

RECEIVED
Apr 25 2022
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2017-CP-10-5427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,
Of whom Patricia Clarkin Smith is the Appellant.

RESPONDENT’S REPLY TO APPELLANT’S RETURN
TO RESPONDENT’S MOTION TO DISMISS

Respondent, Family Services, Inc., as Conservator for Muriel W. Clarkin by and through its undersigned counsel, hereby files and serves this Reply to Appellant Patricia Clarkin Smith’s Return to Respondents Motion to Dismiss filed on November 24, 2021, before this Court for an order dismissing Appellant’s appeal for failure to prosecute. Respondent replies as follows:

- 1) On July 22, 2021, Appellant filed this appellate matter seeking an appeal of the Master’s Order granting summary judgement to Respondent filed on June 21, 2022, based upon the hearing on Respondent’s Motion for Summary Judgement held before the Master on May 11, 2021.
- 2) On August 3, 2021, Appellant filed a Notice of Transcript Request requesting a copy of the transcript for the May 11, 2021, hearing from the court reporter Christine Smith (hereinafter “Court Reporter”).

3) On October 1, 2021, Appellant filed a motion with this Court stating: “I respectfully request an extension of the transcript due date.”

4) On October 20, 2021, Appellant received a PDF copy of the Transcript from the Court Reporter (See Exhibit “B” attached to Appellant’s Return dated April 22, 2022).

5) Appellant alleges that the copy of the Transcript she received contained a time stamp error and that Appellant noted the error to the Court Reporter in a response (See Appellant’s Second Request for an Extension to File a Return to Respondents Motion to Dismiss dated January 5, 2022).

6) Upon information and belief, the Court Reporter mailed a copy of the Certified Transcript to Appellant, on or around October 20, 2021, when the Court Reporter sent Appellant a pdf copy of the Transcript by email.

7) On October 29, 2021, this Court filed and served an Order stating: “Appellant has filed a motion for extension of time to order the transcript. This motion is Granted. *Appellant must notify the Court upon receipt of the transcript so that the time for serving and filing the appellant’s initial brief and designation of matter may be calculated.*”

6) On or around October 29, 2021, upon receipt of this Court’s Order, Appellant failed to comply with this Court’s Order by sending written notice to the Court that Appellant was in receipt of a certified copy of the Transcript.

7) On November 24, 2021, Respondent filed a Motion to Dismiss Appellant’s Appeal of this matter, for failure to prosecute. Respondent asserted in its motion that Appellant had failed to comply with this Court’s Order dated October 29, 2021, requiring Appellant to notify the Court in writing when Appellant had received a copy of the certified Transcript. Respondent further alleged more than thirty (30) days had elapsed since Appellant had received a certified copy of the

transcript. Therefore, Appellant had failed to timely file its initial brief as and designation of matter with the Court as required by Rule 208(a), SCACR.

8) On December 6, 2021, Appellant filed an email requesting “a 30-Day Extension of Time to Submit My Return to Motion that is due today. Dec 6, 2021.”

9) On December 8, 2021, this Court filed an Order stating: “The time for serving and filing the return to motion to dismiss is hereby extended until January 5, 2022. *No further extensions will be granted absent extraordinary circumstances.*”

10) On January 5, 2021, Appellant sent an email to the clerk of court stating: “Due to Extenuating Circumstances – Medical/Quarantine Covid-19¹, I respectfully request a Continuation of the 1st 30-Day Extension of Time to submit my Return To Motion that is due today, January 5, 2022. I will provide any medical documentation required. Attorney Keys filed his Motion to Dismiss on November 24, 2021 and stated in his Affidavit that I received a copy of the transcript on October 20, 2021. *Attorney Keys’ referenced copy was not the official hard copy per Rule 207 and Rule 607; it was a pdf of the transcript that contained a Time Stamp mistake noted in my response to the court reporter.”

11) On March 15, 2022, this court sent Appellant a deficiency letter stating: “Upon reviewing your motion for an extension of time to file the return to motion to dismiss, the following deficiency has been noted...[The required filing fee has not been submitted...] any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered.”

¹ Appellant has an extensive history of requesting continuances of scheduled motions, at the lower court level, in this matter. A pattern and practice which Appellant has now continued in the appeal of this matter. From November 27, 2019 until May 11, 2021, Appellant made 10 requests to continue two motions scheduled to be heard before the lower court. The reason Appellant routinely cited for the requests was *medical* reasons. The lower court granted the vast majority of Appellant’s continuance requests. See the Order on Appeal in this matter filed by Appellant with this Court on July 22, 2021, pages 2-4.

