

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Roger M. Young, Circuit Court Judge

Case No. 2010-CP-07-4146

RECEIVED

APR 25 2013

SC Court of Appeals

Ron Orlosky in his capacity as Personal Representative of
The Estate of Debora L. Orlosky and in his capacity as trustee
of the Debora Laura Orlosky Revocable Trust.....
Respondent

v

The Law Office of Jay A. Mullinax, LLC,Appellant

**RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO MOTION FOR
INVOLUNTARY DISMISSAL AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 240(f), SCACR, Respondent Ron Orlosky, by and through his undersigned counsel, hereby replies to the Appellant's Response to Respondent's Motion for Involuntary Dismissal made pursuant to Rule 260(a) SCACR.¹ The grounds for Respondent's Motion were that Appellant had failed to meet its burden to provide the Transcript and has taken almost no action to prosecute the appeal in the nearly ten months since having filed the Notice of Appeal, that Appellant has failed to inform the Court that the transcript cannot be produced and has failed to respond to any inquiries from Respondent, and that the delay in this appeal is unfairly prejudicial to the Respondent.

¹ Erroneously and incorrectly referred to in the Motion as Rule 206(a) SCACR.

BACKGROUND

On April 20, 2012 a Beaufort County Jury returned a verdict in favor of Respondent and against Appellant in the amount of \$80,000.00 actual damages. On April 26, 2012 Appellant filed post-trial motions for Directed Verdict, Relief from Judgment To Alter or Amend Judgment, and for a New Trial Absolute or New Trial Nisi Remittitur all of which were denied on May 17, 2012. Appellant filed the Notice of Appeal on June 18, 2012, and requested the transcript from the court reporter and from the Beaufort County Clerk of Court on June 25, 2012. In his communication with the Beaufort County Clerk of Court, Appellant acknowledged that the reporter was no longer employed by the court and could be located. However, Appellant neglected to send a copy of his communication with the Clerk of Court to Court Administration and sent only a copy of the letter which was sent to the reporter's address. Further, Appellant neglected to respond to any of the Respondent's communications regarding the status of the appeal or transcript, failed to notify either Court Administration or the Clerk of the Appellate Court that the court reporter could not be located, and took no action to advance the appeal in the absence of a transcript.

DISCUSSION

Appellant's delay has prevented the appeal from going forward to the prejudice and detriment of Respondent. It is the Appellant's responsibility to either obtain the transcript or to initiate a motion to proceed without one. In this case the lack of any activity to move the appeal forward after more than ten months appears deliberate. The Appellant clearly was or, in the exercise of reasonable diligence, should have been aware

that the court reporter could not be found when he wrote to the Beaufort County Clerk of Court on June 25, 2012. In that letter, he acknowledges his understanding that the reporter is no longer employed by the Court, and asks the Beaufort County Clerk to provide an address. (See **Attachment A**) The letter demonstrates that Appellant had at least some awareness of a problem with the Court Reporter.² However, when he wrote to Court Administration more than two months later on September 6, 2012, and again to the Clerk of the Court of Appeals on March 29, 2013, that fact that the Court Reporter could not be located was not mentioned. (See **Attachment B**)

The purpose of the Rules' notification requirements is to ensure that everyone - the opposing party and all of the necessary court officials - are apprised of the status of the appeal and when to expect receipt of the transcript. This notification assists in identifying and addressing problems with the delivery of the transcript so the appeal can proceed timely. Appellant's failure to disclose the problems to Court Administration or the Clerk of the Court of Appeals coupled with his failure to respond to any of the communications sent to him by the Respondent (See **Attachment C**) have resulted in the appeal in this case being delayed unnecessarily because of Appellant's failure to meet it obligation under Rule 207(a)(1), SCACR. This delay has resulted in prejudice to the Respondent Other than his letter to the Court Reporter and his disingenuous communications with this court, since June of 2012 Appellant has taken no action to

² Indeed, the Respondent was able by a simple telephone inquiry to the Clerk of Court for Beaufort County to learn that the Court Reporter who had taken the trial testimony was unable to be located, and that the transcripts of her trials were not able to be produced.

move its appeal forward and has communicated no intent to do so to this Court or to Respondent. Not only is the Respondent unable to close the Probate Estate of his late wife and achieve some closure, but he is unable to take any steps to collect the substantial judgment awarded to him by a jury almost a year ago. Thus, Respondent's rights are being prejudiced by the Appellant's delay in prosecuting its appeal. Since Appellant is not required to file a brief until after receipt of the transcript, the longer Appellant can unduly delay receiving the transcript or making the appropriate motion to proceed with the appeal in the absence of the transcript, the longer Respondent must wait before being able to go forward, either in this appeal or in the winding up of his late wife's affairs.

