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Oct 14 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON
COURT OF COMMON PLEAS
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001292

Frances K. Chestnut, Elizabeth Diane Keese, Sylvester
Keese, Arthur B. Keese and Mary K. Taylor,..... Respondents,

v.

Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, Petitioners.

MOTION TO DISMISS

Respondents Frances K. Chesnut, Elizabeth Diane Keese, Sylvester Keese, Arthur B. Keese and Mary K. Taylor (referred to collectively as “Respondents”) move to dismiss the pending Petition for Writ of Certiorari based on failure of Petitioners to comply with the mandatory service rules as set forth in Rule 242(c), SCACR. In support of their motion, Respondents will show:

1. This matter was finally ruled upon by the Court of Appeals on June 8, 2022, by unpublished Opinion No. 2022-UP-255. **Exhibit A.**
2. The Court of Appeals denied Petitioner’s Petition for Rehearing by order filed August 18, 2022. **Exhibit B.**

3. Apparently, without serving a copy on Counsel for Respondents, Petitioner Mary Keese filed a petition for writ of certiorari with this Court by letter dated September 15, 2022. Counsel was not served with a copy of the letter, the petition, the Appendix, or anything at all in connection with the letter to this Court dated September 15, 2022. Additionally, Petitioners did not file a copy of the Petition and attachments with either the Court of Appeals nor the Circuit Court.
4. As a result, the petition is defective and must be dismissed based on failure of Respondents to comply with Rule 242(c), SCACR. On information and belief, failure to timely serve and file copies of the Petition for Writ of Certiorari renders the filing with this Court invalid and a nullity, of no force and effect.
5. Counsel for Respondents maintains a post office box that she has maintained in excess of ten (10) years, and which is checked daily by counsel or her staff. As established by the affidavit of Patricia C. Milford, attached hereto as **Exhibit C**, counsel for Respondent has not been served with a copy of the filings of September 15, 2022.
6. To date, counsel for Respondents has not yet been served with the filings by Respondents on September 15, 2022.
7. Counsel for Respondents was first made aware of the September 15, 2022 filing when a copy of a letter was received from this Court dated September 23, 2022. **Exhibit D.**
8. Respondents are informed and believe that, not only did Petitioners not serve Respondent's counsel with a copy of the September 15, 2022 filing, they also did not file copies of the September 15, 2022 filing with the clerk of the Court of

Appeals. The C-track docket for Appellate Case No. 2020-000263, attached as **Exhibit E**, reflects no copy of the Petition for Writ of Certiorari having been filed with the Court of Appeals.

9. Similarly, the Anderson County Clerk of Court's docket reflects that no copy of the Petition for Writ of Certiorari was filed with the clerk of court. **Exhibit F**.
10. Rule 242(C), SCACR, requires that in order to properly and timely seek a Writ of Certiorari from this Court, Petitioners are required to serve opposing counsel and file proof of service with the Court of Appeals and the Circuit Court "within thirty (30) days after the petition for rehearing . . . is finally decided by the Court of Appeals."
11. Petitioners have not served the Petition for Writ of Certiorari on counsel for respondents, nor have they filed copies of the Petition with either of the courts as mandated by Rule 242(c), SCACR.
12. Counsel for Respondents has examined the Certificate of Service filed with the Petition for Writ of Certiorari and dated September 15, 2022, which reflects that a copy of the Petition for Writ of Certiorari and attachments was mailed to counsel for respondent on September 15, 2022 by "EXPRESS MAIL." No identifying or tracking information for the "EXPRESS MAIL" transmittal is contained in the cover letter or the Certificate of Service.
13. Counsel for Respondent is unsure what "EXPRESS MAIL" is. However, Rule 262(c), SCACR, sets for the mandatory means by which service under the appellate court rules can be accomplished. With reference to mailing a copy of the documents to effect service, a moving party may "deposit[] a copy in the U.S. mail,

properly addressed to the person at that person's last known address, with sufficient first class postage affixed. . .”

14. Respondents note that the Certificate of Service does not properly reflect service by U.S. mail, nor does it reflect that sufficient first class postage was affixed to ensure delivery to Respondent. Similarly, the Certificate of Service mentions nothing about the mandatory filings required with the Court of Appeals or the circuit court.
15. A search of the permissible methods for service using the United States Postal Service at www.usps.com does not reflect any method of service available which is called “Express Mail.”
16. If, in fact, Petitioners used “Priority Mail Express” as provided by the United States Postal Service, they should have proof via USPS Tracking of both transmittal and delivery of anything that was properly served via U.S. mail on September 15, 2022 or thereafter. *Id.*
17. The USPS also provides for “priority mail express” which also includes proof of tracking for all matters transmitted. *Id.*
18. If Petitioners properly served counsel for Respondents, and properly and timely filed copies of the Petition for Writ of Certiorari on the Court of Appeals and circuit court by U. S. mail, they should be required to provide proof of service and filing by providing proof of delivery by official notice of the United States Post Office.
19. Respondents are informed and believes that Petitioners have not complied with the service and filing requirements of the appellate court rules, and that dismissal of the petition is required.

WHEREFORE, Respondents move for dismissal of the Petition for Writ of Certiorari in this matter, which has been assigned Appellate Case No. 2022-001292 by this Court.

Respectfully submitted,

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