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Feb 10 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-04058
Appellate Case No. 2022-001815

Keith L. Tolbert, Respondent,

v.

Carolyn Tolbert Smith, Charles Tolbert,
Betty Jean Tolbert Jones, Sara Jo Tolbert
Latten, and Estate of Charla Tolbert McMillian, Defendants

Of whom Carolyn Tolbert Smith is the Appellant,

and

Charles Tolbert, Betty Jean Tolbert Jones,
Sara Jo Tolbert Latten, and Estate of Charla
Tolbert McMillian are the Respondents.

MOTION TO DISMISS

Pursuant to Rule 260, SCACR, Respondents Charles Tolbert and Estate of Charla Tolbert McMillian (hereinafter the “Respondents”) hereby move for dismissal of this appeal due to Appellant’s failure to comply with the requirements of the South Carolina Appellate Court Rules.

Specifically, Appellant’s notice of appeal was not filed within thirty (30) days after receipt of written notice of entry or judgment as required by Rule 203, SCACR. Appellant was represented by Malena A. Dinwoodie, Esq., of Finkel Law Firm LLC at the hearing held on

September 21, 2022. The Order Granting Summary Judgment (hereinafter the “Order”), which is the basis for this appeal, was electronically filed in the Court of Common Pleas for Charleston County on November 8, 2022. Counsel of record, including Ms. Dinwoodie, were electronically served with a copy of the Order on November 8, 2022. A copy of the Certificate of Electronic Notification is submitted herewith as “Exhibit A” and incorporated herein by reference. Ms. Dinwoodie remained counsel of record for Appellant until the Motion and Order for Malena Dinwoodie, Esquire to Withdraw as Counsel for Carolyn Tolbert-Smith (hereinafter “Motion/Order to Withdraw”) was filed in the Court of Common Pleas for Charleston County on January 10, 2023. A copy of the Motion/Order to Withdraw is submitted herewith as “Exhibit B” and incorporated herein by reference. Pursuant to Rule 203, SCACR, any notice of appeal had to be filed within thirty (30) days of November 8, 2022. Respondents did not receive the notice of appeal until December 20, 2022. Likewise, Appellant’s document requesting additional time to appeal was not timely as it was not received by the Court of Appeals until December 28, 2022.

Appellant has not made arrangements to order a transcript of the proceeding, or if she has, she has not provided the Respondents with a copy of the correspondence with the court reporter as required by Rule 207, SCACR.

Appellant mailed Respondents a document entitled “Initial Brief of Appellant” on or about January 10, 2023. Appellant has not, to date, provided Respondents with a Designation of Matter to be Included on Appeal. Rule 209, SCACR, requires the Designation of Matter to be Included in the Record on Appeal to be filed within thirty (30) days after service of the notice of appeal. Further, Appellants document entitled “Initial Brief of Appellant” contains facts not in the record and the document does not comply with Rule 208, SCACR.

Appellant’s filings are not in compliance with Rule 267, SCACR.

In *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992) the respondents in that matter sought to dismiss an appeal claiming the appellant's initial brief filed to comply with Rule 207, SCACR and that appellant's Designation of Matter to be included in the Record on Appeal was insufficient under Rule 208, SCACR. The Supreme Court of South Carolina found:

Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent on counsel to provide material that complies with the Rules and facilitates appellate review.

Although this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules, we decline to do so and deny the motion to dismiss as to the Hennings.

Henning 307 S.C. 436, 437-438, 415 S.E.2d at 794. The violations in the *Henning* case were related to deficiencies in the initial brief and deficiencies in the Designation of Matter to be Included in the Record on Appeal. The Supreme Court granted the appellant leave to correct the violations within fifteen (15) days. The violations of Appellant in the within appeal are more egregious than those in *Henning*, warranting dismissal of the appeal as some of the violations are not merely failure to follow formatting guidelines, but are substantive in nature.

Due to Appellant's repeated failure to follow the South Carolina Appellate Court Rules, including Appellant's failure to file a timely notice of appeal and failure to file a timely Designation of Matter to be Included on Appeal, Respondents Charles Tolbert and Estate of Charla Tolbert McMillian move for dismissal of this appeal with prejudice.

[Signature page to follow]

February 9, 2023

s/Ashley G. Andrews
Ashley G. Andrews (SC Bar No. 76667)
LaFond Law Group, PA
544 Savannah Highway
Charleston, SC 29407
843.762.3554 (telephone)
843.377.1111 (facsimile)
Attorney for Respondents Charles Tolbert
and Estate of Charla Tolbert McMillian

EXHIBIT A

Certificate of Electronic Notification

Recipients

Alwyn Silver - Notification transmitted on 11-08-2022 02:58:47 PM.

Malena Dinwoodie - Notification transmitted on 11-08-2022 02:58:46 PM.

William Kalivas - Notification transmitted on 11-08-2022 02:58:46 PM.