This delay should not be tolerated. Rule 260(a), SCACR, mandates dismissal: "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules. . ." In *Henning v. Kaye* the Court observed that "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

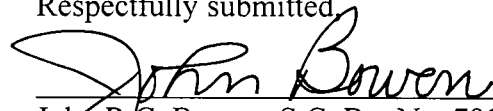
Appellant has made virtually no effort (other than filing a Notice of Appeal and sending a letter requesting a transcript to a person they should know is non-responsive) to prosecute the appeal of the order denying the post trial motions. The delay persists even in the face of a letter from this Court concerning the transcript to which the Appellant has disingenuously replied only that his "office has not received the transcript or notification of an extension" rather than advising the Court of the problems with the court reporter, or requesting some other relief.

Appellant now asks this Court to impose sanctions against Respondent for filing the instant Motion. Although Rule 269, SCACR provides a mechanism whereby sanctions can be imposed for filing a Motion “solely for the purpose of delay” or not in compliance with the Rules, Respondent urges this is not an appropriate case for such action.

CONCLUSION

Since it is the Appellant’s responsibility to move the appeal forward, and since it appears that Appellant has made no good faith efforts to that end, Respondent respectfully requests this appeal be dismissed. pursuant to Rule 260(a), SCACR, and remitted to circuit court.

Respectfully submitted,



John R.C. Bowen, S.C. Bar No. 791

Laughlin & Bowen, P.C.

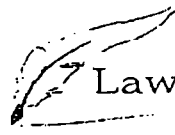
Post Office Drawer 21119

Hilton Head Island, South Carolina 29925

(843) 689-5700

April 23, 2013

ATTACHMENT A



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

September 6, 2012

VIA U.S. POSTAL SERVICE

Office of Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

Re: Ron Orlosky, Respondent v. The Law Office of Jay A. Mullinax, LLC, Appellant
Appellate Case No.: 2012-212331

To Whom It May Concern:

Pursuant to Rule 207(a)(5), please allow this correspondence to serve as notice that our office has failed to receive the transcript that was requested in correspondence sent to Ms. Deborah Everett, the court reporter, on June 25, 2012. Also, we have not received notification of an extension. Please advise our office if you require any further action on our part in order to obtain the requested transcript.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.


Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:lnk

Cc: Ms. Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals
Mr. John R.C. Bowen, Esquire
Ms. Deborah Everett, Court Reporter



Law Office of Jay A. Mullinax, LLC
2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

June 25, 2012

VIA U.S. POSTAL SERVICE

Ms. Lynn Bonge, Clerk
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, SC 29901-1128

Re: Ron Orlosky in his capacity as Personal Representative of the Estate of Debora L. Orlosky, and in his capacity as Trustee of the Debora Laura Orlosky Revocable Trust v. The Law Office of Jay A. Mullinax, LLC
Case No.: 2010-CP-07-4146

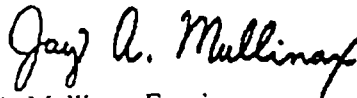
Dear Ms. Bonge:

As discussed, on April 18-20, 2012, the above case was tried before the Honorable Roger M. Young, Circuit Court Judge, in Beaufort County. We are trying to contact Deborah Everett, the court reporter for the case, to order the transcript. Please accept this as our formal request for the transcript. It is our understanding that Deborah Everett no longer works for the Court. Please contact us with Deborah Everett's contact information as soon as possible so that we can directly coordinate with her to obtain the transcript.

If you have any questions or require anything further, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC




Jay A. Mullinax, Esquire

JAM:lnk

Cc: John R.C. Bowen, Esquire
South Carolina Court of Appeals

Page 8

ATTACHMENT B



Law Office of Jay A. Mullinax, LLC
2 PARK LANE, SUITE 303
HILTON HEAD ISLAND, SC 29928

March 29, 2013

VIA U.S. POSTAL SERVICE
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: Ron Orlosky v. The Law Office of Jay Mullinax
Appellate Case No. 2012-212331

Dear Ms. Kitchings:

I am writing in response to your correspondence dated March 25, 2013. As of today, our office has not received the transcript or notification of an extension.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, Esquire

JAM:kem

Cc: Mr. John R.C. Bowen, Esquire

ATTACHMENT C

LAUGHLIN & BOWEN. P.C.

P.O. Drawer 91119
Hilton Head Island, South Carolina 29925
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin
John R.C. Bowen*
Jennie S. Cerrati**
*Admiralty Law
**Admitted in CA and SC

Telephone
(843)689-5700
Facsimile
(843)689-9300
Sender's E-Mail

john@laughlinandbowen.com

September 19, 2012

VIA U.S. MAIL & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax
The Law Office of Jay A. Mullinax, LLC
2 Park Lane, Ste 303
Hilton Head Island, SC 29928

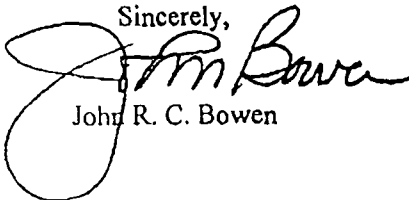
RE; Orlosky v. Mullinax
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv
cc: Mr. Ronald Orlosky (via e-mail)

LAUGHLIN & BOWEN P.C.

