

The South Carolina Court of Appeals

Blue Ridge Electric Cooperative, Inc.,
Appellant/Respondent,

v.

Kathleen J. Gresham, Respondent/Appellant.

Appellate Case No. 2009-141246

ORDER

This court remanded this matter to the trial court for reconstruction of the record on December 12, 2010, urging the trial court to act expeditiously and requiring Appellant/Respondent to provide this court with status updates.

On December 14, 2010, Respondent/Appellant filed a letter with this court explaining that she would be unavailable for approximately three months "due to major surgery." On March 9, 2011, the trial court notified this court that the hearing to reconstruct the record would not be heard until late April because of Respondent/Appellant's health problems.

On April 19, 2011, the trial court forwarded a letter from Respondent/Appellant to this court, stating "I plan to be back in the upstate after May 9th, prior to a trip out of state with my son to return the end of May, if my medical condition allows."

On May 31, 2011, we received a status update from Appellant/Respondent, explaining "[t]o date, . . . due to health issues of [Respondent/Appellant], a final resolution has not been reached." Then, on July 19, 2011, the trial court notified us that because of Respondent/Appellant's health concerns, "it may be September 2011 before a hearing [could] be held in this matter." The trial court also submitted a copy of a letter it sent to Respondent/Appellant on June 2, 2011, requesting updates every forty-five days.

On October 12, 2011, the trial court mailed a letter to Respondent/Appellant, reminding her of its request for status updates and the need to have a hearing to reconstruct the record.

In November 2011, the trial court notified us that "[b]ased on the representations . . . from [Respondent/Appellant] and her physician, she is currently unavailable for activities and will be 'for some time' in the future."

On February 16, 2012, having not received a status update from Respondent/Appellant, the trial court sent another request for a status update. In response to the request, Respondent/Appellant's husband notified the trial court that Respondent/Appellant had to travel out of the country to be with her son who "was experiencing urgent medical difficulties."

On April 2, 2012, the trial court again requested a status update. Respondent/Appellant responded, "I remain in the United Kingdom with my son who is under medical care not to return to S.C. until mid-June." Respondent/Appellant further requested that the trial court advise her "of the status and results of the court's inquiry into the mysterious disappearance of . . . the trial record." She added, "This entire bogus lawsuit and its equally bogus appeal has reaked enough stress on my family"

On June 22, 2012, Respondent/Appellant filed a letter with the trial court, explaining she was back in Greenville and was available at a mutually agreeable time to attempt to reconstruct the record. On August 2, 2012, the trial court sent a letter to the parties acknowledging their responses to potential hearing dates, and tentatively scheduling the matter for September 24, 2012.

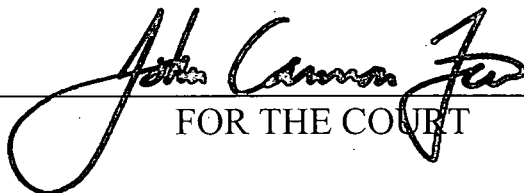
The parties met on September 26, 2012, and agreed to the matters that were missing from the transcript and further agreed to exchange proposed stipulations as to the missing information on or before November 2, 2012. The parties, however, were unable to come to an agreement, and requested an extension of time to submit their proposals for reconstruction of the record until November 19, 2012.

Appellant/Respondent provided a submission of missing testimony and evidence on November 16, 2012. Although Respondent/Appellant filed a letter with this court on January 31, 2013, indicating she provided the trial court with an "assessment of omissions" and her copy of the "surviving transcript," this court has no documentation of the submissions. Respondent/Appellant further informed this

court she will "be unavailable for any more input or response to [this court] or others until early summer."

On April 1, 2013, the trial court notified us "an attempt to reconstruct the record in this matter was set for March 11, 2013" and the parties were notified, but Respondent/Appellant failed to appear. The trial court explained it received a letter from Respondent/Appellant's husband's physician dated March 7, 2013, explaining that the physician is currently treating Respondent/Appellant's husband for a condition "that requires specific treatment, including surgical intervention and recovery for him and his care givers, primarily his wife." The letter further provides, "Participation in non-health related matters, until proper recovery is realized, is not medically recommended."

It is troublesome to this court that reconstruction has not occurred in this case as ordered in December 2010. We note that the trial court has made every effort to schedule a hearing, and it appears that all delays are attributable to Respondent/Appellant. Although we recognize Respondent/Appellant's personal and family medical issues may have contributed to some of the delay, our review of this matter indicates Respondent/Appellant is purposefully delaying this appeal. It is not acceptable, and it is unduly prejudicial to Appellant/Respondent, for this appeal to be held in abeyance for two years and four months. Accordingly, the parties shall appear before the trial court within sixty days for a hearing to reconstruct the record. Any excuse or request for a delay must be approved by the trial court prior to the hearing. The penalty for noncompliance with this order is contempt of court including, if warranted, vacating the judgment below. The parties shall provide this court with a status update within sixty days.


C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Larry C. Brandt
Kathleen Jennings Gresham
The Honorable R. Lawton McIntosh
The Honorable Paul B. Wickensimer

FILED

4/15/12 