

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 08 2022

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000017
Civil Action No. 2021-CP-22-00605

Joseph N. Grate, Appellant,

v.

Christopher Douglas Brown, Respondent.

RESPONDENT'S INITIAL BRIEF

Richard C. Thomas, S.C. Bar No. 5533
Matthew G. Gerrald, S.C. Bar No. 76236
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondent

June 6, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES3

STATEMENT OF ISSUES ON APPEAL.....4

STATEMENT OF THE CASE.....4

STANDARD OF REVIEW5

ARGUMENTS.....6

 I. THE CIRCUIT COURT CORRECTLY DISMISSED THE APPEAL
 ON THE GROUND THAT IT WAS NOT PROPERLY
 PERFECTED.....6

 II. THE CIRCUIT COURT CORRECTLY DENIED APPELLANT’S
 MOTION FOR RECUSAL BECAUSE THERE IS NO EVIDENCE
 OF BIAS OR PREJUDICE7

 III. AN ADDITIONAL GROUND EXISTS FOR SUSTAINING THE
 ORDER.....8

CONCLUSION9

TABLE OF AUTHORITIES

CASES

Boggs-Tate Co. v. Bishop, 149 S.C. 69, 146 S.E. 677 (1929) 7
Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014).....7-8
De Witt v. S.C. Dep’t of Highways & Pub. Transp., 274 S.C. 184, 262 S.E.2d
28 (1980)..... 7
Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008)..... 5
Horry Cty. v. Babb, No. 2007-UP-244, 2007 S.C. App. Unpub. LEXIS 210 (Ct.
App. May 22, 2007)..... 7
Inabinet v. Hous. Auth. of Columbia, 270 S.C. 509, 242 S.E.2d 905 (1978)6-7
In re Estate of Cretzmeyer, 365 S.C. 12, 615 S.E.2d 116 (2005)..... 7
I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)8-9
Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct. App. 1984) 8
Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (2004).....5, 8
Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984)..... 7, 8
State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (2004) 6, 7

STATUTORY PROVISIONS

Rule 208, SCACR..... 8
Rule 220, SCACR..... 8
Rule 74, SCRCP 6
Rule 18, SCRMC..... 6, 9
S.C. Code Ann. § 18-7-20 9

STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY DISMISS THE APPEAL ON THE GROUND THAT IT WAS NOT PROPERLY PERFECTED?
- II. DID THE CIRCUIT COURT CORRECTLY DENY APPELLANT'S MOTION FOR RECUSAL BECAUSE THERE IS NO EVIDENCE OF BIAS OR PREJUDICE?
- III. DO ADDITIONAL GROUNDS EXIST FOR SUSTAINING THE ORDER?

STATEMENT OF THE CASE

This litigation arose out of a motor vehicle accident that occurred on February 28, 2018. Appellant filed suit against Respondent Christopher Douglas Brown in the Georgetown County Magistrate's Court, and a jury trial was held on June 16, 2021. At the conclusion of the trial, the jury returned a verdict—which was announced in open court—in favor of Appellant and against Respondent in the amount of \$1,097.76. On June 21, 2021, the magistrate entered a formal judgment for the same amount.

On July 21, 2021, Appellant filed and served a Notice of Appeal of the Magistrate Court's judgment in the Court of Common Pleas for Georgetown County. (R. p. ____). On July 30, 2021, Respondent filed a Motion to Dismiss the Appeal on the grounds that the appeal was not timely. (R. p. ____). On October 21, 2021, the Georgetown County Clerk of Court received a letter from the Georgetown County Central Jury Court stating: "Central Jury Court have not received any notice of appeal for case 2021CV221070017 Joseph N. Grate VS Christopher D. Brown from June 2021 when the case was disposed until this present date." (R. p. ____). On November 1, 2021, Appellant filed a Motion for Recusal requesting that "Judge B. Culbertson" and "Court Reporter: Sallie Beth Todd" recuse or otherwise be prohibited from participating in any case involving Appellant "in the interest of Justice." (R. p. ____).

The matter came before the Georgetown County Court of Common Pleas on December 9, 2021 for a hearing by the Honorable Benjamin H. Culbertson. During the hearing, Judge Culbertson ruled from the bench that Appellant's Motion for Recusal would be denied and that Respondent's Motion to Dismiss would be granted because the appeal was not properly filed. (Tr. at 2:18-3:1, 7:22-23). Judge Culbertson subsequently issued a Form 4 Order (the "Order") formally denying Appellant's Motion for Recusal and granting Respondent's Motion to Dismiss the Appeal. (R. p. ____). The Order stated, in part:

Motion for Recusal by Appellant is DENIED.

