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Mar 16 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals Jr., Circuit Court Judge

APPEAL FROM HORRY COUNTY
Magistrate Court
Hon. Christopher J. Arakas

Case No.: 2023-CP-26-00448

Appellate Case No. 2023-000169

Plantation Apartments,

Respondent,

v.

Shenika McIntyre,

Appellant.

RESPONDENT'S RETURN TO MOTION TO REINSTATE

The Appellant's Motion to Reinstate ("Motion") should be denied as Appellant did not follow the requirements set out in Rule 240, South Carolina Appellate Court Rules ("SCACR"). Therefore, the Order dismissing the Appellant's appeal dated February 23, 2023 (the "Order") and remittitur should have been sent to the lower court pursuant to Rule 221(b), SCACR. In addition to the Appellant's failure to follow certain requirements as set forth above, the Appellant's Motion lacks good cause, or any cause, to reinstate the appeal.

PROCEDURAL BACKGROUND

On January 6, 2023, the Horry County Court of Common Pleas affirmed the Magistrate Judgment (the “Circuit Court Order 1”) (App. 1-3). On January 24, 2023, Appellant again appealed the Magistrate Judgment to the Horry County Court of Common Pleas. The Horry County Court of Common Pleas quickly dismissed the second appeal in an order dated January 26, 2023 (the “Circuit Court Order 2”) (App. 4-6). The Circuit Court Order 2 outlined that the appeal was dismissed because it was duplicative of the action that was ultimately dismissed by Circuit Court Order 1. Appellant filed the Notice of Appeal in this case which was marked as received by this Court on February 2, 2023 (the “Notice of Appeal”) (App. 7-8). The Notice of Appeal outlines that the appeal was from the Magistrate Judgment dated September 15, 2022. On February 6, 2023, this Court issued a deficiency letter which identified numerous deficiencies in the Appellant’s Notice of Appeal (“Deficiency Letter 1”) (App. 9-10). Those deficiencies included, but were not limited to the following:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal;
- A proof of service has not been provided; and
- A proof of filing of a copy of the Notice of Appeal with the clerk of the lower court was not provided.

Thereafter, Appellant submitted additional documentation to the Court, but on February 23, 2023, the Court filed the Order dismissing the appeal as a result of Appellant failing to provide the additional documents listed above pursuant to Rule 203, SCACR. (App. 11). The Order outlined that the remittitur would be sent as provided by Rule 221(b), SCACR. On March 10, 2023, the Appellant filed the Motion with the Court. (App. 12-13). On that same day, the Court

issued an additional deficiency letter outlining that the required filing fee had not been submitted and proof of service was not provided (the “Deficiency Letter 2”) (App. 14). The Deficiency Letter 2 indicated that the deficiencies were to be corrected within ten (10) days or the Motion would not be considered.

DISCUSSION

I. The Appellant’s recently filed Motion to Reinstate should not be considered as Appellant has failed to file multiple documents along with the Motion as required Rule 240, SCACR.

Pursuant to Rule 260, SCACR, “the clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).” The Appellant appears to have filed the Motion on March 10, 2023 which was the fifteenth day after the Order dated February 23, 2022. However, the Appellant failed to follow certain requirements set out in Rule 240(c), SCACR, which governs the rules relating to the filing of motions with this Court. The deficiencies in Appellant’s Motion included the lack of the required filing fee and failure to provide proof of service of the Motion on all parties which the Court outlined in Deficiency Letter 2. Given the Motion contained numerous deficiencies and it is now past the fifteenth day to file a Motion to Reinstate pursuant to Rule 260, SCACR, the Court should disregard the Motion and send the Order and remittitur to the lower Court pursuant to Rule 221, SCACR.

In Wise v. South Carolina Dept. of Corrections, 642 S.E.2d 551 (2007), the court held that the remittitur “was not sent down by mistake, error or inadvertence of the Court of Appeals.

Instead, it was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement. See Rule 224, SCACR (certificate of service shall be filed with all motions and petitions). Accordingly, this Court does not have jurisdiction to act in this matter. The documents filed by appellant are hereby dismissed.”

The procedural facts in this case are eerily similar to the ones present in Wise. Just like in Wise, the Appellant here failed to provide a proof of service on all parties with her filed Motion. Therefore, this Court should not consider the Motion as it was improper due to the lack of proof of service filed along with the Motion.

II. The Appellant has failed to show good cause to reinstate the appeal as required by Rule 260, SCACR.

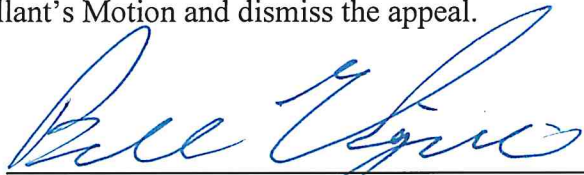
In addition to the deficiencies with the Appellant’s Motion as stated above, the Appellant has failed to show good cause for this Court to reinstate the appeal. Pursuant to Rule 260, SCACR, “a case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Appellant’s Motion fails to give one reason as to why the appeal should be reinstated and why she did not comply with Rule 203, SCACR in filing her Notice of Appeal in a timely manner. Instead, the Appellant’s Motion contains information that is irrelevant to the appeal and the facts of this case.

