief a Court has no authority to grant. In contrast, Appellant appears to have been timely and well-grounded in law and procedure as to all filings.

As a result of all the above listed factors, this Court does rely upon Respondent's failure to timely file his Initial Brief as justification to reverse the lower Court's ruling.

The lower Court's ruling is herewith reversed and remanded with instructions for the Probate Court of Darlington County to enter an Order granting Appellant's Motions and also permitting such post-trial and subsequent actions as Appellant would have a right to promote.

---

<sup>4</sup> The transcript was sent to the court and was an element of the file available both to Respondent and the Court prior to the hearing.

---

Honorable Roger E. Henderson

\_\_\_\_\_, 2020  
Darlington, SC



Darlington Common Pleas

**Case Caption:** Rodney Brock Hopkins VS Mary Uptagrafft , defendant, et al

**Case Number:** 2019CP1600634

**Type:** Order/Other

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2020-02-12 16:44:40 page 8 of 8