P.O. Drawer 21119
Hilton Head Island, South Carolina 29925
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin
John R.C. Bowen*
Jennie S. Cerrati**
*Admiralty Law
**Admitted in CA and SC

Telephone
(843)689-5700
Facsimile
(843)689-9300
Sender's E-Mail

john@laughlinandbowen.com

October 1, 2012

VIA U.S. MAIL & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax
The Law Office of Jay A. Mullinax, LLC
2 Park Lane, Ste 303
Hilton Head Island, SC 29928

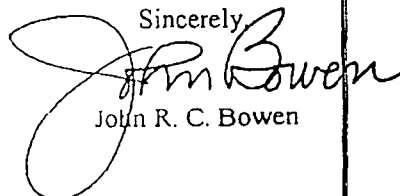
RE; Orlosky v. Mullinax
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

LAUGHLIN & BOWEN. P.C.

P.O. Drawer 21119
Hilton Head Island, South Carolina 29928
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin
John R.C. Bowen*
Jennie S. Cerrati**
*Admiralty Law
**Admitted in CA and SC

Telephone
(843)689-5700
Facsimile
(843)689-9300
Sender's E-Mail
john@laughlinandbowen.com

February 8, 2013

VIA COURIER & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax
The Law Office of Jay A. Mullinax, LLC
2 Park Lane, Ste 303
Hilton Head Island, SC 29928

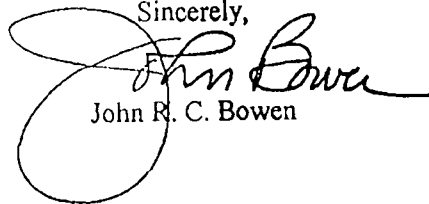
RE: Orlosky v. Mullinax
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. I have posed this question to you twice before (in September and October of 2012), but have not had the courtesy of any response. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

LAUGHLIN & BOWEN. P.C.

P.O. Drawer 21119
Hilton Head Island, South Carolina 29925
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin
John R.C. Bowen*
Jennie S. Cerrati**
*Admiralty Law
**Admitted in CA and SC

Telephone
(843)689-5700
Facsimile
(843)689-9300
Sender's E-Mail
john@laughlinandbowen.com

February 15, 2013

VIA COURIER & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax
The Law Office of Jay A. Mullinax, LLC
2 Park Lane, Ste 303
Hilton Head Island, SC 29928

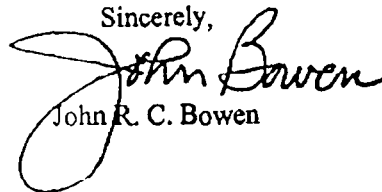
RE; Orlosky v. Mullinax
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

As you know, the court reporter from whom you requested the transcript no longer works for the court, and has not done so since the Spring of 2012. I am advised that the Court has been unable to locate her, and that transcripts are not available. I have written to you concerning the transcript on three previous occasions without the courtesy of any response. Please advise immediately if you intend to pursue this appeal.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Roger M. Young, Circuit Court Judge

Case No. 2010-CP-07-4146

RECEIVED

APR 25 2013

SC Court of Appeals

Ron Orlosky in his capacity as Personal Representative of
The Estate of Debora L. Orlosky and in his capacity as trustee
of the Debora Laura Orlosky Revocable Trust.....
Respondent

v

The Law Office of Jay A. Mullinax, LLC,Appellant

CERTIFICATE OF SERVICE

I, John Bowen, do hereby certify that I have this date served one (1) copy of the Respondent's Reply to Appellant's Response to Motion for Involuntary Dismissal and Memorandum in Support upon the following counsel of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

Jay A. Mullinax, Esquire
Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928



John R. C. Bowen, Esquire
P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700
Attorney for Respondent

April 23, 2013
Hilton Head Island, South Carolina

LAUGHLIN & BOWEN. P.C.

P.O. Drawer 21119
Hilton Head Island, South Carolina 29925
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin
John R.C. Bowen*
Jennie S. Cerrati**
*Admiralty Law
**Admitted in CA and SC

Telephone
(843)689-5700
Facsimile
(843)689-9300
Sender's E-Mail

john@laughlinandbowen.com

April 23, 2013

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

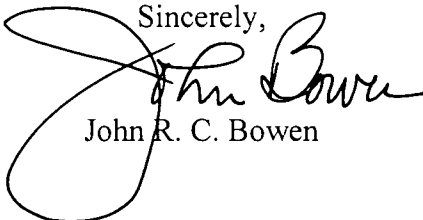
RE: Ron Orlosky v. The Law Office of Jay A. Mullinax, LLC
Appellate Case No.: 2012-212331

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondent's Reply to Appellant's Response to Motion for Involuntary Dismissal and Memorandum in Support and Certificate. We would appreciate it if you could please file the originals and return a clocked copies to us in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact us should you have any questions. In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky
Mr. Jay A. Mullinax, Esquire

RECEIVED
APR 25 2013

SC Court of Appeals