

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jun 11 2021

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488
Civil Action Case No. 2018-CP-40-06344

MB Hutson/MB Hudson, Appellant,

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, Respondents.

**RESPONDENTS' MOTION TO DISMISS
AND OBJECTION TO APPELLANT'S MOTION TO FILE
AMENDED REPLY BRIEFS OUT OF TIME**

Pursuant to Rule 260(a) of the South Carolina Appellate Court Rules and all other applicable authority, Respondents Penn America Insurance Company and Global Indemnity Group, Inc. ("Respondents PAIC"), Timothy J. Newton ("Newton") and J.R. Murphy ("Murphy") (collectively "Respondents"), jointly move this Court for an Order dismissing this appeal. Respondents also object to Appellant's June 3, 2021 Motion for leave to file his Final Reply Briefs out of time. In support thereof, Respondents state as follows:

Rule 260(a) mandates dismissal when a party has failed to comply with the requirements of the Appellate Court Rules. Appellant MB Hutson/MB Hudson has failed to comply with not

only the Rules, but multiple court orders. An appellant's failure to timely file and serve his briefs also warrants dismissal. Rule 208(a)(4), SCACR. Furthermore, dismissal is appropriate when an appellant repeatedly fails to follow the appellate rules. Tinsley v. Ervin Co., 264 S.C. 487, 495, 216 S.E.2d 170, 173 (1975).

BACKGROUND

Appellant filed his Initial Brief over a year ago on March 3, 2020. Respondents filed their Initial Briefs on March 8, 2020. Appellant filed two (2) Initial Reply Briefs. The first was directed to Respondents Newton and Murphy, and it was filed on April 27, 2020. Appellant subsequently filed an Initial Reply Brief directed to Penn-America Insurance Company and its parent company (hereinafter collectively "Penn-Am") on May 7, 2020.

Hutson's Initial Reply Brief to Penn-Am was non-compliant in that it exceeded the page limit. Appellant filed a motion to exceed the page limit. This Court denied Appellant's motion by Order filed July 28, 2020. This Court directed Appellant to serve and file an amended reply brief within 25 days of that Order.

On August 10, 2020, Appellant filed a "Response to Penn America Initial Brief. Respondents considered this document to be Appellant's Initial Reply Brief to Penn-Am.

On September 21, 2020, Appellant filed a self-described "Final Brief."

Respondents moved on September 25, 2020 to strike that brief as premature because the Record on Appeal had not been filed. This Court denied that motion by Order filed November 30, 2020. Thus, it appears that Appellant's September 21, 2020 filing stands as Appellant's Final Brief.

Respondents filed their Final Briefs on March 8, 2021. By Order filed May 5, 2021, this Court required Appellant to make certain corrections to the Record on Appeal, but further ruled that those corrections will not require Respondents to amend their final briefs.

On March 31, this Court required Appellant to correct his Final Brief. Specifically, this Court required Appellant to include a certificate of counsel and proof of service. Those corrections were due within ten (10) days of that Order. That deadline expired on or about April 12, 2021.

This Court issued another 10-day letter on this same issue on June 3, 2021. On June 7, 2021, Appellant filed two single-page documents that appear to be responsive to that letter.

By separate Order dated March 31, 2021, this Court notified Appellant that the time for serving and filing his Final Reply Briefs had expired. This Court required him to do two things. First, he was directed to file a motion to file his Final Reply Brief out of time. Second, Appellant was directed to serve and file his Final Reply Brief. The deadline for compliance with this Order also expired on or about April 12, 2021.

Appellant did not timely comply with this Court's March 31, 2021 Orders. Instead, Appellant filed a Request for a twenty-five (25) day extension of time for compliance on April 2, 2021. Respondent Newton filed an opposition to that motion. This Court has not yet ruled on that motion.

Assuming Appellant's Request for Extension was granted, the deadline for serving and filing compliant Final Briefs expired on or about May 5, 2021.¹ Appellant failed to file and serve complying Final Briefs within that time period.

