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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No.: 2019-001665

RECEIVED
FEB 24 2020
SC Court of Appeals

David L. Scheer, as Personal Representative of the
Estate of Matthew J. Scheer..... Respondent,

v.

Southern Myrtle Inpatient Services, LLC, Nirlep A. Patel, M.D.
and Rachel Ash-Bernal, M.D. Defendants,

Of which
Southern Myrtle Inpatient Services, LLC isAppellant.

**RESPONDENT’S MOTION TO DISMISS APPELLANT’S APPEAL FOR FAILURE
TO TIMELY FILE AN INITIAL BRIEF AND DESIGNATION OF MATTER**

Respondent respectfully moves this Honorable Court to dismiss Appellant’s appeal for its failure to timely file an initial brief and designation of matter. After having been granted FIVE extensions, Appellant failed to submit its initial brief and designation of matter within the prescribed time. The South Carolina Appellate Court Rules provide that dismissal is mandatory:

Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk **shall issue an order of dismissal**, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

Rule 260(a), SCACR (*emphasis added*). Then, after dismissal, should Appellant wish to have the appeal reinstated, it is required to seek leave of court and show good cause why it failed to meet any of the six deadlines imposed by the rules and subsequent orders by the Court of Appeals.

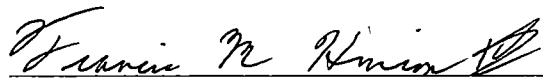
Leaving no ambiguity as to the deadline for filing, the order granting the fifth extension provided: “*The time for serving and filing the appellant’s initial brief and designation of matter is hereby extended until February 20, 2020. No further extension will be granted.*” Despite this clear deadline/mandate, Appellant did not file its initial brief and designation by February 20, 2020, and the documents were not received by the Court of Appeals until February 24th of the following week. To accept Appellant’s brief at this stage would be to effectively grant a sixth extension and would run afoul of Rule 260(a), SCACR. As cautioned by this Court in Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (Ct. App. 1992):

Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.

Respondent would respectfully submit that the appeal must be dismissed. “Justice delayed is justice denied,” In re Atwater, 397 S.C. 518, 528, 725 S.E.2d 686, 691 (2012), and to permit Appellant’s brief at this late date would amount to an unreasonable delay that is unjust to Respondent and would condone Appellant’s disregard for the Court’s rules and instructions.

Appellant has failed to comply with the requirements of the South Carolina Appellate Court Rules and the prior orders of this Court. Accordingly, Respondent moves that the appeal of Southern Myrtle Inpatient Services, LLC, be dismissed pursuant to Rule 260(a), SCACR.

Respectfully submitted,



Francis M. “Brink” Hinson, IV (SC Bar # 74917)

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Counsel for Respondent

February 24, 2020
Columbia, South Carolina

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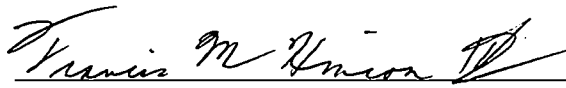
Of which
Southern Myrtle Inpatient Services, LLC isAppellant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the *Respondent's Motion to Dismiss Appellant's Appeal for Failure to Timely File an Initial Brief and Designation of Matter* was served upon counsel for the Appellant in the above-captioned matter, by causing a copy of same to be deposited in the United States Mail, first class postage prepaid, this day, February 24, 2020, and addressed as follows:

Robert L. Widener, Esq.
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, SC 29211

FINKEL LAW FIRM LLC


Francis M. "Brink" Hinson, IV (SC Bar # 74917)
Counsel for Respondent



Francis M. "Brink" Hinson, IV, Esq.
bhinson@FinkelLaw.com
Shareholder
Reply to Columbia Office

February 24, 2020

VIA HAND DELIVERY

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

RECEIVED
FEB 24 2020
SC Court of Appeals

RE: Scheer vs. Southern Myrtle Inpatient Services, LLC, et al.
Case No.: 2017-CP-26-01571
Appellate Case No. 2019-001665
Our File No.: 79595-50893

Dear Ms. Kitchings:

Enclosed, please find the original and six copies of *Respondent's Motion to Dismiss Appellant's Appeal for Failure to Timely File an Initial Brief and Designation of Matter* and a Proof of Service for filing in regard to the above-named matter. Also enclosed, please check for the filing fee of fifty dollars.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

Francis M. "Brink" Hinson, IV

Enclosures (*as noted above*)

cc: Robert L. Widener, Esq.

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