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**Mar 22 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
Hon. Debra R. McCaslin

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Appellate Case No. 2022-00165

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IN THE MATTER OF James Marshall Shoemaker, Jr.....Decedent  
James Marshall Shoemaker, III .....Appellant

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee, and Edward Sloan Shoemaker  
and Jonathan Evans Shoemaker as Beneficiaries and as Individuals.....Respondents

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MOTION FOR REINSTATEMENT OF APPEAL FOLLOWING INVOLUNTARY  
ADMINISTRATIVE DISMISSAL

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COMES NOW William R. McKibbon, counsel for Appellant, hereby moves, for this Court to reinstatement the appeal of the above-referenced case, which was administratively dismissed on March 6, 2023 for failing to update the Court on the status of the lower court transcript. This motion is based upon Rule 260(a) SCACR, wherein a party is granted 15 days for such motion reinstate, not including the date such Order was filed. Thus, this Motion is timely made, as it is the 15<sup>th</sup> day of such reinstatement request.

Rule 260(a), SCACR, states that if it appears that an appellant has failed to comply with the requirements of appeal filing rules, that the clerk shall issue an order of dismissal. That is what has occurred in this case by Order dated March 6, 2023. Rule 260(a) continues to state that

a party may file a motion for reinstatement (within the time as addressed above), and that upon good cause shown, the case may be reinstated by leave of court. Rule 260(a) SCACR.

This motion is made on the following grounds, and submits that the matters herein would satisfy the good cause standard, and pray for the relief herein requested upon the following grounds and historic chronology events:

1. Appellant received the Transcript of the proceeding on January 11, 2023 and notified opposing counsel upon receipt;
2. From the date of transcript receipt, the calculation of time within which to file the Initial Brief created a deadline of February 11, 2023.
3. On February 6, this office's executive assistant confirmed with opposing Knox Haynsworth that a motion for extension of time should be filed based upon this firm's need due to conflicting court matters and a very difficult schedule within which to timely file the initial brief.
4. Opposing counsel consented to such grant of extension, and a motion to the Court of Appeals was prepared and Mr. McKibbon was assured by executive assistant that it had been submitted to Tyler Clark as case manager for this appeal.
5. March 11, counsel for appellant dedicated virtually all of his time to this Appeal, based upon the honest belief of March 11 as the extension deadline for filing. In so doing, counsel gave 100% of attention to the preparation and submission of said initial brief and designation of matter to be included. It is Mr. McKibbon's practice to focus 100% upon appellate briefs and/or trials as they approach, and to have staff manage the office as these primary and deadline oriented matters of great importance get all necessary attention.

6. Based upon counsel's apparent misunderstanding of the extension motion be submitted and granted, the initial brief and designation of matter was timely filed (so thought) on March 11.
7. Appellant's counsel then had a complex criminal sexual conduct trial in General Sessions which began 2 days after the initial brief was submitted, and again, counsel turned 100% attention to final preparation for that trial and then every day and night for the entire week in defending the client; as such, March 20 was essentially the first day McKibbon returned to the office for addressing other matters which were assigned to the staff to monitor in McKibbon's absence.
8. Mr. McKibbon was only alerted today of his staff's accidental oversight, despite all appropriate documents having been prepared and the one error seeming to be a inadvertent failure and memory of counsel's staff in mailing the motion for extension to the Court and opposing counsel for filing.
9. It is of greatest importance to note that this matter is of the highest and most grave importance to the client, as it involves a dispute of an approximately \$9 million probate estate involving a testatory's legal capacity challenges to testamentary documents. It is further of greatest importance to note that this firm's client had no part in the appellate process or timing.
10. Had counsel been previously aware of such a dismissal date, counsel would certainly have addressed that matter with haste and also certainly not submitted a brief and designation of matter with knowledge that the case had already been administratively dismissed; again, due to staff oversight which now threatens the complete absence of

opportunity to argue important legal matters in a tremendously consequential matter for the client.

11. Counsel proceeded with what he believed was a certainty of timeliness based upon his understanding that all was timely and in accordance with active communication with the Court as well as opposing counsel.
12. For all of the foregoing reasons, including a) the good faith belief of counsel of the due date of based upon reliance upon staff confirmation of March 11 being the confirmed deadline; b) based upon a single clerical error of time and deadline managing administrative staff essentially not pressing 'send' on an email to the Court; c) the dismissal being an administrative dismissal for failure to update the court on the status of the lower court's transcript, d) due to the above factual matters as stated and verified through the undersigned's signature, and e) that reinstatement shall result in no undue prejudice to Respondents, counsel for the Appellant seeks this Court's finding of good cause shown for reinst and catastrophic results to Appellant; based upon all of that above, Appellant submits and requests that good cause be demonstrated sufficiently to the Court for Appeal reinstatement and acceptance of the previously submitted Initial Brief and Designation of Matter.
13. Attached hereto as Exhibit A is an affidavit from the staff member of McKibbon's firm that is referred to above.

