

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, Master in Equity



Appellate Case No. 2019-001289

Raven’s Run Homeowners Association, Inc., Appellant/Respondent,
v.

Crown Pointe Association, Inc.; Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013, Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevics, Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Spigner a/k/a Shirley Deanna Spigner; Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr., and Terry W. Graves; Mary Elizabeth Gladden; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr., and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. and Melissa F. Kubu, and
Leila June Johnson are the Respondents

And Katherine Kinlaw is the Respondent/Appellant.

RETURN OF APPELLANT/RESPONDENT RAVEN’S RUN TO
MOTION OF RESPONDENTS JAMES AND MELISSA KUBU
FOR RELIEF OF COUNSEL AND TO HOLD TIMELINE
IN ABEYANCE

Appellant/Respondent Raven’s Run Homeowners Association, Inc. (“Raven’s Run”) respectfully submits this Return to the *pro se* motion (“Motion”) filed by Respondents James and Melissa Kubu, for relief of counsel and to hold this appeal and cross-appeal—both of which have been fully briefed—in abeyance for an undefined period of time so the Kubus can retain new counsel.

The Court should deny the Motion. The Kubus have known they needed to retain counsel since at least mid-August 2019—*nearly ten months ago*. Granting the Motion not only would reward the Kubus’ unjustified delay but would also unfairly punish Raven’s Run, which has diligently litigated this appeal.

BACKGROUND

As explained more fully in the briefs filed by Raven’s Run, this appeal concerns ownership of a 10- to 12-foot-wide buffer strip of dry land that lies between the rear lot lines of Lots 37E through 66E of the Crown Pointe Subdivision and the waterline of a lake owned by Raven’s Run. The buffer strip provides a screen of trees and greenery that enhances the value of the lots in Raven’s Run by creating a feeling that they are located in a secluded woodland. Raven’s Run contends that it owns the buffer strip and is appealing the master-in-equity’s ruling in favor of three individual lot owners, Katherine Kinlaw (Lot 45E), Leila Johnson (Lot 39E), and the Kubus (Lot 40E).¹ Kinlaw

¹ Raven’s Run filed an action seeking a declaratory judgment that it owns the buffer strip and damages for trespass and nuisance, naming all owners of Lots 37E through

has cross-appealed the master's ruling that Raven's Run owns the lake that lies between the Raven's Run Subdivision and the Crown Pointe Subdivision.

Raven's Run filed its notice of appeal on August 1, 2019. Respondent/Appellant Katherine Kinlaw filed her notice of cross-appeal on August 6, 2019. Both notices were served on the Kubus' counsel, Mr. Pritchard.² Raven's Run subsequently filed motions for leave to file an amended notice of appeal and for an extension of time to file its initial brief, both of which were also served on Mr. Pritchard as counsel for the Kubus. By letter dated September 27, 2019, the Clerk of Court asked counsel for the Kubus and Respondent Leila Johnson to file a return to the motion for leave to file an amended notice of appeal.

In a letter dated October 1, 2019, Mr. Pritchard stated that he was retiring from the practice of law and would no longer be representing the Kubus. Mr. Pritchard further stated,

I talked to [Mr. Kubu] on the phone on September 30th and he stated that he had not, as yet, retained the services of another attorney to represent him in this matter.

Mr. Kubu was copied on Mr. Pritchard's letter. (*Id.*)

66E and the Crown Pointe Association as defendants. By the time of the master's ruling, Raven's Run had entered into settlements with the Crown Pointe Association and all of the other individual lot owners.

² All of the filed documents referenced in this Return are publicly available on the Court's docket, which can be accessed through the "C-Track Public Access" link on the home page of the website for the South Carolina Judicial Branch, www.sccourts.org.

In fact, by the time of Mr. Pritchard's October 1, 2019 letter, the Kubus had already known for *over a month* that they needed to retain new counsel. On August 26, 2019, Mr. Pritchard informed trial counsel for Raven's Run that the Kubus were in the process of retaining new counsel:

I will not be representing James Kubu in this appeal as I am going to not renew my law license when it comes due in December of this year. *I know James Kubu has been to see Harold Oberman and also that he is going to see Mackie Gibson about that matter.* I assume that you will soon be hearing from one of these attorneys on his behalf.

