

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

NOV 03 2022

SC Court of Appeals

Michael S. Holt, Circuit Court Judge, PROBATE JUDGE
CASE NO.: 2015-CP16-00622

CASE NO.: 2022-000261

Harold Wilson,.....Appellant.
Vs.
Cynthia Barnett, Louise Sweet, and Hubert Wilson,.....Respondents.

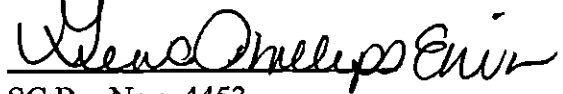
MOTION TO DISMISS APPEAL

The Respondent, Cynthia Barnett by and through her undersigned attorney, hereby moves this Court for an Order dismissing the Appellant’s appeal. This Motion is made on the grounds that although the Appellant filed a Notice of Appeal stating that he is appealing on Order by the Honorable Michael S. Holt on June 11, 2022 the written Order issued by the Court was filed January 24, 2022. A copy of said Order is attached hereto and incorporated herein by reference as Exhibit “A”. A copy of said Order was served on Harold Wilson by mail on January 31, 2022 at the address of 1549 Country Manor Road, Darlington, South Carolina 29532. Said service was pursuant to a Certificate of Service dated January 31, 2022 and filed on January 31, 2022 in the Darlington County Clerk of Courts office. Since no Notice of Intent to Appeal was filed or served upon the Respondent since that time. Upon information and belief, the Appellant appears to have merely appealed from a Form 4 filed on January 11, 2022, thirteen days prior to the filing of the actual Order.

Upon information and belief, no Notice of Intent to Appeal was filed with the Court of Appeals within the time period required. As a result of Appellant’s failure to timely file the Notice of Intent to Appeal as required by Rule 203(b)(1), this Court lacks subject matter jurisdiction to consider the appeal and it therefore must be dismissed. See Gallagher vs. Evert, 353 S.C. F59, 577 S. E. 2D, 2017 (S.C. App., 2002).

As a result of Appellant's failure to timely file a Notice of Intent to Appeal, the Circuit Courts Order from the actual written Order filed by the Court and Petitioner and failure to timely comply with Rule 260-SCARC which states "whenever it appears that Appellant or Petitioner has failed to comply with the requirements of these rules, the Clerk shall issue an Order of Dismissal which will have the same force and effect as an Order of Appellant Court).

RESPECTFULLY SUBMITTED,



SC Bar No.: 4453

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ATTORNEY FOR RESPONDENT

CYNTHIA BARNETT

Florence, South Carolina
October 31, 2022

Other Parties of Record:

Harold Wilson, Pro Se Appellant
1549 Country Manor Rd.
Darlington, SC 29532

Louise Sweet
6857 North 19th Street
Philadelphia, PA 19126

Hubert Wilson
2916 Briar Park Road
Effingham, SC 29541

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

APPEAL FROM THE PROBATE)
COURT OF DARLINGTON COUNTY)

IN THE MATTER OF:)

DOROTHY W. HATCHER, HAROLD)
WILSON,)

Appellant,)

v.)

CYNTHIA BARNETT, LOUISE)
SWEET, AND HUBERT WILSON)

Respondents.)

_____)

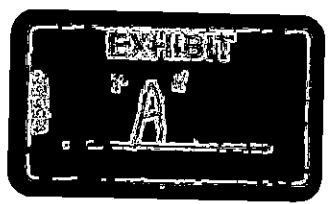
IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP16-00622

ORDER

This matter came before me as a result of a Motion to Dismiss for lack of prosecution previously filed by the Respondent, Cynthia Barnett, by and through her undersigned attorney Gena Phillips Ervin on October 12, 2021. The Appellant, Harold Wilson, filed a Motion to Oppose a Motion to Dismiss on November 15, 2021. The matter was scheduled to be heard on January 4, 2022 at 10:00 a.m. in the Darlington County Probate Court before the Honorable Michael S. Holt. On December 28, 2021, the Appellant filed a Motion for Continuance of that hearing. The Motion for Continuance was denied.

At 10:00 a.m. on January 4th, the Appellant was not present in the courtroom. When the Court called the case at 10:30 a.m., Appellant still was not present, nor did he call or attempt to contact the Court about the hearing.