12) On March 25, 2022, Appellant emailed the clerk of court noting that she had mailed the required filing fee in response to the Court's letter and further stated: "I am grateful for the present decision, "held in abeyance." *As of today, my extenuating circumstances for Return to Dismissal Motion continuance due to Jan 5, 2022, quarantine remain unchanged – medical release date remains unknown.*"

13) On March 30, 2022, this Court issued an order stating: "The time for serving and filing the return to motion to dismiss is hereby extended until April 25, 2022. *No further extensions will be granted absent extraordinary circumstances.*"

14) On April 22, 2022, Appellant emailed the Clerk of Court a copy of Appellant's Return to Respondent's Motion to Dismiss which states: "Attorney Keys filed his Motion to Dismiss on November 24, 2021, and he wrote that I received a "copy" of the transcript on October 20, 2021. Attorney Keys failed to note whether that "copy" was a pdf file or the official hard copy. Attorney Keys' referenced "copy" was not the official hard copy as stated on the Transcript Order Form, "Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules...*On October 20, 2021, I received a pdf file of the transcript that contained a Time Stamp error as an attachment to an email from the court reporter...I, Patricia Clarkin Smith, respectfully request the South Carolina Court of Appeals to Deny Attorney Keys' Motion for Dismissal...*"

15) More than six (6) months later, now Appellant acknowledges having received a pdf copy of the Transcript in October of 2021 (and upon information and belief the certified copy followed in the mail within a week).² After multiple requests for extensions to file a return, Appellant in her filed return has failed to address the substance of Respondent's Motion to Dismiss in its entirety.

² If On October 20, 2021, Appellant was in possession of a pdf copy of the Transcript, even it was not the certified copy of the Transcript, then on October 20, 2021, Appellant was in possession of all the information she needed to begin drafting Appellant's initial brief. However, more than 6 months later Appellant has still failed to serve and file a copy of Appellant's initial brief.

Instead, Appellant has chosen to ambiguously assert alleged discrepancies in the process. Upon information and belief, Appellant has done so for the sole purpose of further delaying Appellant's obligation to prosecute this appeal in a timely manner.

16) It has been six months since this Court ordered Appellant to “*notify the Court upon receipt of the transcript so that the time for serving and filing the appellant's initial brief and designation of matter may be calculated.*” However, Appellant at present continues disobey this Court's Order. All reasonable information before this Court, evidences that Appellant likely, received a certified copy of the Transcript within the mail within a week of October 20, 2021, and contemporaneous to Appellant receiving this Court's October 29th Order.

17) If for some reason, this Court's Order dated October 29, 2021, was not clear enough to place Appellant on notice that she had thirty (30) days from receipt of the certified Transcript to file Appellant's Initial Brief and Designation of Matter, then certainly Respondent's Motion to Dismiss served upon Appellant five (5) months ago put Appellant on notice. Respondent in its Motion to Dismiss asserted Appellant had failed to timely file Appellants Initial Brief and Designation of Matter as required by the Rules.

18) In this six month time period, Appellant has never filed a motion with this Court requesting an extension of time to file and serve Appellant's Initial Brief and Designation of Matter.³ Nor, has Appellant filed and served Appellant's Initial Brief and Designation of Matter.

³ Appellant acknowledges she has been in possession of a copy of the Transcript for over six months. During the last six months Appellant could have also moved for an extension to file Appellant's Initial Brief and Designation of Matter, or even better during that six-month period Appellant could have simply filed and served her initial brief and designation of matter. However, Appellant chose not to do so. Upon information and belief Appellant's principal purpose in not doing so was to further delay Appellant's obligation to prosecute this appeal in a timely manner.

19) Rule 208(a), SCACR states: “(1) Brief of Appellant. Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, 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. . . (4) Failure to File. *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.”

22) Upon information and belief, and based upon the record before this Court, more than one hundred and eighty (180) days has passed since Appellant received the certified copy of the Transcript from the Court Reporter. Appellant filed this appeal nearly a year ago. There is evidence in the record that Appellant has sought to delay Appellant’s obligation to timely prosecute this Appeal. Respondent has been harmed by the delays attributable to Appellant. Appellant has failed to comply with this Court’s order for six months. Appellant has failed to move for an extension of time to file Appellant’s Initial Brief and Designation of Matter. Last and certainly not least, Appellant has failed to served a copy of Appellant’s initial brief and Designation of Matter on Respondent, nor has Appellant filed a copy of the same with the clerk of this Court.

WHEREFORE, based on the grounds stated in Respondents Motion to Dismiss filed November 24, 2021, and further supported by the grounds stated herein above, Respondent requests that this Court issue an order dismissing Appellant’s appeal of the Order filed June 21, 2021.

SIGNATURE BLOCK TO FOLLOW

April 25, 2022.

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
s/ D. Conor Keys
D. Conor Keys (100148)
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Respondent

RECEIVED

Apr 25 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2017-CP-10-5427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,
Of whom Patricia Clarkin Smith is the Appellant.

CERTIFICATE OF SERVICE

I certify that on this 25th day of April 2022, I have served Respondent’s Reply to Appellant’s Return to Respondent’s motion to dismiss upon Appellant by first class mail addressed as follows:

Patricia Clarkin Smith
602 Atlantic St.
Mount Pleasant, SC 29464

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
s/ D. Conor Keys
D. Conor Keys (100148)
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Respondent

THE LAW OFFICE OF
DAVID CONOR KEYS LLC
PO Box 14225 CHARLESTON, SC 29422
CONOR@DCONORKEYSLAW.COM
843-906-3998

April 25, 2022

Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org.

RECEIVED
Apr 25 2022
SC Court of Appeals

RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia Clarkin Smith, Et al.
App. Case No. 2021-000793

Madam Clerk:

Enclosed please find in regard to the above referenced matter the following:

- 1) Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss
- 2) Proof of Service for the Reply; and

I kindly request that you file the same

With kind regards,

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys (100148)
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Respondent

Enclosures:
(as stated)
CC:
Patricia Clarkin Smith