The Appellant’s Motion fails to outline why the Appellant failed to fulfill the requirements of Rule 203, SCACR, which ultimately led this Court to dismiss the appeal by the Order filed on February 23, 2022. This Court has previously noted that “[t]he touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps.” See Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 507, 868

S.E.2d 400 (Ct. App. 2021). As stated above, Appellant's Motion does not outline an honest mistake or error she made in filing the Notice of Appeal with this Court. Rather, the Motion is focused on irrelevant issues and does not contain sufficient grounds for this Court to reinstate the appeal. Given Appellant's failure to demonstrate good cause as required by Rule 260, SCACR, the Appellant's Motion should be denied.

CONCLUSION

The Appellant's Motion should be denied by this Court as Appellant has failed to follow the South Carolina Appellate Court Rules. Additionally, the Appellant's Motion completely lacks any cause for this Court to reinstate the appeal. Based on the foregoing, Respondent respectfully requests this Court to deny the Appellant's Motion and dismiss the appeal.



Benjamin M. Virgin, Esq., SC Bar No. 104931
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, South Carolina 29403
843-723-6470
ben.virgin@roblaw.net
Attorney for Respondent

Charleston, South Carolina
March 16, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals Jr., Circuit Court Judge

APPEAL FROM HORRY COUNTY
Magistrate Court
Hon. Christopher J. Arakas

Case No.: 2023-CP-26-00448

Appellate Case No. 2023-000169

Plantation Apartments,

Respondent,

v.

Shenika McIntyre,

Appellant.

**APPENDIX TO RESPONDENT’S RETURN TO APPELLANT’S MOTION TO
REINSTATE**

Circuit Court Order 1 dated January 6, 2023.....	1
Circuit Court Order 2 dated January 26, 2023.....	4
Notice of Appeal dated February 2, 2023.....	7
Deficiency Letter 1 dated February 6, 2023.....	9
Order dated February 23, 2023.....	11
Motion to Reinstate dated March 10, 2023.....	12
Deficiency Letter 2 dated March 10, 2023.....	14

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2605997

Shenika McIntyre
PLAINTIFF(S)

Plantation Apartments
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other See Below

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The Decision by the Magistrate's Court is Affirmed based on the return and all evidence presented.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/06/2023 .

Plantation Apartments for Plantation Apartments
Shenika McIntyre for Shenika McIntyre
Plantation Apartments for Plantation Apartments
Shenika McIntyre for Shenika McIntyre

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Horry Common Pleas

Case Caption: Shenika McIntyre VS Plantation Apartments

Case Number: 2022CP2605997

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-06 14:35:53 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2600448

Shenika McIntyre
PLAINTIFF(S)

Plantation Apartments
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other MOOT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This Appeal is a duplicate of Civil Action Number 2022CP2605997 which was heard and Affirmed by this Court on January 4, 2023, therefore this case is Dismissed with prejudice.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/26/2023 .

Plantation Apartments for Plantation Apartments
Shenika McIntyre for Shenika McIntyre
Plantation Apartments for Plantation Apartments
Shenika McIntyre for Shenika McIntyre

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Horry Common Pleas

Case Caption: Shenika McIntyre VS Plantation Apartments

Case Number: 2023CP2600448

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-26 14:49:53 page 3 of 3

NOTICE OF APPEAL IN CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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Feb 02 2023

SC Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Christopher J. Arakas, circuit court magistrate judge

Case No. 2023CP200448

Plantation Apartments

The opposing party

Shenika McIntyre

Respondent

v.

Appellant

Shenika McIntyre appeals the order [judgement] of honorable Chris Arakas dated 15t day of September. Appellant received written notice of entry of this order {judgement] on February 2, 2023.

John ozolin

1201 B Creel Street, Wing A-

1

Conway sc, 29527

Attorney of Appellent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 06, 2023

Shenika McIntyre
200 Rittenhouse Rd. Apt 4B
Myrtle Beach SC 29588

Re: Plantation Apartments v. Shenika McIntyre
Appellate Case No. 2023-000169

Dear Ms. McIntyre:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The required filing fee has not been submitted. The correct filing fee is \$250.00. If you wish to request relief from this Court regarding the filing fee, you must file a motion pursuant to Rule 240, SCACR.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The document has not been signed by you as required by Rule 267(b), SCACR. If you are represented by counsel, they will need to serve and file the notice of appeal on your behalf.
- You must provide proof of filing a copy of your notice of appeal with the clerk of the lower court.

- The letters and attachments filed along with your notice of appeal cannot be considered at this time. Please be advised that you may present your argument and any lower court documents in your appellant's initial brief and designation of matter pursuant to Rule 208 and 209, SCACR. Therefore, no further action will be taken on these attachments.

Very truly yours,


CLERK

cc: Plantation Apartments

The South Carolina Court of Appeals

Shenika McIntyre, Appellant,

v.

