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Jan 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Case No. 2020-001583

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.,..... Appellants,

vs.

Jonathan Dye, Shaun Dye, Shellmore Homeowners’ Association, Inc., and
John H. Chakides, Jr., individually and in his capacity as Director of Shellmore
Homeowners’ Association, Inc.,..... Respondents.

MOTION TO DISMISS

Pursuant to Rules 240 and 260(a) of the South Carolina Appellate Court Rules (“SCACR”), Respondents Jonathan and Shaun Dye move to dismiss Appellants’ appeal. Respondents respectfully request this Court to dismiss the appeal because Appellants failed to timely order the transcript of the proceeding and, thereafter, failed to timely file their initial brief and statement of issues on appeal.

Appellants filed and served their Notice of Appeal on November 22, 2020. Pursuant to Rule 207(a)(1), Appellants had ten days in which to order the transcript. The deadline for Appellants to order the transcript was December 2, 2020. Appellants did not order the transcript until December 7, 2020. Thus, Appellants failed to order the transcript by the required deadline.

Because Appellants did not order the transcript by the required deadline, they were required to serve their initial brief on all parties “within thirty (30) days after serving the notice of appeal[.]” Rule 208(a)(1), SCACR. The deadline for Appellants to serve their initial brief was December 22, 2020. Appellants failed to serve or file their initial brief and statement of issues on appeal by the mandatory deadline. As of the filing of this motion, Appellants still have not served or filed their initial brief. Thus, this Court should dismiss their appeal. Rule 260(a), SCACR (“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.” (emphasis added)). Indeed, the failure to comply with the Appellate Court Rules by failing to file and serve an initial brief and statement of issues on appeal requires the dismissal of the appeal. *See Wise v. S.C. Dep’t of Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (“Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal *shall* be issued.” (emphasis added)).

CONCLUSION

For the reasons stated above, the Court should dismiss the above-captioned appeal.

[Signature Page to Follow]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

Andrew M. Connor
SC Bar No. 100050
E-Mail: andrew.connor@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Counsel for Respondents Jonathan and Shaun Dye

Charleston, South Carolina
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PROOF OF SERVICE

I certify that I have served the foregoing Motion to Dismiss on all parties of record by sending an electronic copy to their respective attorneys' primary e-mail addresses listed in the Attorney Information System (AIS) pursuant to the Supreme Court's Amended Order regarding Operation of the Appellate Courts During the Coronavirus Emergency (as amended May 29, 2020), as follows: Ian S. Ford (ian.ford@fordwallace.com) and Ainsley F. Tillman (ainsley.tillman@fordwallace.com) for Appellants; and L. Sidney Connor, IV, (sconnor@classactlaw.net) for Respondents Shellmore Homeowners' Association, Inc., and John H. Chakides, Jr.

[Signature Page to Follow]

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

Andrew M. Connor
SC Bar No. 100050
E-Mail: andrew.connor@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Counsel for Respondents Jonathan and Shaun Dye

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