This appeal stems from an Order filed in the Darlington County Probate Court dated



February 27, 2014. The matter involves an Estate which was originally opened in 2012. When the Notice of Appeal was filed, the Appellant mistakenly filed it in the South Carolina Court of Appeals. The matter was later remitted to the Darlington County Circuit Court by Order of the Honorable Jasper W. Cureton, Jr. filed June 16, 2015. A review of the file shows that since the Appeal was remitted on July 2, 2015, the Appellant has failed to make any effort to finalize this Appeal or request that it be heard. A review of the file shows that since the Appeal was remitted on July 2, 2015, the Appellant has failed to make any effort to finalize this Appeal.

When remitted to the Circuit Court the Court notes the file did not contain a transcript nor any correspondence from the Appellant requesting the transcript as required by Rule 207 of Appellant Court Rules. The Appellant is responsible for furnishing copies of the transcript to the Appellant Court as well as all correspondence with the Court Reporter. The record contains no transcript of the original hearing. Appellant Court Rules also requires that the Appellant serve all parties to the appeal with a Designation of Matter along with the brief setting forth with specificity those parts of the record which he proposes to include in the Record on Appeal. The Designation did not include any items with specificity. The Items the Appellant proposed to include included items such a " letter from attorney 2009, a "Last Will and Testament" and "a Living Will."

The Appellant has the burden of prosecuting his or her action. If they fail to do so, the Court may dismiss the action for unreasonable neglect in proceeding with the Cause. *McComas V. Ross*, 626 S.E. 2d 902. Although the Appellant received six (6) separate extensions of time to file the Initial Brief in the Court of Appeals, since the case was remitted, there is no evidence that the Appellant has taken any action whatsoever. In filing an appeal, the Appellant is responsible for fulfilling all rules required by the Court. Prior to dismissing a case for failure to prosecute

the Court must consider four factors: (1) the Appellant's degree of personal responsibility; (2) the amount of prejudice to the other party; (3) drawn out history of proceeding in a dilatory fashion; and (4) effectiveness of less drastic sanctions. *McComas*, Supra. This Estate has been opened since 2012. Because of the inaction of the Appellant, more than five (5) years have passed and no estate assets have been distributed. The Appellant's failure to prosecute this matter has prejudiced both the Respondent and all heirs of the Estate of Dorothy Hatcher. The evidence provided by review of the record shows a long history of proceeding in a dilatory fashion by the Appellant and the Court does not believe there are any less drastic sanctions than Dismissal.

The Appellant's Appeal is hereby Dismissed.

IT IS SO ORDERED.

The Honorable Michael S. Holt
Darlington County Probate Court

Darlington, South Carolina
This ____ day of January, 2022



Darlington Common Pleas

Case Caption: Harold Wilson VS Cynthia Barnett
Case Number: 2015CP1600622
Type: Order/Dismissal

So Ordered

s/ Michael S. Holt, 2772

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PROOF OF SERVICE

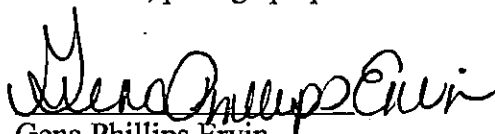
I certify that I have served the Motion for Extension of Time to File Respondent's Initial Brief
and Motion to Dismiss on the following:

Harold Wilson, Pro Se Appellant
1549 Country Manor Rd.
Darlington, SC 29532

Louise Sweet
6857 North 19th Street
Philadelphia, PA 19126

Hubert Wilson
2916 Briar Park Road
Effingham, SC 29541

By depositing a copy of same in the United States Mail, postage prepaid on October 31, 2022.



Gena Phillips Ervin
SC Bar No.: 4453
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Post Office Box 2527
Florence, South Carolina 29503
(843) 667-6613
**ATTORNEY FOR RESPONDENT
CYNTHIA BARNETT**

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ATTORNEYS AND COUNSELORS AT LAW
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GENA PHILLIPS ERVIN

TELEPHONE (843) 667-6613
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SC Court of Appeals

October 31, 2022

Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Estate of Dorothy Hatcher
My File No.: 6141.002

Dear Ms. Kitchings:

Enclosed please find an original and two copies each of a Motion for Extension of Time to File Respondent's Initial Brief, Motion to Dismiss Appeal and Proof of Service in the above mentioned matter. I am also enclosing our check in the amount of \$100.00 for the filing fee. Please do not hesitate to contact our office if you should need any additional information.

Very truly yours,

ORR & ERVIN, LLC

BY: 

GENA PHILLIPS ERVIN

GPE/ml
Enclosures

cc: Cynthia Barnett (w/o enclosure)



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10/31/2022

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ORR & ERVIN, LLC
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FLORENCE, SOUTH CAROLINA 29503

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SC Court of Appeals

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