

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

The Honorable Edgar W. Dickson

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Appellate Case No. 2019-001921

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**RECEIVED**  
**Nov 04 2020**  
**SC Court of Appeals**

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor child under the age of 18,.....Respondent,

v.

Regional Medical Center,.....Appellant.

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**RESPONDENT’S MOTION TO DISMISS APPEAL**

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Respondent Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor child under the age of 18 (“Respondent”) moves this Court for an order dismissing the above-captioned appeal.

**BACKGROUND**

This appeal arises out of a May 2018 trial of a medical negligence action in which the jury returned a verdict for Respondent minor Robert M. for \$1,127,280.00 and for Respondent Tekayah Hamilton for \$135,477.00. Appellant Regional Medical Center (“Appellant”) filed a post-trial motion to reduce the damages to the South Carolina Tort Claims Act statutory cap and for a judgment notwithstanding the verdict or, alternatively, a new trial. The lower court granted the motion to reduce the damages for Respondent minor Robert M. to the \$300,000.00 statutory cap and denied the motion for JNOV and a new trial.

Appellant filed this appeal on November 19, 2019.<sup>1</sup> Almost one-year later, Appellant has not obtained the transcript or filed an initial brief. In a series of requests from this Court and responses from Appellant, the only thing that appears to have happened is that Appellant communicated once or twice with the retired court reporter to ask for missing transcript pages.

On December 3, 2019, the Court sent Appellant a letter stating the time to order the transcript expired and ordering Appellant to, within ten days, file proof that Appellant requested the transcript. The Court directed Appellant to copy the Court, Court Administration, and opposing counsel on all communications with the court reporter.

On December 9, 2019, Appellant advised the Court that it already ordered and received the transcript. On December 13, 2019, Appellant filed a first motion for an extension to file its initial brief. The Court granted the motion, extending the due date to January 20, 2020.

On January 14, 2020, Appellant wrote the Court stating that it was missing portions of the transcript dealing with motions *in limine*. Appellant stated that it emailed the court reporter, who is retired, and she still had the original tapes “and is trying to find this portion of the transcript and will advise if it may be transcribed.” Appellant requested a stay of the time to file its initial brief.

On February 10, 2020, this Court filed an order holding this appeal in abeyance until March 9, 2020. That time expired, and this Court has not issued another order holding the appeal in abeyance.

On March 16, 2020, Appellant wrote to the Court that it still had not received the missing transcript pages.

On June 5, 2020, the Court wrote to Appellant that “the transcript in the above matter should have been delivered” but that Appellant had “not notified us that you have failed to receive

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<sup>1</sup> All documents referenced in this motion are on file with the Court.

the transcript, nor have we received your initial brief.” The Court ordered Appellant to provide a status update within 10 days or it would dismiss the appeal.

On June 10, 2020, Appellant sent the Court a letter stating it still had not received the transcript. Appellant also sent Court Administration a letter stating that, in its “last contact with [the court reporter] several months ago, she was still attempting to locate this portion of the transcript.”

On June 25, 2020, Appellant sent another letter stating it still had not received the transcript.

On August 19, 2020, the Court sent Appellant another letter stating that “the transcript in the above matter should have been delivered.” The Court ordered Appellant to provide a status update within 10 days or it would dismiss the appeal.

On August 20, 2020, Appellant again wrote the Court that it still had not received the transcript. It also sent Court Administration another letter repeating that in its “last contact with [the court reporter] several months ago, she was still attempting to locate this portion of the transcript.”

On November 2, 2020, the Court wrote Appellant for a fourth time asking for a resolution of the transcript and stating that it would dismiss the appeal if Appellant does not provide a status update within 10 days.

### **ARGUMENT**

This appeal has been pending for over eleven months, and Appellant has not filed an initial brief. The appeal is not being held in abeyance. The abeyance order expired on March 9, 2020, eight months ago, yet Appellant has failed to file an initial brief or otherwise seek an extension.

The Court and Appellant keep sending each other the same correspondence, yet there is no progress towards resolving the issue. At some point the appeal must be dismissed or otherwise meaningfully be made to move forward. Neither the parties nor the Court can wait indefinitely.

“Whenever it appears that an appellant or a 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.” Rule 260(a), SCACR (emphasis added). The Court should dismiss the appeal because Appellant failed to comply with numerous Rules.

Appellant has failed to comply with the Rules governing transcripts. “Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” Rule 207(a)(1), SCACR. Appellant has not provided the Court, Court Administration, or opposing counsel with copies of its correspondence with the court reporter. Although Appellant refers to an email and correspondence with the court reporter, it failed to provide copies of any such correspondence as required by Rule 207(a)(1). When an “appellant has not received the transcript within the allotted time nor received notification of an extension . . . appellant *shall* notify the Office of Court Administration, the clerk of the appellate court, *and the court reporter in writing.*” Rule 207(a)(5), SCACR (emphasis added). Respondent has not received a copy of correspondence to the court reporter in writing.

Appellant has failed to comply with the Rule governing initial briefs. “Upon the failure of the appellant 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. Although the Court originally granted an extension of time to file an initial brief and held the timelines in abeyance,

those orders and due dates expired. Appellant has not sought an additional extension or filed a brief. Therefore, it failed to file a timely brief.

It is Appellant's duty to obtain the transcript. Rule 207, SCACR. Respondent should not be forced to suffer any further delay in a resolution of this case. Respondent moves the Court to dismiss this case for failure to comply with the Rules and failure to make any meaningful effort to pursue this appeal.

### CONCLUSION

For these reasons, Respondent requests the Court dismiss the appeal.

November 4, 2020

Respectfully submitted,

s/Kathleen C. Barnes

Kathleen Chewning Barnes, SC Bar No. 78854

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**PROOF OF SERVICE**

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The undersigned certifies that a copy of the Notice of Appearance of Kathleen C. Barnes on Behalf of Respondent and Respondent's Motion to Dismiss Appeal have been served upon counsel for Appellant via electronic mail at the email address stated in the Attorney Information System as set forth below on November 4, 2020.

MICHAEL C. TANNER, LLC  
Michael C. Tanner  
[michaelctannerllc@bellsouth.net](mailto:michaelctannerllc@bellsouth.net)

November 4, 2020

s/Kathleen C. Barnes  
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**BARNES**  
LAW FIRM | LLC

Kathleen C. Barnes  
Admitted: Georgia | South Carolina

November 4, 2020

**Via E-Mail**

The Honorable Jenny Abbott Kitchings  
Clerk of Court for the Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

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**SC Court of Appeals**

Re: *Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor child under the age of 18 v. Regional Medical Center*  
Appellate Case No. 2019-001921

Dear Mrs. Kitchings:

Attached for electronic filing and service pursuant to section (c)(6) of Supreme Court Order 2020-05-29-02 *RE: Operation of the Appellate Courts During the Coronavirus Emergency*, please find the following documents: Notice of Appearance of Kathleen C. Barnes on behalf of Respondent, Respondent's Motion to Dismiss Appeal, and proof of electronic service of the notice and motion. Please file the documents and return one file-stamped copy to me via email. By electronic copy of this letter, I am serving all counsel of record with a copy of the same.

Pursuant to Order 2020-05-29-02, the \$50.00 filing fee is being mailed to the Court within five days of the date of this filing. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Kathleen C. Barnes

Enclosures

cc: Michael C. Tanner (via email only)  
Jonathan F. Krell (via email only)  
David R. Williams (via email only)  
Virginia W. Williams (via email only)