Plantation Apartments, Respondent.

Appellate Case No. 2023-000169

Horry County
Trial Court Case No. 2023CP2600448

ORDER

Appellant has failed to provide a signed notice of appeal, proof of service for the notice of appeal, a copy of the order on appeal, and proof of filing a copy of the notice of appeal with the clerk of the lower court as required by Rule 203 of the South Carolina Appellate Court Rules and this Court's letter dated February 6, 2023. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR. No further action will be taken on the appellant's request to waive the filing fees.

FOR THE COURT

BY *Catherine Hannisa, deputy*
CLERK

Columbia, South Carolina

cc:
Shenika McIntyre
Plantation Apartments

FILED
Feb 23 2023

Motion to Reinstatement

(Court Level and Jurisdiction)

Shenika McIntyre

Plaintiff

-vs-

Pinkston Apartments

Defendant

2023-000009
(Case No. Number)

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MAR 10 2023

SC Court of Appeals

AFFIDAVIT

I, Shenika McIntyre, of Myrtle Beach, in Horry, South Carolina, MAKE OATH AND SAY THAT:

1. I Shenika McIntyre haven't done anything wrong. Steven Smith was not coming out my back door in his work clothes. He didn't even go to work that day and I sent you the letter from his boss stating that.
2. I Shenika McIntyre am requesting relief from this court. I am innocent and i have a baby to take care of. I go to work, church and bible study and go home. I don't have anywhere else to go I don't want to be put out my resident for something not true.
3. I Shenika McIntyre am doing the right thing and my landlord Jawanda Cuttino just keep harassing me and everything and nick picking. She even have PPP loans that has been flagged and I have a copy of the petition I got people to sign against her.

Affidavit

STATE OF SOUTH CAROLINA

COUNTY OF Horry

SUBSCRIBED AND SWORN TO BEFORE

ME, on the 10 day of
March, 2023

Signature

(Seal)

Jacqueline Boomer

NOTARY PUBLIC

My Commission expires:

Jan. 24, 2033

JACQUELINE BOOMER
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
JANUARY 24, 2033

Shenika McIntyre

(Signature)

Shenika McIntyre



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2023

Shenika McIntyre
200 Rittenhouse Rd. Apt 4B
Myrtle Beach SC 29588

Re: Shenika McIntyre v. Plantation Apartments
Appellate Case No. 2023-000169

Dear Ms. McIntyre:

Upon reviewing your motion to reinstate, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The required filing fee has not been submitted. The correct filing fee is \$50.00.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

cc: Plantation Apartments

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Mar 16 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals Jr., Circuit Court Judge

APPEAL FROM HORRY COUNTY
Magistrate Court
Hon. Christopher J. Arakas

Case No.: 2023-CP-26-00448

Appellate Case No. 2023-000169

Plantation Apartments,

Respondent,

v.

Shenika McIntyre,

Appellant.

PROOF OF SERVICE

I certify that I have served the Return to Motion to Reinstate and Appendix by depositing a copy in the United States Mail, postage prepaid, on March 16, 2023, addressed to the Appellant Shenika McIntyre, 200 Rittenhouse Road, Apartment 4-B, Myrtle Beach, South Carolina, 29588 and to John Ozolin, Esq., 1201B Creel Street, Wing A-1, Conway, South Carolina, 29527.

s/Elizabeth Castle

Elizabeth Castle, Legal Assistant
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, South Carolina 29403
Phone: 843-723-6470
Attorneys for Respondent

Charleston, South Carolina
March 16, 2023

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Mar 16 2023

SC Court of Appeals

ROBERTSON HOLLINGSWORTH
MANOS & RAHN, LLC
ATTORNEYS AT LAW
550 King Street, Suite 300
Charleston, South Carolina 29403
(843) 723-6470 • Fax (843) 853-9045
www.roblaw.net

Dunn D. Hollingsworth
Theodore L. Manos
Paul R. Rahn
Jillian S. Barton
Benjamin M. Virgin

March 16, 2023

Via Email only: ctappfilings@sccourts.org

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

Re: Plantation Apartments v. Shenika McIntyre
Case No.: 2023-CP-26-00448
Appellate Case No.: 2023-000169

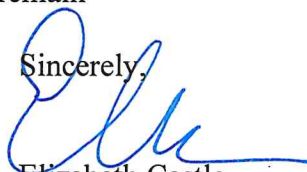
Dear Ms. Kitchings:

Attached for filing are Plantation Apartments' Return to Motion to Reinstate with Appendix and Proof of Service. We are serving the Appellant and attorney as the online filing system indicates that Appellant is Self Represented, but the Notice of Appeal lists Mr. Ozolin as her counsel.

Please do not hesitate to contact this office should you have any questions.

With kind regards, I remain

Sincerely,



Elizabeth Castle
Legal Assistant

/ec

Attachments (as stated)

cc: Shenika McIntyre (via U.S.P.S.)
John Ozolin, Esq. (via U.S.P.S.)