¹ On that same date, this Court issued an Order finding that Appellant's third iteration of the Record on Appeal was defective.

Nearly a month later, on June 1, 2021, Respondents received e-mail notice that Appellant filed a Motion to Allow filing of Amended Reply Briefs. Attached to that Motion are copies of Appellant's April 27, 2020 and August 10, 2020 Reply Briefs.

Then on June 3, 2021, Appellant re-filed his Motion. This time the attached documents are captioned as final reply briefs. A Table of Contents has been added to both briefs. They both contain what appears to be an identical Table of Authorities. However, the information provided in that Table is not accurate with respect to either brief. A Statement of Issues on Appeal has also been added to both briefs. It appears that Appellant merely copied the Table of Authorities and Statement of Issues on Appeal from his Final Appellant's Brief and attached them to his Final Reply Briefs. Both briefs contain new material in violation of Rule 211(b), SCACR. This is prejudicial because Respondents have already filed their Final Briefs. These filings also fail to comply with this Court's March 31, 2021 directive that Final Briefs contain a certificate of counsel and proof of service.

ARGUMENT

The stated reason for the tardiness of Appellant's final briefs is the illness of Appellant's typist's son. However, Appellant has filed numerous motions in this Court and other courts in which his cases are pending since April 2, 2021. (*See, e.g.*, Appellant's Response to Newton's Objections filed April 14, 2021; re-filed Record on Appeal May 26, 2021.) It is not apparent why Appellant's June 1, 2021 Motion would require the services of a typist—it is merely a one-page motion with attached copies of previously-filed documents.

Appellant's "Final Briefs" attached to his June 3, 2021 Motion merely append material to the beginning and end of his initial briefs. No meaningful effort was made to comply with the Rules. Notably, the Table of Authorities in Appellant's "Final Brief" directed to Respondents

Newton and Murphy lists nineteen (19) cases, two (2) statutes, and four (4) ethical rules. However, in the body of the brief Appellant does not cite to a single authority other than to quote a citation found in an e-mail. This alone is grounds for dismissal. See Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (holding that short, conclusory statements made without supporting authority are deemed abandoned). The Table of Authorities in Appellant's "Final Brief" to Penn-America and its parent company is incorrect.

Both briefs violate Rule 211(b), SCACR by including new material. It appears that Appellant utilized this as an opportunity to publish additional slander and editorialization regarding his feelings on the matter.

Moreover, issues surrounding the Record on Appeal have not been resolved. In a motion filed contemporaneously with this motion and incorporated herein, Respondents contend that Appellant's attempt to comply with this Court's May 5, 2021 Order regarding the Record on Appeal was deficient.

Appellant has failed to timely file requisite briefs and has failed to comply with the Rules in numerous respects. Therefore, Respondents are entitled to dismissal pursuant to Rule 260(b) and 208(a)(4), SCACR. Tinsley, 264 S.C. at 495, 216 S.E.2d at 173; 16 S.C. Jur. Appeal and Error § 89 (May 2021 Update).

CONCLUSION

The briefs Appellant filed are untimely and they do not show evidence of a good-faith effort to comply with the applicable rules. They merely seize the opportunity to prosecute his campaign of misinformation and character assassination against Respondents. Accordingly, Respondents oppose Appellant's motion to file his final reply briefs out of time. Respondents also move for dismissal of this appeal for failure to comply with the Appellate Court Rules.

Respectfully submitted,

s/Christian Stegmaier

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**RESPONDENTS' THIRD JOINT MOTION
THIRD JOINT MOTION FOR CORRECTION
AND CLARIFICATION OF THE RECORD ON
APPEAL**

Columbia, South Carolina

Dated: June 11, 2021

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CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing RESPONDENTS' MOTION TO DISMISS by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, and via electronic mail, addressed to the following:

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