

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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**Apr 19 2021**

**S.C. SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2021-000302

Churchill Park,

Respondent,

v.

Alan G. Nix and the Estate of Norma J. Nix,

Defendants,

Of which Alan G. Nix is the

Appellant.

**RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR WRIT OF  
CERTIORARI**

The Respondent, Churchill Park, respectfully asks this court deny the Petition for Certiorari filed by the Appellant. In support of the request, the Respondent shows the following unto the court:

This appeal arises out of a foreclosure action initiated by Churchill Park against Alan Nix and Norma J. Nix for unpaid homeowners' association dues. Trial was held before the Master in Equity for Charleston County on September 26, 2017. The trial court ruled in favor of Churchill Park and issued its final order on November 9, 2017. Alan Nix ("Nix") timely filed a motion to reconsider and notice of appeal of that order. Appellate case number 2018-00056 was dismissed

June 27, 2019 because Nix refused to file and serve Appellant's initial brief. This Court denied Nix's Petition for Writ of Certiorari regarding that dismissal on January 16, 2020. Thereafter the case was remitted to the trial court. The trial court held a supplemental damages hearing and issued a Supplement Order of Foreclosure on August 21, 2020. Nix filed an appeal of that order on September 24, 2020.

Pursuant to Rule 207(a)(1), SCACR, Appellant was required to order the transcript no later than October 1, 2020. On October 19, 2020 the Court of Appeal gave Appellant until October 29, 2020 to file a letter showing he had ordered the transcript and a motion requesting permission to order the transcript outside the filing deadlines. The Court of Appeals' letter warned that this appeal would be dismissed if Nix did not make those filings by October 29, 2020. On November 5, 2020 Appellant filed his Second Motion for Emergency Stay of Sale. While the caption of this motion includes reference to ordering transcript late, the motion itself does not request permission to order the transcript outside the filing deadline and does not include any indication that Appellant had ordered the transcript as required by Rule 207. Because Appellant failed to order the transcript or comply with the court's October 29, 2020 letter, the Court of Appeals dismissed the appeal on November 24, 2020. Appellant's Motion to Reinstate the Appeal was denied on February 19, 2021 and Appellant's Petition for Writ of Certiorari followed on March 22, 2021.

### **Appellant's Petition for Writ of Certiorari Should be Denied Because the Court of Appeals Properly Dismissed the Appeal for Failure to Order Transcripts**

The Court of Appeal properly dismissed Appellant's appeal because he refused to order the transcript as required by Rule 207, SCACR. Rule 207(a)(1) requires the appellant order a copy of the transcript from the court reporter within 10 days of after the date of service of the notice of appeal. Rule 207(a)(1) describes further describes this obligation as requiring the appellant "make satisfactory arrangements (including agreement regarding payment for the transcript) in writing with the court report for furnishing the transcript."

Exhibit E to Appellant's Petition for Writ of Certiorari shows that Appellant submitted his request for transcript to the court reporter on August 31, 2020. Exhibit E further shows that the court report responded to Appellant's request on September 2, 2020 with a note that the listed estimated cost must be paid in advance. However, Appellant has not provided any evidence that he complied with the court reporter's requirement that payment be received before the transcript

preparation would begin. Instead, Appellant has stated that Charleston County employees are improper parties to prepare a transcript of the proceedings because Appellant believes the Master in Equity lacked jurisdiction to hear the underlying foreclosure case. Appellant has provided no authority to support his contention that the trial court's lack of jurisdiction somehow disqualifies the court reporter who attended the hearing from preparing a transcript of the proceedings.

Appellant failed to comply with court reporter's instructions for payment and preparation of the transcript and failed to comply with the Court of Appeal's instruction that he file a copy of the transcript request and a motion requesting permission to order the transcript outside the filing deadlines. Appellant was on notice that failure to complete these steps would result in dismissal of his appeal and still failed to do so. Therefore the Court of Appeals' dismissal of the appeal was proper.

### **CONCLUSION**

The Court of Appeals properly dismissed Appellant's appeal because he refused to order the transcript of the proceedings as required by Rule 207(a)(1), SCACR. Accordingly, Respondent respectfully requests this court deny Appellant's Petition for Writ of Certiorari.

/s Stephanie Trotter Kellahan  
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**ATTORNEYS FOR RESPONDENT**

April 19, 2021