

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2020-CP-23-01669  
Appellate Case No. 2020-001182

**RECEIVED**

JAN 27 2021

SC Court of Appeals

Sean Eric Roach ..... Respondent,

v.

Lee C. Yarborough ..... Appellant.

REPLY BRIEF IN SUPPORT OF RESPONDENT'S  
MOTION TO DISMISS APPEAL

Respondent, Sean Eric Roach, by and through his undersigned counsel, hereby submits this Reply Brief in Support of Respondent's Motion to Dismiss Appeal. Appellant's return to the motion to dismiss brief is dated January 19, 2021. Under Rule 240(E), SCACR, Appellant's return was due on December 20, 2020, ten days after the motion was served. It is ironic that Appellant filed the return 30 days late, because Respondent's Motion to Dismiss the Appeal was based on mootness caused by Appellant's failure to pursue the appeal in a timely manner. The Court should not consider Appellant's late-filed return and should dismiss the appeal forthwith.

Even if the Court were to accept the untimely filed return, Appellant has not made any showing sufficient to defeat Respondent's argument regarding the mootness of this appeal.

Although Appellant acknowledges Respondent's reliance on the mootness doctrine recognized by Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973), Appellant does not make any effort to distinguish the Mathis case or to demonstrate that the holding from that case does not apply here.

Appellant first argues that the motion to dismiss ignores the fact that Appellant's appeal includes the Circuit Court's order awarding costs to Respondent for the first-level appeal from the magistrate's court order. Importantly, however, Appellant has not raised the propriety of the award of costs in the Statement of Issues on Appeal as one of the six grounds for appeal. (Initial Br. of Appellant, at 4, 8). Nowhere in Appellant's Initial Brief does Appellant even mention the Circuit Court's separate Order of August 17, 2020 awarding costs to Respondent in the amount of \$942.51. Tellingly, Appellant's Statement of the Case does not even include the Order of August 17, 2020 in Appellant's recitation of the procedural history of the case. (Initial Br. of Appellant, at 6). This is not a sufficient basis to rebut a showing of mootness.

Appellant also asserts that Respondent's motion to dismiss ignores a provision in the Stalking and Harassment Statute, S.C. Code Ann. § 16-3-1780(B), which allows a court to extend a restraining order, for good cause, upon motion by a plaintiff, with notice to the defendant, and after a hearing within thirty (30) days of the expiration of the restraining order. Of course, there is no restraining order in place at this time, based on Judge Gravely's order of July 24, 2020, vacating the magistrate court's restraining order and instructing that all documents relating to the restraining order be destroyed within 30 days under S.C. Code Ann. 16-3-1760(E); much less is there a basis for extending the now-vacated restraining order beyond the original one year period, which would have expired on March 9, 2021. Appellant's appeal could not possibly have the restraining order

reinstated by March 9, 2021, much less could Appellant have such a restraining order extended at a hearing within 30 days before March 9, 2021. Accordingly, the appeal is clearly moot and should be dismissed.

Appellant's counsel next asserts that Respondent's discovery responses in a separate federal lawsuit, Propel PEO, Inc. et al. v. Sean Eric Roach et al., Civil Action No. 6:19-cv-03546-HMH-KFM, which responses were served on September 11, 2020, are somehow relevant to the appeal of Judge Gravely's order vacating the magistrate judge's restraining order. Nothing in the federal case can be considered by this Court on appeal, because none of that information was presented to the Circuit Court below. Rule 210(c), SCACR, plainly provides that the Record on Appeal shall not include matter that was not presented to the lower court. Indeed, the discovery responses upon which Appellant now tries to rely were served almost three weeks after the Notice of Appeal in this case was filed on August 21, 2020. Furthermore, Appellant has not even attempted to comply with Rule 240(c), SCACR by attaching to her return any documents or affidavits in support of her arguments.

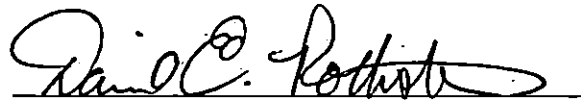
The fact that Respondent has invoked his Fifth Amendment rights during discovery in a completely separate lawsuit has nothing whatsoever to do with the instant appeal or the original restraining order in magistrate's court. There are no criminal charges pending or threatened against Respondent under the Harassment and Stalking Statute, nor would there be any basis in fact or law for such hypothetical charges. Respondent's invoking of the Fifth Amendment in the federal civil case was based on the statements of federal postal inspectors from late February 2020, who informed Respondent that they were investigating federal criminal charges based on the mailings at issue in both the magistrate's case and in the federal civil case. Appellant's wildly speculative suggestion

that Respondent's Fifth Amendment assertion in the federal case was raised "[i]n the event Mr. Roach is charged under Mary Lynn's Law" (App. Br., at 3), is not only uncorroborated, but is utterly nonsensical.

Respondent's decision not to testify in the magistrate's court proceeding has nothing to do with whether or not the instant appeal is moot. The procedural history of this case was well known to the Circuit Court, including Respondent's refusal to testify during the magistrate court proceeding on March 9, 2020, also invoking the Fifth Amendment because of the postal investigators' comments during their visit with Respondent in late February 2020. Even with whatever inferences the Circuit Court could permissibly draw from Respondent's refusal to testify during the magistrate court hearing, the Circuit Court properly found that "the testimony [of Appellant herself] does not support a finding of harassment 1<sup>st</sup> or 2<sup>nd</sup> degree or stalking—which is required for the Magistrate to issue this Restraining Order." (Order of July 24, 2020, at 2).

In summary, even if this Court were to accept Appellant's blatantly late return (which it should not), the uncontested fact is that Appellant's appeal in this case is moot because nothing the Court of Appeals might order after March 9, 2021 could affect the legal relations of the parties with respect to the restraining order in question. Accordingly the appeal should be dismissed as moot.

January 25, 2021



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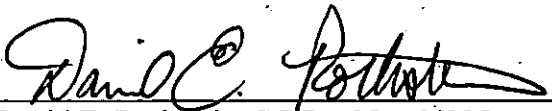
v.

Lee C. Yarborough ..... Appellant.

PROOF OF SERVICE

I certify that I have served the Reply Brief in Support of Respondent's Motion to Dismiss Appeal on Appellant, Lee C. Yarborough, by email and by depositing a copy of the same in the United States Mail, postage prepaid, on January 25, 2021, addressed to Appellant's attorney of record, Wesley D. Few, Esq., Wesley D. Few, LLC, P.. Box 9398, Greenville, SC 29604 ([wes@wesleyfew.com](mailto:wes@wesleyfew.com)).

January 25, 2021



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January 25, 2021

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

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**SC Court of Appeals**

Re: Sean Eric Roach v. Lee C. Yarborough,  
Appellate Case No. 2020-001182

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Reply Brief in Support of Respondent's Motion to Dismiss Appeal, and Proof of Service. Please file the original and six copies of this documents and return the extra copy, clocked in, to me via the enclosed return envelope.

By copy of this letter, I am hereby serving a copy of the Reply Brief on counsel for Appellant.

Thank you in advance for your attention to this matter. If you have any questions or need anything else, please do not hesitate to call me or email me.

Sincerely yours,

David E. Rothstein

Enclosures

cc: Wesley D. Few (via email and regular mail)

Postnet barcode



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MON 25 JAN 2021 PM

  
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