Respondent's Motion to Dismiss Appeal is GRANTED. The appellant failed to file his Notice of Appeal with the magistrate rendering the decision on appeal. See Rule 18(a), SC Rules of Magistrate Court. Therefore, this appeal is DISMISSED.

Appellant served a Notice of Appeal to this court on January 3, 2022. The Notice of Appeal was received and filed by this court on January 6, 2022.

STANDARD OF REVIEW

The dismissal of an appeal for failure to comply with the applicable rules is an issue of law. "[T]his Court reviews questions of law de novo." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008).

"[I]f there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004).

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY DISMISSED THE APPEAL ON THE GROUND THAT IT WAS NOT PROPERLY PERFECTED.

Rule 18(a), SCRMC, states in part: “[A] party wishing to appeal shall serve on the respondent and file a notice of appeal . . . with the magistrate rendering the judgment[.]” Rule 74, SCRCP, similarly states in part: “[N]otice of intention to appeal shall be filed . . . with the inferior court or administrative agency or tribunal[.]” Accordingly, in order to perfect an appeal to the Circuit Court, Appellant was required to file his Notice of Appeal with the Georgetown County Magistrate’s Court. He failed to do so, and as a result, the magistrate did not file a return or the record, a statement of all proceedings in the case, or the testimony taken at trial as required by Rule 18(b), SCRMC.¹

In Inabinet v. Housing Authority of Columbia, 270 S.C. 509, 242 S.E.2d 905 (1978), a tenant appealed an eviction order issued by the Richland County Magistrate’s Court. The landlord moved to dismiss the appeal on the ground that the tenant had not complied with a statutory requirement that she personally serve the magistrate with her notice of intent to appeal.² The Circuit Court denied the motion, but the Supreme Court reversed, finding that in light of the tenant’s failure to personally serve the magistrate, “it was error for the lower court to entertain the appeal from the magistrate’s court.” Id. at 512,

¹ For the reasons set forth in his Motion to Strike and Reply to Appellant’s Objection to Motion to Strike, Respondent continues to object to the inclusion in the Record on Appeal—and this court’s consideration—of materials that were not presented to the Circuit Court, including those that were presented only to the magistrate. See also State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (“[I]t is error for the Court of Appeals to consider facts not included in the magistrate’s return.”).

² Upon the implementation of the South Carolina Rules of Civil Procedure in 1985, the requirement that the notice of appeal be provided to the magistrate was moved to Rule 74, SCRCP.

242 S.E.2d at 906. See also Brown, 358 S.C. at 387, 596 S.E.2d at 41 (“[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction[.]”); De Witt v. S.C. Dep’t of Highways & Pub. Transp., 274 S.C. 184, 186, 262 S.E.2d 28, 29 (1980) (“[A] circuit judge cannot reverse a magistrate’s judgment when the appellant has failed to serve on the magistrate the proper notice and grounds of appeal within the prescribed time limits.”); Boggs-Tatè Co. v. Bishop, 149 S.C. 69, 75, 146 S.E. 677, 679 (1929) (“If the appeal should be dismissed for the reason that it has not been perfected as required by law, there would be no occasion to hear it on its merits--practically, the appeal does not exist.”). Cf. Horry Cty. v. Babb, No. 2007-UP-244, 2007 S.C. App. Unpub. LEXIS 210, at *2-4 (Ct. App. May 22, 2007) (affirming dismissal of a criminal appeal for failure to timely serve the notice of appeal on the magistrate); In re Estate of Cretzmeyer, 365 S.C. 12, 13-14, 615 S.E.2d 116, 116-17 (2005) (affirming dismissal of a probate appeal for failure to comply with procedural requirements).

Because Appellant did not properly perfect his appeal by timely filing his Notice of Appeal with the Georgetown County Magistrate’s Court, there was nothing in the record for the Circuit Court to review, and the Circuit Court lacked appellate jurisdiction over the case. Accordingly, the Circuit Court committed no error in dismissing the appeal.

II. THE CIRCUIT COURT CORRECTLY DENIED APPELLANT’S MOTION FOR RECUSAL BECAUSE THERE IS NO EVIDENCE OF BIAS OR PREJUDICE.

“Canon 3(C)(1)(a) of the Code of Judicial Conduct, Rule 33, Rules of Practice of the Supreme Court, requires a judge to recuse himself when ‘he has a personal bias or prejudice concerning a party’” Payne v. Holiday Towers, Inc., 283 S.C. 210, 217, 321 S.E.2d 179, 183 (Ct. App. 1984) (ellipsis in original). “Appellate courts accord great

weight to the trial judge's assurance of his own impartiality." Davis v. Parkview Apartments, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014) (citations and quotation marks omitted). "[T]he movant or petitioner must show some evidence of the bias or prejudice of the judge." Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984). "It is not sufficient for a party seeking disqualification to simply allege bias; the party must show some evidence of bias or prejudice." Patel, 359 S.C. at 524, 599 S.E.2d at 118.

