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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM BERKELEY COUNTY
Roger M. Young, Sr., Circuit Court Judge

Bethany Aloha Rich,
Appellant,

v.

New Heights Property Management,
Respondent.

APPELLATE CASE NO. 2020-001684

RESPONDENT’S MOTION TO DISMISS APPEAL FOR FAILURE TO SERVE
AND FILE INITIAL BRIEF

Scott Riddell, Esquire
SC Bar No. 102809
P.O. Box 1547
Summerville, SC 29484
(843) 735-9702
Attorney for Respondent

INTRODUCTION and FACTS

In this eviction matter, the parties had a residential lease that ran from December of 2018 to December of 2019. The parties then executed a lease renewal through the end of January, and, at the same time, the owners were listing their home for sale, and Appellant was one such prospective buyer. The deal between the owners and Appellant fizzled in January of 2020. The owners refused further rent payment from Appellant and filed the eviction in early February. On March 11, 2020, the Goose Creek magistrate upheld the eviction after a hearing. On November 16, 2020 the Court of Common Pleas affirmed the decision on appeal. During this litigation, one of the owners (a couple) has become terminally ill; the owners have accordingly changed their intentions with the home and await this litigation's completion to return to the home as a final residence together.

Appellant received the transcript on February 12. Ex. A at 1 (email from court reporter to Appellant's counsel, attaching transcript, dated February 12, 2021). Respondent did not know of this receipt, or itself receive the transcript, until March 5, 2021, as Respondent had not been copied on any communications between Appellant and the court reporter, contrary to Rule 207(a)(1), SCACR ("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."). Ex. A at 1-2. Respondent's counsel

attempted to clarify the grounds for the instant Motion in order to respond meaningfully to it, but Appellant’s counsel did not provide any. Ex. B at 1 (emails between Appellant’s counsel and Respondent’s counsel dated March 18, 2021, Appellant’s counsel stating, “Respectfully, I don’t think I’m required to, and I don’t think I should.”).

LAW

“Within thirty (30) days after receiving the transcript . . . 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(a)(1), SCACR. “Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.” Rule 240(b), SCACR. “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.” Rule 208(a)(4), 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. A

case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR. The Court has enforced this rule where appellants have failed to serve and file initial briefs within Rule 208’s deadline. See, e.g., Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (S.C. 1981) (“Respondent . . . did not file a brief with this Court. Her failure to do so allows this Court to take such action upon the appeal as it deems proper. This failure alone would justify reversal; however, we simply consider it as an additional ground.”); State v. Serrette, 375 S.C. 650, 651, 654 S.E.2d 554, 555 (Ct. App. 2007) (“Though South Carolina affords criminal defendants the opportunity to appeal, the right to an appeal may be lost through a variety of actions by an appellant, such as: (1) . . . ; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR;”).

The Supreme Court’s order 2020-05-29-02, “Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020),” forgave procedural defaults in two contexts, neither of which applies here, since the first ended on June 8, 2020, and the second ended on April 9, 2020. Order 2020-05-29-02 at (1)(2)-(3). The sparing nature of any residual forgiveness of procedural defaults allowed under said order is demonstrated by the Supreme Court’s footnote to the first context just described: “As explained by the order of March 20, 2020, this automatic extension was intended to give ‘lawyers and

self-represented litigants appearing before the Appellate Courts ... time to take actions to protect themselves and their families.’ Since sufficient time has been provided for this to occur, and most lawyers and litigants have been able to adjust to working remotely, this automatic extension is no longer warranted.” Order 2020-05-29-02 at (1)(2) n.4.

ARGUMENT

Appellant’s deadline to serve and file her initial brief was March 15, 2021. Here, Appellant has not shown good cause for granting her Motion; rather, she has asked this Court to believe in the merits of her Motion at face value, and has refused to elaborate on them; at the least, a hearing on the merits of this Motion should be had so that Respondent has a meaningful opportunity to respond. Appellant has consistently omitted Respondent, and perhaps this Court as well, from communications with the court reporter regarding obtaining the transcript. Appellant’s Motion did not stay the deadline to serve and file the initial brief, per Rule 240, SCACR. The language of Rules 208, 240, and 260, SCACR, is mandatory regarding a clerk’s entry of an order of dismissal and a motion’s effect on deadlines. Such would conform with the precedents of Turner v. Santee Cement Carriers, Inc. and State v. Serrette.

Respondent had not been copied on any communications between Appellant and the court reporter, contrary to Rule 207(a)(1), SCACR (“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.”). Respondent is unable to determine if Appellant had been complying with Supreme Court Order 2018-05-01-04 (Re: Electronic Means Pursuant to Rules 207 and 607, South Carolina Appellate Court Rules, Appellate Case No. 2017-002059), but if Appellant has not, Respondent would request that such be considered in deciding the instant Motion.

CONCLUSION

Appellant’s Motion should be denied, her appeal dismissed, and Respondent’s costs and fees should be awarded to Appellant (Respondent intends, should dismissal occur, to file a Rule 222(d) motion upon this Court’s remittitur).

Respectfully submitted,

s/Scott Riddell

Scott Riddell, Esquire

SC Bar No. 102809

P.O. Box 1547

Summerville, SC 29484

(843) 735-9702

Attorney for Respondent