

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2019-CP-42-03236

RECEIVED

Oct 21 2020

SC Court of Appeals

Rita St. Aubin,
as Personal Representative of the Estate of Irene Ramsey,

Respondent,

v.

THI of South Carolina at Camp Care, LLC,
d/b/a Lake Emory Post Acute Care; THI of South Carolina, LLC;
Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; and Casey Caddell,
as Officer/Manager of THI of South Carolina at Camp Care, LLC,
d/b/a Lake Emory Post Acute Care,

Appellants.

**APPELLANTS' RETURN TO
RESPONDENT'S MOTION TO DISMISS APPEAL**

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis, Jr. (SC Bar No. 12084)
Matthew O. Riddle (SC Bar No. 76650)
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Attorneys for Appellants

Appellants, THI of South Carolina at Camp Care, LLC, d/b/a Lake Emory Post Acute Care; THI of South Carolina, LLC; Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; and Casey Caddell, as Officer/Manager of THI of South Carolina at Camp Care, LLC, d/b/a Lake Emory Post Acute Care, by and through their undersigned counsel, submit this return to Respondent's Motion to Dismiss Appellants' Appeal for Failure to Comply with Rule 210, SCACR, filed/served October 5, 2020 ("Respondent's Pending Motion to Dismiss"), and, on the following grounds, ask this Honorable Court to deny the motion:

1. Respondent, Rita St. Aubin, as Personal Representative of the Estate of Irene Ramsey, served her Initial Brief of Respondent on August 24, 2020.

2. Based on the date of service of the Initial Brief of Respondent, the deadline for Appellants to file/serve an initial reply brief (had they opted to do so) was September 3, 2020 (the 10th day after August 24, 2020), pursuant to Rule 208(a)(3), SCACR, but in the absence of an initial reply brief, the deadline for Appellants to file/serve the Record on Appeal was September 23, 2020 (the 30th day after August 24, 2020), pursuant to Rule 210, SCACR.

3. Appellants did not file/serve an initial reply brief; accordingly, the deadline for Appellants to file/serve the Record on Appeal was September 23, 2020.

4. As explained in Appellants' Motion to File Record on Appeal Out of Time and for Acceptance of Record and Final Brief, filed/served, October 12, 2020 ("Appellants' Pending Motion for Relief"), which is incorporated herein by reference, through inadvertence, Appellants did not properly calendar the deadline for the Record on Appeal.

5. By letter dated October 2, 2020, the Court advised as follows:

Dear Counsel:

Our records reflect that the time for serving and filing the appellants' final brief and respondent's final brief have expired. *Within ten days of the date of this letter, both parties must separately serve and file their final briefs, along with a motion requesting permission to serve and file the final briefs outside of the filing deadlines set by Rule 211 of the SCACR.* Failure to file the final briefs along with the motion will result in consideration of the appeal without review of either brief.

(emphasis added.)

6. The Court's October 2, 2020, letter refers only to the parties' final briefs and does not mention the Record on Appeal. It appears that, for a time, the Court may have inadvertently filed the Record on Appeal from another of the undersigned's appeals in this case and thus believed the Record on Appeal had been timely filed/served in this case but the parties' final briefs had not. In any event, however, the essential point of the Court's letter was correct: a deadline had been missed and corrective action was necessary.

7. Again, Respondent's Pending Motion to Dismiss was filed/served October 5, 2020. By letter dated October 13, 2020, the Court advised Respondent's counsel that the motion was deficient because the required filing fee had not been submitted. By letter dated October 16, 2020, Respondent's counsel sent the filing fee to the Court. This return timely follows.

8. On October 12, 2020, the 10th day after the Court's October 2, 2020, letter, Appellants' filed/served Appellants' Pending Motion for Relief,¹ along with the Record on Appeal and the Final Brief of Appellants, which were conditionally filed/served therewith.

9. In support of Appellants' Pending Motion for Relief, Appellants submitted that good cause existed to grant the relief requested in the motion, as the oversight that had prompted it was indeed inadvertent and not occasioned by any bad faith or lack of respect toward the Court, Respondent would not suffer any undue prejudice by the Court's grant of the relief, and the Court's grant of the relief is in the interests of justice.

¹ In accordance with Paragraph (c)(5) of the Supreme Court's Amended Order RE: Operation of the Appellate Courts During the Coronavirus Emergency, filed May 29, 2020, Appellants' Pending Motion for Relief was filed/served via email on October 12, 2020, and a check for the required filing fee was sent to the Court via U.S. Mail the following day.

10. Appellants submit that the good cause that supports the grant of Appellants' Pending Motion for Relief also supports the denial of Respondent's Pending Motion to Dismiss.

11. Additionally, Appellants' Pending Motion for Relief was duly filed/served within 10 days of the Court's October 2, 2020, letter.

12. Moreover, with the conditional filing/service of the Record on Appeal and Final Brief of Appellants along with Appellants' Pending Motion for Relief on October 12, 2020, there should be no material delay in the progress of this appeal. Had the Record on Appeal been timely filed/served on September 23, 2020, the deadline for filing/serving final briefs would have been October 13, 2020 (i.e., the 20th day after September 23, 2020), pursuant to Rule 211(a), SCACR. Understanding, of course, that, having just received the Record on Appeal on October 12, 2020, Respondent should, if needed, have a full 20 days to prepare her final brief, the timeline of this appeal is not upset in any way that stands to cause undue prejudice to Respondent.

Accordingly, Appellants ask that the Court DENY Respondent's Pending Motion to Dismiss and GRANT Appellants' Pending Motion for Relief.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
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Charleston, South Carolina

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Appellants.

PROOF OF SERVICE

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Attorneys for Appellants

I, Russell G. Hines, of Young Clement Rivers, LLP, attorneys for Appellants, hereby certify that **APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL** was served on all other parties to this appeal on October 21, 2020, via email (see attached) to the following counsel of record:

Eric M. Poulin, Esquire
Roy T. Willey, IV, Esquire
Stefan B. Feidler, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
Attorneys for Respondent

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

October 21, 2020

From: [Hines, Russell](#)
To: "Stefan Feidler"
Cc: eric@akimlawfirm.com; efile.akimlaw@gmail.com; roy@akimlawfirm.com; [Brown, Stephen L.](#); [Bell, Pollyana \(Polly\)](#); [Davis, Jay](#); [McNeil, Tasha](#); [Riddle, Matthew](#); [Dotterer III, Gaillard T. \(Gilly\)](#); [Preiser, Skyla](#); [Feidler/Hodge; Justman, Aimee](#)
Subject: St. Aubin v. THI (2020-000357) -- Appellants" Return to Respondent"s Motion to Dismiss Appeal
Date: Wednesday, October 21, 2020 1:14:58 PM
Attachments: [St. Aubin v. THI \(2020-000357\) -- Appellants" Return to MTD Appeal.pdf](#)
[image003.png](#)

Attached please find **Appellants' Return to Respondent's Motion to Dismiss Appeal**. It will be sent to the Court of Appeals for filing via separate email.

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