Ashley Andrews - Notification transmitted on 11-08-2022 02:58:46 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2021CP1004058

Official File Stamp: 11-08-2022 02:58:37 PM

Court: CIRCUIT COURT

Common Pleas

Charleston

Case Caption: Keith L Tolbert VS Carolyn Tolbert Smith ,
defendant, et al

Document(s) Submitted: Order Granting Summary Judgment as to
Counterclaim Order/Summary Judgment

Filed by or on behalf of: Mikell Scarborough

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

Ashley G. Andrews for Charla Tolbert Mcmillian
Estate, Charles Tolbert

Alwyn Taylor Silver for Sara Jo Tolbert Latten

Malena A. Dinwoodie for Carolyn Tolbert Smith

William King Kalivas for Keith L Tolbert

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

Betty Jean Tolbert Jones for Betty Jean Tolbert
Jones

Charla Tolbert Mcmillian

Carolyn Tolbert Smith for Carolyn Tolbert Smith

Carolyn Tolbert Smith for Carolyn Tolbert Smith

Betty Jean Tolbert Jones for Betty Jean Tolbert
Jones

Exhibit B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Keith L. Tolbert,)
)
 Plaintiff,)
)
 v.)
)
 Carolyn Tolbert- Smith; Charles Tolbert;)
 Betty Jean Tolbert Jones; Sara Jo Tolbert)
 Latten; and Estate of Charla Tolbert McMillian,)
)
 Defendant(s).)
)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-04058

**MOTION AND ORDER FOR
 MALENA DINWOODIE, ESQUIRE TO
 WITHDRAW AS COUNSEL FOR
 CAROLYN TOLBERT- SMITH**

WHEREAS attorney Malena Dinwoodie, Esq. (“Malena”) is the attorney of record for the defendant Carolyn Tolbert-Smith (“Carolyn”) in the above captioned action; and

WHEREAS Malena and Carolyn are mutually desirous to terminate Malena’s representation of Carolyn in this proceeding; and

WHEREAS Malena represents that she has informed Carolyn that if she does not retain substitute counsel, she will be deemed to be proceeding pro se and without counsel, and Carolyn acknowledges understanding of the same;

NOW, THEREFORE, IT IS HEREBY:

ORDERED that the motion of Malena Dinwoodie to withdraw as attorney of record for Carolyn Tolbert-Smith is hereby **GRANTED**; and it is further

ORDERED that Carolyn Tolbert- Smith is deemed to be proceeding pro se in this action unless and until such time as substitute counsel appears on her behalf. Carolyn Tolbert- Smith shall keep the Clerk of Court’s office informed as to any change in her below mailing address.

AND IT IS SO ORDERED.

*MOTION AND ORDER FOR MALENA A. DINWOODIE, ESQUIRE
TO WITHDRAW AS COUNSEL FOR CAROLYN TOLBERT - SMITH*

December ____, 2022
Charleston, South Carolina

The Honorable Mikell R. Scarborough
Master-In-Equity, Charleston County

IMOVE:

Malena A. Dinwoodie, Esq. (S.C. Bar 103978)
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
MDinwoodie@finkellaw.com
Telephone: (843) 576-5460

Date: _____

ICONSENT:

Carolyn Tolbert- Smith
338 5th Avenue
Mt. Pleasant, SC 29464
Telephone: (843) 216-6960

Date: _____



Charleston Common Pleas

Case Caption: Keith L Tolbert VS Carolyn Tolbert Smith , defendant, et al

Case Number: 2021CP1004058

Type: Order/Withdraw

So Ordered

s/Mikell R. Scarborough 3062

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APPEAL FROM CHARLESTON COUNTY
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Case No. 2021-CP-10-04058
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Keith L. Tolbert, Respondent,

v.

Carolyn Tolbert Smith, Charles Tolbert,
Betty Jean Tolbert Jones, Sara Jo Tolbert
Latten, and Estate of Charla Tolbert McMillian, Defendants

Of whom Carolyn Tolbert Smith is the Appellant,

and

Charles Tolbert, Betty Jean Tolbert Jones,
Sara Jo Tolbert Latten, and Estate of Charla
Tolbert McMillian are the Respondents.

PROOF OF SERVICE

I do hereby certify that I have served the Motion to Dismiss in the above-captioned action, by depositing the same in the United States Mail, postage prepaid on this 10th day of February, 2023, addressed to:

Carolyn Tolbert Smith
338 Fifth Avenue
Mt. Pleasant, SC 29464

William K. Kalivas, Esq.
PO Box 40578
Charleston, SC 29423

Alwyn Taylor Silver, Esq.
PO Box 1665
Georgetown, SC 29442

Betty Jean Tolbert Jones
1311 Delaware Ave SW, Unit South 843
Washington, DC 20027

February 10, 2023

s/Ashley G. Andrews
Ashley G. Andrews (SC Bar No. 76667)
LaFond Law Group, PA
544 Savannah Highway
Charleston, SC 29407
843.762.3554 (telephone)
843.377.1111 (facsimile)
Attorney for Respondents Charles Tolbert
and Estate of Charla Tolbert McMillian

LaFond Law Group, PA
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LaFondLaw.com | info@LaFondLaw.com

RECEIVED

Feb 10 2023

SC Court of Appeals

February 10, 2023

Via E-Mail: ctappfilings@sccourts.org

South Carolina Court of Appeals
Attn: Clerk of Court
PO Box 11629
Columbia, SC 29211

Re: *Keith L. Tolbert, Respondent vs. Carolyn Tolbert Smith, et al., of whom Carolyn Tolbert Smith is the Appellant*
Appellate Case No. 2022-001815

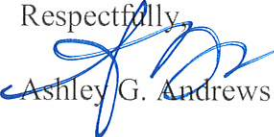
Dear Sir or Madam:

I have attached for filing a Motion to Dismiss, Motion to Dismiss – Exhibit A, Motion to Dismiss – Exhibit B, and Proof of Service for the above reference appeal.

I am serving all interested parties by mailing copies of the same as evidenced by the Proof of Service. Additionally, counsel of record is copied on this e-mail.

Pursuant to the amended Appellate Court Rules, I am filing this Motion by e-mail, without additional copies. A check in the amount of \$50.00 is being mailed to the Court for the filing fee.

With kind regards, I am

Respectfully,

Ashley G. Andrews

Enclosure(s) as stated

cc: William K. Kalivas, Esq.
Alwyn Taylor Silver, Esq.