

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Feb 24 2021

The Honorable Alex Kinlaw, Circuit Court Judge

SC Court of Appeals

Appellate Case No: 2020-001525

James Earl Tegeler Appellant,

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, and Northgate Baptist Church
..... Respondents.

**RESPONDENTS' JOINT RETURN TO APPELLANT'S MOTION TO FILE BRIEF OUT
OF TIME AND MOTION TO DISMISS APPEAL**

This appeal is from the Order of the Hon. Alex Kinlaw, Jr. filed November 9, 2020 denying reconsideration of his order of September 8, 2020 dismissing Appellant's claims in full against the Respondents. Appellant filed his Notice of Appeal on November 19, 2020.

The only hearing in this matter was held on August 18, 2020 when the Court heard the Respondents' Motions to Dismiss. The Court granted the Respondents' Motions to Dismiss in full. Subsequent to that hearing, the Respondent Charlotte Collier ordered a transcript of the hearing. The Respondent Charlotte Collier filed this transcript as an exhibit to her Memorandum in Opposition to Appellant's Motion for Reconsideration on September 24, 2020.

Appellant also ordered and received a copy of the transcript in question in September 2020. (Appellant B000017 Ex. B to Appellant's 2/19/21 letter) This would be in addition to the Appellant's receipt of the copy of the transcript filed by Respondent Charlotte Collier on September 24, 2020.

When Appellant filed his notice of Appeal on November 19, 2020, he improperly filed a copy of the hearing transcript electronically with the Court. On that same date, Appellant's counsel filed copy of a letter she sent to the Court reporter asking for the transcript that she had already filed with the Court that same day. In response, the Court reporter emailed Appellant's counsel to see if she wanted a second copy of the transcript, since the transcript had already been delivered two months prior. (Appellant B000090 Ex. B. to Appellants 2/19/21 letter.) Counsel responded to the Court reporter that she did not want another copy of the transcript (Appellant B000093 Ex. B 2/19/21 letter). Appellant never informed the Court or opposing counsel that he dropped his request for a transcript. Appellant did not copy Respondents on any of these emails.

On February 17, 2021, the Clerk of Court for the South Carolina Court of Appeals wrote Appellant's counsel inquiring as to the status of the receipt of the transcript and the appeal since the transcript was past due and Appellant had not granted an extension to the Court reporter. The Court gave Appellant ten days to report to the Court regarding the status of the transcript.

On February 19, 2021, Appellant's counsel wrote a letter to this Court stating that she had filed a copy of the transcript to the Court as Exhibit A to her Notice of Intent to Appeal. Counsel informed the Court that she had received the transcript on September 22, 2020, before Respondent Charlotte Collier filed the transcript. Counsel in her letter

states that she is requesting “the Court to permit additional time for Ms. Jenkins¹ to provide a copy of the already submitted transcript directly to the Court pursuant to this letter.” At no point in the letter does Appellant address the fact that her initial brief is by her own admission two months past due.

In Exhibit B to her February 19, 2021 letter to the Court, Appellant attaches a series of Bates stamped emails between Appellant’s counsel and the Court reporter Hollie Jenkins. Those emails show that upon receipt of the February 17, 2021 letter from this Court, Appellant’s counsel sent an email to the Court reporter asking her to send the Court of Appeals the hearing transcript that had been previously and improperly filed directly to the Court of Appeals by emailing it to Tyler Clark, an appeals specialist with the South Carolina Court of Appeals.² (Appellant B000102 Ex. B. letter 2/19/21) Contrary to the instructions in this Court’s letter to counsel of February 17, 2021, Counsel did not copy opposing counsel on her email to the Court reporter asking that she send the transcript via email directly to Tyler Clark.

Based upon the date of the Notice of Appeal and the fact that Appellant already had the hearing transcript, Appellant’s Initial brief would have been due to this Court and to the Respondents on December 19, 2020. Now two months later, Appellant has yet to file an initial brief.