(Exhibit A (emphasis added))

The Clerk of Court responded to Mr. Pritchard's October 1, 2019 letter, clearly advising Mr. Pritchard that he remained counsel of record for the Kubus:

Pursuant to Rule 264 of the South Carolina Appellate Court Rules, *you remain counsel of record.* In order to withdraw from representation, you must either provide a copy of an order relieving you as counsel from the lower court, or *you must serve and file a motion to be relieved as counsel with this Court. Otherwise, our records will remain with you as counsel for James B. Kubu and Melissa F. Kubu.*

(emphasis added) No such motion has ever been filed. The Court's docket shows that since November 1, 2019 (the date of the Clerk's response to Mr. Pritchard), there have been numerous filings, correspondence and interim orders, *all* of which have been served on or sent to Mr. Pritchard.

On June 1, 2020, the Clerk of Court emailed correspondence to counsel for the parties, including Mr. Pritchard, advising that "the time for filing and serving the

respondent's brief and designation of matter has expired for ... [the Kubus]." The letter instructed,

Within ten (10) days of the date of this letter, you may serve and file the respondent's initial brief and designation of matter, along with a motion requesting permission to serve and file the brief and designation outside of the filing deadlines set by Rules 208 and 209 of the SCACR. Your respondent's initial brief will not be considered if no motion is made within ten (10) days of the date of this letter.

On June 9, 2020, the Kubus, acting *pro se*, filed the Motion.

ARGUMENT

The Kubus have known they needed to retain new counsel for this appeal since mid-August 2019—*ten months ago*. Nevertheless, they now ask the Court to hold this appeal in abeyance for some undefined period of time so they can retain counsel, and for some additional undefined period of time so their new counsel can become familiar with the case and draft a response to the brief filed by Raven's Run in January. The Court should deny the Motion.

First, the Kubus have improperly filed a *pro se* motion even though they are represented in this Court by Mr. Pritchard, their counsel of record. In its November 1, 2019 letter, the Court clearly advised Mr. Pritchard that unless he filed a motion to be relieved as counsel pursuant to Rule 264, SCACR, he would remain as counsel of record for the Kubus. He never filed such a motion, and throughout this appeal he has been served with, or copied on, all filings, orders, and correspondence. Additionally, since Mr. Pritchard remains counsel of record for the Kubus, undersigned counsel are in the

awkward position of filing a Return to the Motion but being ethically prohibited from serving the Return on the Kubus. *See* S.C. R. Prof'l Resp. 4.2.³

Second, the Kubus fail to provide any justification for the relief they seek — essentially, an open-ended suspension of proceedings in this matter. They vaguely claim that they have made “diligent efforts” to retain counsel but have been unable to do so because of “current Covid-19 restrictions.” (Motion, at 2.) However, the Kubus provide no information whatsoever regarding the nature of their efforts to retain counsel, nor do they explain how any “Covid-19 restrictions” have hindered their efforts to do so.

More importantly, the Kubus have known for *ten months* that they needed to retain new counsel, and in fact were interviewing attorneys by mid-August 2019. (Exhibit A) This was *more than six months* before Governor McMaster entered his first executive order related to the COVID-19 pandemic on March 11, 2020. *See* Exec. Order 2020-07 (Mar. 11, 2020). But the Kubus do not tell the Court what they did to try to retain counsel during that period, nor do they explain why those efforts were unsuccessful. In short, nothing in the Motion gives the Court any reason to accept, at face value, the Kubus’ claim that they have diligently sought new counsel.