In this case, Appellant's Motion for Recusal cited no evidence of bias or prejudice, declaring simply that recusal was necessary "in the interest of justice." (R. p. ____). Appellant repeated his invocation of the "interest on justice" at the hearing on the motion. (Tr. at 2:25). In his brief, Appellant alludes to a prior matter in which he requested Judge Culbertson's recusal. App. Br. at 4-5. However, "[w]hen no evidence is presented other than prior appearances by a party which resulted in 'adverse' ruling by the judge, the judge is not required to recuse himself." Payne, 283 S.C. at 217, 321 S.E.2d at 183. Simply put, the record in this case contains no evidence requiring recusal, and thus the Circuit Court committed no error in denying the Motion for Recusal.

III. AN ADDITIONAL GROUND EXISTS FOR SUSTAINING THE ORDER.

In addition to the grounds set forth above, there is at least one other reason why the Order should be affirmed. See Rule 208(b)(2), SCACR ("Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)."); Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723

(2000) (holding that “a respondent—the ‘winner’ in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling”).

The trial of this case was held on June 16, 2021, and the jury’s verdict was announced in open court on that date. Accordingly, the deadline for Appellant to serve and file his Notice of Appeal to the Circuit Court was July 16, 2021. See, Rule 18(a), SCRMC (“If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced.”); S.C. Code Ann. § 18-7-20 (“The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, *except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary*, shall serve a notice of appeal[.]”) (emphasis added). Accordingly, Appellant’s Notice of Appeal—which was filed and served on July 21, 2021—was untimely.

CONCLUSION

For the reasons set forth herein, the Order contains no reversible error. Accordingly, the Respondent respectfully requests that this court affirm the Order.



Richard C. Thomas, S.C. Bar No. 5533
Matthew G. Gerrald, S.C. Bar No. 76236
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondent

June 6, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 08 2022

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000017
Civil Action No. 2021-CP-22-00605

Joseph N. Grate, Appellant;

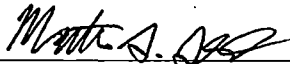
v.

Christopher Douglas Brown, Respondent.

PROOF OF SERVICE

I, the undersigned, do hereby state that I have on June 6, 2022 served copies of **RESPONDENT'S INITIAL BRIEF** and **RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** upon the Appellant, *pro se*, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

Joseph N. Grate
P.O. Box 1294
Pawley's Island, SC 29585


Matthew G. Gerrald, S.C. Bar No. 76236
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111

WELDON R. JOHNSON *
DAVID G. WOLFF
KAY GAFFNEY CROWE *
ALAN J. REYNER †
RICHARD C. THOMAS
ROBERT T. STRICKLAND
CURTIS W. DOWLING
MATTHEW G. GERRALD
EMILY COLLINS BROWN
JEFFREY D. HOPKINS **
CREASIE PARROTT SCHLACHTER **
JOSHUA G. HILL



BARNES ALFORD

Barnes Alford Stork & Johnson L.L.P.

ATTORNEYS AT LAW

OF COUNSEL
WILLIAM C. STORK
ROGER A. WAY, JR.
* CERTIFIED CIVIL
COURT MEDIATOR
† CERTIFIED SPECIALIST
IN TAXATION
** ALSO ADMITTED IN
NORTH CAROLINA
RUDOLPH C. BARNES
(1917-1995)
JAMES W. ALFORD
(1930-2008)

June 6, 2022

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

JUN 08 2022

SC Court of Appeals

Re: Joseph N. Grate v. Christopher Douglas Brown
Appellate Case No. 2022-000017
BASJ File No. 217.22536

Dear Sir or Madam:

Enclosed please find the originals of Respondent's Initial Brief, Respondent's Designation of Matter to Be Included in the Record on Appeal, and a Proof of Service in this case. Copies of these documents were previously filed via email.

With best regards, I am

Very truly yours,

Matthew G. Gerrald

MGG/tas
Enclosures

cc: Joseph N. Grate

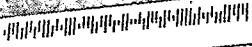
MATTHEW G. GERRALD

1613 MAIN STREET (29201)
POST OFFICE BOX 8448
COLUMBIA, SC 29202



OFFICE: 803.799.1111
FAX: 803.254.1335
MATT@BASJLAW.COM

WWW.BARNESALFORD.COM



FIRST CLASS



US POSTAGE MONEY ORDER
\$001.76
JUN 08 2022



BARNES/ALFORD
BARNES ALFORD STORK & JOHNSON, LLP
ATTORNEYS AT LAW
1613 MAIN STREET, POST OFFICE BOX 848
COLUMBIA, SOUTH CAROLINA 29202-8448

TO

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

JUN 08 2022

SC Court of Appeals