

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Feb 01 2021**  
SC Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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

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Circuit Court Case No. 2020-CP-10-04185  
Appellate Case No. 2020-001583

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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.

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**RETURN TO RESPONDENTS' MOTION TO DISMISS**

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Appellants Bonnie and Walter Wall (the "Walls") respectfully request that this Court would deny Respondents Shaun and Jonathan Dyes' (the "Dyes") Motion to Dismiss their appeal, which motion was filed January 29, 2021.

The Dyes have asked this Court to dismiss the Walls' *entire appeal* because the undersigned attorney was five days late in ordering the transcript of the hearing and

therefore, the Dyes argue, late in filing the initial brief. The remedy that the Dyes demand of this Court is to strip the Walls of all judicial review on the merits of their appeal, because of a purported technical violation of the South Carolina Appellate Court Rules. The relief sought is vastly disproportionate to the infraction that is alleged.

At the outset, there is no dispute that the Notice of Appeal was timely served on November 22, 2020, and timely filed with the Court of Appeals on December 2, 2020. The transcript was ordered on December 7, 2020. The court reporter delivered the transcript on January 8, 2021, which triggered the deadline for the initial appeal brief of February 8, 2021.

**A. Counsel for the Walls mistakenly ordered the transcript five days late.**

By the calendar, counsel for the Walls was indeed five days late in ordering the transcript.<sup>1</sup> The reason for the five-day delay is an accidental oversight by the undersigned counsel, who was overwhelmed at that moment in time. In addition to the holidays and a very busy law practice, the undersigned attorney was grappling with grave family illness during the time-period complained of by the Respondents in their Motion to Dismiss.<sup>2</sup> By her signature below, Ainsley Tillman attests that her father-in-law was very ill during late November and throughout December, and after that difficult illness he passed away on December 31, 2020.

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<sup>1</sup> The five-day time period on which Respondents found their Motion to Dismiss includes Thanksgiving.

<sup>2</sup> The undersigned counsel mistakenly believed that the transcript should be ordered within 10 days *of filing* the notice of appeal (December 2); however, the rule reads that the time-period started running from the date of service, which in this instance was earlier (November 22). For that reason, the undersigned did not realize the delay until this Motion to Dismiss was served.

Although counsel for the Dyes, and this Court, were copied on all correspondence with the court reporter, including the five-day (tardy) transcript order dated Monday December 7, 2020, counsel for the Dyes has never before expressed any concern about or prejudice experienced during that five-day delay. In their Motion to Dismiss, the Dyes do not claim that they suffered any prejudice at all from those five days (nor, in truth, could the Dyes do so in good faith).

The Dyes go on to argue that because the undersigned attorney was five days late in ordering the transcript then the appellants' initial brief is also late. Under the analysis that the Dyes demand in their Motion to Dismiss, the Walls' brief would have been due 30 days after filing the notice of appeal—or December 22, 2020. This argument by the Dyes is a misreading of Rule 208, SCACR, which specifies that the initial brief is due within 30 days "if no transcript is ordered." The transcript *was* ordered, although five days late. As summarized above, the transcript was ordered on Monday December 7, 2020; it arrived on January 8, 2021;<sup>3</sup> and the appeal brief deadline therefore is February 8, 2021.<sup>4</sup>

**B. The undersigned counsel tried to resolve this motion.**

Immediately upon receiving the Dyes' Motion to Dismiss, and upon realizing her mistake, the undersigned attorney sent an email message to the Dyes' attorney, providing the reason for the delay and asking that he withdraw the motion. (Exhibit 1, attached).

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<sup>3</sup> A truly remarkable turn-around time by court reporter Christine Smith.

<sup>4</sup> Appellants filed a motion requesting an extension to file the initial brief, on which this Court has not yet ruled.

Appealing to common decency, she explained that the cause for the delay was a serious health crisis. Counsel responded:

Dear Ms. Tillman.

I must respectfully decline your request. Your clients' appeal in this case, as well as the underlying case itself, is frivolous, being without any grounds in law or fact. Any further protraction of these matters, through appeal or otherwise, is dilatory and in violation of both the spirit and the letter of the law. While under normal circumstances, I am happy to oblige opposing counsel in consenting to requests for extensions (especially for personal circumstances), the contradictory and meritless positions taken by your client throughout this case, the threats of endless appeals, and the continuation of this vexatious litigation are beyond the pale.

With this in mind, I would, again, ask your clients and you to consider dismissing this appeal and dismissing the underlying case and, perhaps, avoid the inevitable post-trial/post-appeal Rule 11 and Frivolous Civil Proceedings Act motion.

Best,



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ANDREW M. CONNOR PARTNER

(Exhibit 2, attached). The above response does not claim prejudice of any sort. Instead, it purposefully attempts to turn a family health crisis into a “gotcha” moment.<sup>5</sup>

### C. Dismissal is not warranted.

Since the Dyes' counsel will not have mercy, the undersigned respectfully requests that this Court **would**. She deeply regrets—particularly for the sake of her clients, the Walls—that she inadvertently delayed by five days in ordering the transcript, about which opposing counsel did not comment or complain until filing this Motion to Dismiss, fifty-three (53) days later.