³ “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.” *Id.*

This lack of explanation leads to the third reason why the Motion should be denied: Delay simply plays into the Kubus' hands. Raven's Run has diligently pursued this appeal. To date, it has filed an initial opening and initial reply brief in support of its appeal, and an initial respondent's brief in opposition to Kinlaw's cross-appeal. Kinlaw served and filed her initial reply brief of respondent/appellant on June 11, 2020. Initial briefing on the appeal and cross-appeal are now complete and the clock is ticking for Raven's Run to prepare and serve the record on appeal. *See* Rule 210(a), SCACR. Allowing the Kubus to disrupt the appellate process at this late date would unjustly deny Raven's Run's right to a prompt resolution of this appeal. *See* S.C. Const. art. I, § 9 ("All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.").

In this vein, it is important to point out that the Kubus have no incentive to move this appeal toward an orderly and efficient resolution. To the contrary, for as long as the appeal remains pending the status quo will prevail, meaning that the Kubus can continue to trespass on land that rightfully belongs to Raven's Run. The Kubus's removal of the trees and greenery from the portion of the buffer strip behind their lot has resulted in a damaged, eroded shoreline. **(Exhibit B)**⁴ This matter needs to be resolved so that Raven's Run can begin efforts to restore the buffer strip.

⁴ This photograph was submitted to the master as part of Exhibit 11 in support of Raven's Run's motion for summary judgment.

The Kubus have had ample time to retain counsel for this appeal. Not only have they failed to do so, but they have not made a serious attempt to explain or justify this failure. Granting the Motion would simultaneously reward the Kubus for their delay and punish Raven's Run for its diligent pursuit of its rights.

CONCLUSION

For the reasons set forth above, Raven's Run respectfully asks the Court to deny the Motion.

Respectfully submitted,

s/ William W. Wilkins

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Raven's Run Homeowners Association, Inc.

June 19, 2020

Greenville, South Carolina

EXHIBIT A

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August 26, 2019

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RE: Raven's Run Homeowner's Association Inc. Vs. Crowne Point
Association Inc., et al
C/A No: 2017-CP-10-000473
Appellate Case No.: 2019-001289
Client File: 3603.0001

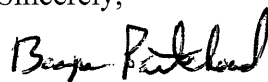
Dear Hamlin:

I am in receipt of your letter of August 20, 2019 addressed to the Honorable Jenny Abbott Kitchings. This letter was delivered to me by FedEx here at my home - 2830 Middle Street, Sullivan's Island, SC on August 21st. I noticed that your Amended Proof of Service states that you have served the Appellants' Notice of Appeal by sending copy of same with postage pre-paid overnight delivery to several people including me at 1558 Ben Sawyer Blvd., Mt. Pleasant, SC 29464. Luckily for you when FedEx tried to deliver that letter to me at 1558 Ben Sawyer Blvd, they found that this building has been totally empty and that the buyers are in the process of demolition.

I will not be representing James Kubu in this appeal as I am going to not renew my law license when it comes due in December of this year. I know James Kubu has been to see Harold Oberman and also that he is going to see Mackie Gibson about that matter. I assume that you will soon be hearing from one of these attorneys on his behalf.

If you have anything to have FedExed to me personally, please be sure they send it to my address at 2830 Middle Street, Sullivan's Island, SC 29482.

Sincerely,



Edward K. Pritchard, jr.


ekp/skp

cc: James Kubu
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EXHIBIT B

A photograph showing a close-up view of a Kubu tree stump in a field. The stump is dark and charred, with several large, gnarled roots extending outwards. The surrounding ground is uneven and shows signs of erosion, with a deep, narrow channel running through the soil. The ground is covered with dry, brown leaves and some green grass. The background is a dark, wooded area.

1514 Diamond (Kubu) close
up , dead stumps and roots ,
erosion effects

CERTIFICATE OF SERVICE

I certify that the foregoing **Return of Appellant/Respondent Raven's Run to Motion of Respondents James and Melissa Kubu for Relief of Counsel and to Hold Timeline in Abeyance** was served on Respondents and Respondent/Appellant by emailing a copy to counsel of record at the email address listed in the Attorney Information System (AIS), and additionally by depositing a copy of it in the United States Mail, postage prepaid, addressed to their counsel of record as set forth below.

June 19, 2020



s/Kirsten E. Small
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