

The South Carolina Court of Appeals

Luther Harris, Donna Harris, and Bobby E. Leopard,
Appellants,

v.

Perry Wendell Barbour and Southland Transportation
Co., Respondents.

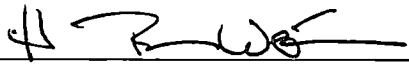
Appellate Case No. 2020-001110

ORDER

On November 2, 2022, this Court issued an opinion affirming the circuit court. On November 18, 2022, the day the remittitur was to be sent, Appellants filed a motion to allow late filing of their petition for rehearing along with the \$50 filing fee. Appellants subsequently filed the petition on November 21, but failed to send the accompanying filing fee for the petition. Accordingly, on November 22, this Court sent Appellants a deficiency letter notifying Appellants of the deficiency and allowing them ten days to cure or the petition would not be considered. On December 12, 2022, this Court sent Appellants another letter, explaining the deficiency had not been cured and therefore, we would not act upon the petition for rehearing. The remittitur was sent the same day.

Appellants have now filed a motion to recall the remittitur, explaining counsel's employee mistakenly sent the filing fee for the November 18 motion to file out of time, but failed to send another filing fee for the petition for rehearing. Apparently unaware of the employee's error, Appellants believed the November 22 deficiency letter was a result of the petition having been e-filed and the check arriving separately. Based on that belief, Appellants took no action upon receipt of the November 22 deficiency letter. Appellants are correct in asserting South Carolina courts prefer to decide cases on the merits, when a procedural error can be easily cured. However, a remittitur cannot be recalled except upon "a very strong showing . . . that the remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer." *State v. Keels*, 39 S.C. 553,

17 S.E. 802 (1893). Appellants have failed to make such a showing. Appellants' motion, therefore, is denied.



FOR THE COURT C.J.

Columbia, South Carolina

cc:
Donald Loren Smith, Esquire
David L. Moore, Jr., Esquire
Amy W. Cox

FILED
Mar 17 2023