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<sup>5</sup> See SCACR 402(h)(3) (South Carolina attorney civility oath).

Rule 260, SCACR, which the Dyes cite as grounds for inflicting the legal “death penalty” on the Walls because their attorney accidentally ran a yellow light, anticipates relief for good cause shown. Further, involuntary dismissal is strongly disfavored by the principle that appellate courts should make decisions on the merits of a case, not on alleged technical defects.<sup>6</sup>

The merits of this appeal include (*inter alia*) the question of whether the directors of a nonprofit corporation owe fiduciary duties to its members (the Master-in-Equity found as a matter of law that no such duty is owed), as well as questions about the interplay of the South Carolina Nonprofit Corporations Act and the recently-enacted South Carolina Homeowners’ Association Act. Such a legitimate, well-founded appeal should be decided on its merits, and not on a five-day technical violation of the rules, from which Respondents do not allege that they suffered any prejudice.

In the event that this Court feels that sanctions are warranted for the five-day delay, the undersigned attorney requests that those sanctions be directed against her, rather than dismissing her clients’ appeal for a technical violation in which Bonnie and Walter Wall played no part.

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<sup>6</sup> See C.J.S., *Appeal and Error*, vol. 5, § 752, p. 21 (West 2007) (footnotes omitted). (“The decisions of the appellate courts should turn on substance rather than procedural technicality, and appellate courts hesitate to dismiss a case on purely technical grounds. Unless the ground urged for dismissal is free from doubt, an appeal should not be dismissed. Thus a motion to dismiss an appeal must be made on some legal ground recognized by statute or rules of court, or otherwise present substantial defects of such a nature as to preclude a fair determination of the cause on appeal, or the motion will be denied. . . .”).

## CONCLUSION

For the reasons set forth herein, Appellants respectfully request that this Court deny the Respondents' Motion to Dismiss Appellants' appeal. Appellants further request that the Court expand their deadline to order the transcript by five days, to December 7, 2020.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ainsley F. Tillman  
Ainsley F. Tillman, SC Bar No. 70551  
[Ainsley.Tillman@FordWallace.com](mailto:Ainsley.Tillman@FordWallace.com)  
715 King Street  
Charleston, SC 29403  
(843) 277-2011

*Attorney for Appellants Bonnie and Walter Wall*

February 1, 2021  
Charleston, South Carolina

**Re: Case No. 2020-001583; Bonnie Wall v. Jonathan Dye**

Ainsley Tillman &lt;Ainsley.Tillman@fordwallace.com&gt;

Fri 1/29/2021 4:04 PM

**To:** Andrew Connor <Andrew.Connor@nelsonmullins.com>**Cc:** Ian Ford <ian.ford@fordwallace.com>; Sid Connor <sconnor@classactlaw.net>; Traci Corallo <traci.corallo@nelsonmullins.com>; Ashley Logan <ashley.logan@nelsonmullins.com>

Andrew,

I am asking you to withdraw this motion. My being 5 days late to request a transcript is not grounds for dismissal of an appeal--particularly when several of those days fell over the Thanksgiving holidays.

If necessary, I will draft a Return to this motion, which I will accompany with my own affidavit explaining the personal circumstances that contributed to this (minimal) delay, including a serious health crisis. I would rather not do that.

Sincerely,  
Ainsley

**Ainsley Fisher Tillman**  
Ford Wallace Thomson LLC  
[715 King Street](#)  
[Charleston, S.C. 29403](#)

T. 843.266.1289

E. [Ainsley.Tillman@FordWallace.com](mailto:Ainsley.Tillman@FordWallace.com)W. [www.FordWallace.com](http://www.FordWallace.com)

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**From:** Andrew Connor <Andrew.Connor@nelsonmullins.com>**Sent:** Friday, January 29, 2021 3:23 PM**To:** Court Of Appeals Filings <ctappfilings@sccourts.org>**Cc:** Ian Ford <ian.ford@fordwallace.com>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Sid Connor <sconnor@classactlaw.net>; Clark, Tyler P. <tpclark@sccourts.org>; Traci Corallo <traci.corallo@nelsonmullins.com>; Ashley Logan <ashley.logan@nelsonmullins.com>**Subject:** Case No. 2020-001583; Bonnie Wall v. Jonathan Dye

Dear Sir or Madam:

In accordance with the Supreme Court of South Carolina's Amended Order regarding the Operation of the Appellate Courts During the Coronavirus Emergency (as amended May 29, 2020), please find the attached Motion to Dismiss and Proof of Service for filing and service in this matter. All parties to the appeal have been copied on this correspondence and, in accordance with the above-referenced Order, are being served by this e-mail.

A check for the filing fee of \$50 will be mailed within five (5) days of this filing as required by the above-referenced Order.

Best,

 **NELSON MULLINS**

**ANDREW M. CONNOR PARTNER**

[andrew.connor@nelsonmullins.com](mailto:andrew.connor@nelsonmullins.com)

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**RE: Case No. 2020-001583; Bonnie Wall v. Jonathan Dye**

Andrew Connor &lt;Andrew.Connor@nelsonmullins.com&gt;

Fri 1/29/2021 4:17 PM

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