LEGAL ARGUMENT

I. **APPELLANT HAS NOT TIMELY FILED HIS INITIAL BRIEF.**

South Carolina Appellate Court Rule 208(a)(1) provides as follows for the due date of the initial brief of the Appellant:

¹ Ms. Jenkins is the Court reporter.

² As of the date this brief is filed, Appellant has filed three unrequired copies of the transcript of hearing with this Court.

a) Time for Serving and Filing Initial Briefs.

(1) *Brief of Appellant.* Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate Court one copy of the brief with proof of service.

Rule 208, SCACR

According to Appellant's counsel, she received the transcript of the hearing on September 22, 2020. This would be in addition to the copy of the transcript filed by Respondent Charlotte Collier on September 24, 2020. Thus under Rule 208 Appellant's initial brief was due thirty days from the date he filed his Notice of Appeal.

II. **APPELLANT'S MOTION TO FILE OUT OF TIME SHOULD BE DENIED AND THE APPEAL SHOULD BE DISMISSED.**

After sending his letter of February 19, 2021 to the Court, Appellant filed a Motion to File Out of Time. In this motion, Appellant requests until March 19, 2021 to file the initial brief that was due on December 19, 2020. Appellant does not explain why he did not timely file his brief in the first instance or why he needs ninety days to complete his initial brief.

The Appellant's failure to file an initial brief is governed by South Carolina Appellate Court Rule 208(a)(4) which provides as follows:

(4) *Failure to File.* 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, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate Court may take such action, as it deems proper

Rule 208 SCACR

South Carolina Appellate Court Rule 260 allows the Appellant, after the Court has dismissed the appeal, to move the reinstate the appeal "for good cause shown."

The Appellate has tried to short circuit the process with the Motion to File Out of Time. To the extent Appellant procedurally can maintain this appeal with the motion filed, the motion fails to provide the requisite “good cause” as to why the appeal should move forward. The Motion to File out of Time fails to set forth any explanation as to why the brief was not timely filed or to why the appeal should go forward. Appellant’s motion does not provide any grounds that would serve as an avoidance of the penalty set forth in Rule 208(a) (4) for failure to timely file an initial brief.

CONCLUSION

Respondents would request this appeal be dismissed in accordance with South Carolina Appellate Court Rule 208(a)(4) and that Appellant’s Motion to File out of Time be denied.

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February 24, 2021

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CERTIFICATE OF SERVICE

I, Amy Snyder, certify that I have today served the Respondents' Joint Return To Appellant's Motion To File Brief Out Of Time And Motion To Dismiss Appeal by electronic copy to all counsel of record.

/s/ Amy M. Snyder

Amy M. Snyder

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Attorney for Charlotte Collier

February 24, 2021

February 24, 2021

VIA EMAIL ONLY

Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
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File No.: 20200827.000

Feb 24 2021

SC Court of Appeals

Re: James Earl Tegeler vs. Charlotte Collier, Hannah Elizabeth Collier, Linda Smith,
Northgate Baptist Church
Case No.: 2020-001525

Dear Ms. Kitchings:

Attached please find the original of the Respondents' Joint Return to the Appellant's Motion to File Brief Out of Time and Motion to Dismiss Appeal to be filed in the above-referenced case. Please return a stamped, filed copy at your convenience. I have placed our check in the amount of Fifty (\$50.00) Dollars representing the administrative fee for this request in the mail.

By copy of this letter, I am serving a copy of the Respondents' Joint Return to the Appellant's Motion to File Brief Out of Time and Motion to Dismiss Appeal upon counsel of record, along with a Certificate of Service.

Very truly yours,

CLAWSON and STAUBES, LLC



Amy M. Snyder

AS/sns
Enclosure

cc: Deborah D. Davis, Esq. (*via email only*)
S. Michael Nail, Esq. (*via email only*)
Daniel R. Hughes, Esq. (*via email only*)