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Aug 06 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix, and the Estate of Norma J. NixAppellants,

v.

Churchill Park, Churchill Park Homeowner's Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Southern Community Services, LLC, Park West Master Association, Inc., LPPM, Inc., McCabe, Trotter & Beverly, PC, Larry Ridlehover, Stephanie Trotter, Ryan McCabe, Jamie McSweeney, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson Builders, Inc., D.R. Horton, Inc., Brian Gardner, Dodds & Hennessey LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Park West Development, Inc., Rogers, Townsend Thomas, PC, Henry Munn, Individually Directors, Officers, Agents, Attorneys, Accountants, Independent Contractors, Investors, Successors, Predecessors, Parents, Subsidiaries, Sister and Affiliated entities, Partners, and Members of all named EntitiesRespondents.

**RESPONDENTS DAVID BROWN AND CATHERINE BROWN'S
SECOND MOTION TO DISMISS APPEAL**

The Respondents, David Brown and Catherine Brown, pursuant to Rule 260(a), SCACR, respectfully move the Court for an order dismissing the appeal filed by Appellants for failure to timely file and serve their initial brief as required by both Rule 208(a)(1), SCACR and the Court's Order dated June 4, 2020. In support of their motion, Respondents state the following:

This appeal arises from a Complaint filed by Appellate on January 4, 2019 in the Court of Commons Pleas for Charleston County. Respondents filed a Motion to Dismiss on May 24, 2019,

which was heard on September 26, 2019, before the Honorable Deadra L. Jefferson. The trial court ruled in favor of Respondents and issued its Order Dismissing the action as to Respondents on October 17, 2019. Appellant filed a Notice of Appeal on November 6, 2019.

Subsequently, the court reporter provided the final transcript from the September 26, 2019 hearing to Appellant no later than February 29, 2020, as evidence by their submission of the transcript to this Court on that date for inclusion in this Appeal. See Exhibit A. Appellants then failed to timely file their Designation of Matter and/or Initial Brief, as required by the South Carolina Appellate Court Rules.

As stated in Respondents' first Motion to Dismiss, pursuant to Rule 208(a)(1), SCACR, Appellants' deadline to file and serve their initial brief was, at the latest, March 30, 2020. See Respondents David Brown and Catherine Brown's Mot. Dismiss Appeal ¶ 4. Pursuant to South Carolina Supreme Court Order entitled Operation of the Appellate Courts During the Coronavirus Emergency, the due dates for all Appellate Court filings have been extended twenty (20) days, which therefore, would extend Appellants' deadline to file and serve their initial brief until April 20, 2020. See S.C. Supreme Court Order, Appellate Case No. 2020-000447.

Subsequently, these Respondents, as well as other Respondents to this action, filed Motions to Dismiss Appeal, and all motions to dismiss related to this action were denied by Order of this Court dated June 4, 2020. Order Denying Mot. Dismiss June 4, 2020. In that same Order, this Court directed that Appellants' Initial Brief and Designation of Matter be "served and filed within thirty days of the date of this order". Id. Thirty days from June 4, 2020, fell on a holiday, July 4, 2020, which was also a Saturday of this year. As a result, Appellants had until Monday, July 6, 2020 to serve and file their Initial Brief and Designation of Matter. This Court has graciously given Appellants multiple opportunities and extra time to file their initial brief and designation of matter,

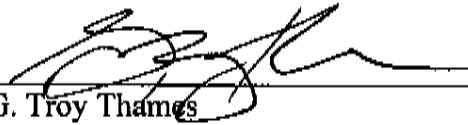
and to date, Appellants have not filed any brief in this matter or requested any extension of time related to briefing.

Appellants blatantly disregarded the Rules and Orders related to this Appeal by filing a separate motion entitled Appellant's Motion to Remand to Lower Court and Clarify Order dated June 4, 2020, which does not either allude to or state that Appellants include a Designation of Matter and/or Initial Brief. See Appellant's Mot. Remand. This Court's Order dated June 4, 2020 was clear: "Appellant's initial brief and designation of matter *shall* be served and filed" within thirty days of June 4, 2020. Order Denying Mot. Dismiss (emphasis added). Appellants' Motion is another in a very long succession of delay tactics, misuse and abuse of legal resources by a *pro se* litigant that this Court must not entertain. Appellants' motion must be denied and their Appeal dismissed at this time because the Rule is clear: upon Appellants' failure "to file and serve his brief within the time prescribed, the clerk of the appellate court *shall* sign an order dismissing the appeal." Rule 208(a)(4), SCACR. (emphasis added). Appellants failed to follow the Rules and chose to ignore this Court's Order dated June 4, 2020. See S.C. Code § 15-36-10 (stating that whether attorney or *pro se* litigant, the party is held to the same standard as a "reasonable attorney" and is subject to sanctions for frivolous purposes); see also Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 760 S.E. 2d 399 (2014) (holding that sanctions were proper against the *pro se* appellant for frivolous and dilatory litigation tactics).

For these reasons, Respondents respectfully request that Appellants' Appeal be dismissed with prejudice and for such other and further relief as the court deems just and appropriate.

[SIGNATURE ON SUBSEQUENT PAGE]

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Mt. Pleasant, South Carolina
August 6, 2020

**ATTORNEY FOR RESPONDENTS
DAVID BROWN AND CATHERINE BROWN**

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v.

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PROOF OF SERVICE

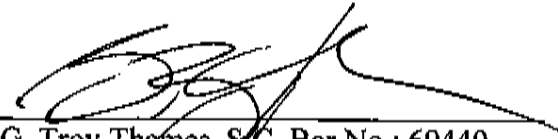
The undersigned certifies that a copy of *Respondents David Brown and Catherine Brown's Second Motion to Dismiss Appeal* has been served upon the following counsel of record by mailing a copy of the same by United States Mail, addressed as shown below this 6th day of August, 2020.

Alan G. Nix
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Pro Se Appellant

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Luzuriaga Mims, LLP
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Charleston, SC 29403

***Attorney for Respondents Churchill Park,
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Churchill Park Homeowners Association, Inc.***

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***Attorney for Respondents McCabe, Trotter
& Beverly, P.C., Stephanie Trotter, Ryan
McCabe and Jamie McSweeney***



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August 6, 2020

***Attorney for Respondents David Brown and
Catherine Brown***

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VIA US MAIL & FACSIMILE (803) 734-1839

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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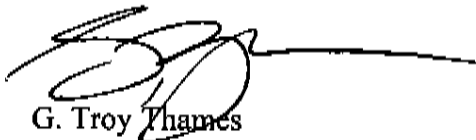
Re: Alan Nix vs. Catherine Brown & David Brown et al.
Appellate Case No.: 2019-001951
WJC&B File No.: 0375.00218
Claim No.: 633930-GH

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents' Second Motion to Dismiss Appeal in connection with the above-referenced matter. Also enclosed is a check in the amount of \$50.00 for the required filing fee. Please return a filed copy to me in the enclosed stamped envelope. Please let me know if you have any questions or need any additional information.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



G. Troy Thames

GTT/slb

Enclosures

cc: via US Mail: Mr. Alan G. Nix
Kevin W. Mims, Esquire
Andrew W. Countryman, Esquire