

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

S.C. SUPREME COURT

APPELLATE CASE NO. 2020-000635
CIVIL ACTION NO. 2018-CP-23-3544

Order in Appellate Case No. 2018-001606 (S.C. Ct. App. March 19, 2020)

Dwight Gray,

PETITIONER,

versus

Kimbrells Furniture,

RESPONDENT,

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner's repeated failure to order the transcript as required by the South Carolina Appellate Court Rules despite multiple opportunities given by the South Carolina Court of Appeals to do so warranted the Court of Appeals' dismissal of the appeal.

COUNTERSTATEMENT OF THE CASE

This action arises out of a Claim and Delivery filed by Respondent Kimbrells Furniture on or about January 9, 2018 in the Magistrate's Court for Greenville County against Petitioner Dwight Gray with respect to Petitioner's failure to pay as contractually obligated for furniture ordered from Respondent. Respondent prevailed in the Magistrate's Court, which judgment was then affirmed on appeal by the Circuit Court.

Petitioner subsequently filed the Notice of Appeal of the Circuit Court's Order in the South Carolina Court of Appeals on September 1, 2018. Following the Court of Appeals' letter dated September 5, 2018 to Petitioner regarding deficiencies with the Notice of Appeal, Petitioner served the Notice of Appeal upon Respondent on September 21, 2018.

Pursuant to Rule 207(a)(1) of the South Carolina Appellate Court Rules, Petitioner was required to have ordered the transcript of the proceedings below within ten (10) days of the date of service of the notice of appeal, or by October 1, 2018. Rule 207(a)(1) also required Petitioner to "make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript."

Despite being advised by the Court of Appeals on September 28, 2018 and March 6, 2019 of the rules for ordering a transcript, Petitioner never complied with the requirements of Rule 207(a)(1) for ordering a transcript, including making arrangements

with the court reporter for the payment of and furnishing of the transcript and copying counsel for Respondent on any correspondence with the court reporter. The Court of Appeals sent an additional letter to Petitioner on June 19, 2019 advising Petitioner that he needed to advise the Court of the status of the transcript. Petitioner never responded to the June 19, 2019 letter by the Court of Appeals. To Respondent's knowledge, Petitioner never made any contact with the court reporter to order the transcript as required by the South Carolina Appellate Court Rules.

Based upon Petitioner's failure to order the transcript from the court reporter, Respondent moved to dismiss the appeal for lack of prosecution on June 28, 2019. Respondent served a copy of the Motion to Dismiss upon Petitioner at his address on file with the Court of Appeals. Petitioner did not respond to the Motion to Dismiss. The Court of Appeals granted the Motion on October 16, 2019 and dismissed the appeal.

Petitioner moved to reinstate the appeal on November 20, 2019. On January 24, 2020, the Court of Appeals issued an order advising that it would reinstate the appeal if Petitioner made satisfactory arrangements with the court reporter for procuring the transcript within ten days of the order. Petitioner again did not order the transcript, and the Court of Appeals issued its order denying the motion to reinstate the appeal on March 19, 2020.

Petitioner now moves this Court for an order granting a petition for writ of certiorari, arguing that the Court of Appeals should not have dismissed the appeal for his failure to order the transcript.

ARGUMENT

Petitioner's repeated failure to order the transcript as required by the South Carolina Appellate Court Rules despite multiple opportunities given by the South Carolina Court of Appeals to do so warranted the Court of Appeals' dismissal of the appeal.

The Court of Appeals properly dismissed Petitioner's appeal for failing to order the transcript as required by the South Carolina Appellate Court Rules. When the Court of Appeals dismissed Petitioner's appeal, the appeal had been pending for over a year and the transcript had still not been ordered by Petitioner as required by the South Carolina Appellate Court Rules. The fact that Petitioner was proceeding *pro se* did not relieve him of the responsibility of complying with all procedural and substantive requirements. State v. Burton, 356 S.C. 259, 589 S.E.2d 6, 9, n.5 (2003).

Petitioner's failure to comply with the South Carolina Appellate Court Rules significantly delayed the appeal and hindered the ability of Respondent to move forward with the relief granted by the Magistrate's Court for Petitioner's default on payments owed to Respondent. The Court of Appeals offered Petitioner many chances to order the transcript, including a chance to reinstate the appeal after it was dismissed if Petitioner ordered the transcript. Petitioner never did so. Accordingly, the Court of Appeals properly dismissed the appeal.

CONCLUSION

For the reasons set forth herein, Respondent Kimbrells Furniture respectfully requests this Court to deny the Petition for Writ of Certiorari filed by Petitioner.

Respectfully submitted,



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June 10, 2020.