#### Legal Support for Good Cause

As sated above, Rule 260(a), SCACR allows this Court to grant leave to reinstate an Appellant's appeal after administrative dismissal upon good cause shown. Appellant

suggest that the law supports a finding of good cause being shown in the present circumstances.

Perhaps one of the best cases issuing from the South Carolina Supreme Court regarding the issue of good cause is Jordan v. Hartford Financial Group, Inc. et. al., 435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021). In this matter, Hartford's attorney requested his paralegal to calendar the deadline for appeal. The paralegal mistakenly thought that one party was the Respondent instead of the Appellant, and mistakenly calendared the brief to be due on May 27, 2019, when in fact it was due on May 12, 2019. The lower tribunal dismissed the case for failure to timely file. A motion for reinstatement was filed seeking reinstatement for good cause due to the "honest human mistake." Id. at 401-402. Without explanation, the lower tribunal denied the motion to reinstate and the matter was appealed to the South Carolina Court of Appeals. What follows is a comprehensive examination of good cause from the Court of Appeals in this 2021 case, and this Appellant has taken the liberty of citing extensively from that discussion for accuracy and import of its inclusion.

"The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances." Id. at 402. The Court further stated, "[r]ules are rules, and due dates matter. The rule of good cause is also a rule. A tribunal cannot strictly enforce due dates but ignore good cause." Id. at 402.

"The American tradition of rule of law has recognized from its earliest days that a "motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and

its judgment is to be guided by sound legal principles." United States v. Burr , 25 F. Cas. 30, 35 (C.C.D. Va. 1807) (Marshall, C.J.); see also Martin v. Franklin Cap. Corp. , 546 U.S. 132, 139, 126 S.Ct. 704, 163 L.Ed.2d 547 (2005) ("Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike.")” Id. at 402.

“[The Court] has held that dismissing an appeal when a party's lawyer did not appear for court due to a calendar mishap. See Micronics, Inc. v. S.C. Dep't of Rev. , 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (“We find no evidence in the record that the mistake was anything but a good faith error, as shown by [counsel's] explanation coupled with his speed in asking the ALJ for rehearing.”). We have also held good cause exists to set aside a default granted because the answer was received one day late. Columbia Pools, Inc. v. Galvin , 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (“[W]here there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief.”).

“These cases recognize, as we do again today, that the practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene.” Id. at 402-403. To be sure, miscalendaring is not always good cause. But a reflexive refusal to consider that a calendaring mistake could be good cause is an abuse of discretion. Some decisions have refused to find the neglect of a party's lawyer or agent in forwarding a summons or other time-triggering paperwork sufficient good cause to set aside a default, but those cases dealt with degrees of carelessness and periods of inattention far greater than we have here, and none tossed a party out of court for not timely filing a brief at a later stage of a perfected case. See, e.g.

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AFFIDAVIT OF BRADLY ALLAMON

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1. My name is Bradly Allamon and I was hired into the position of Executive Assistant to William R. McKibbon, III on January 23, 2023.
2. On February 6, 2023, an extension of time for the Initial Brief in the Shoemaker Appeal was consented to from Knox Haynsworth, opposing counsel, via email.
3. On February 9, 2023, I spoke with Tyler Clark at the Court of Appeals regarding how to formalize the extension. He very kindly and helpfully assisted me with instructions to draft a motion for such extension and to note the consent of the opposing party. I drafted the Motion for Extension of Time, which Mr. McKibbon approved, signed, and returned to me for filing through email to the Court of Appeals. I firmly believed that I did so file, and I represented to Mr.

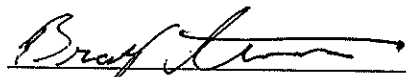
McKibbon that it was filed. After that, Mr. McKibbon asked me to confirm filing and the grant of extension, and based on what must have been my misunderstanding, I believed the extension had been granted and informed Mr. McKibbon that it was, and that the new deadline for the filing of the Initial Brief and Designation of Matter became March 11, 2023.

4. Between the beginning of March and March 11, Mr. McKibbon worked almost exclusively on two items – 1) the Appellate brief in this case, and 2) trial preparation for a 5 day, 7 indictment Criminal Sexual Misconduct – 2d degree case. During such time, due to the large volume of emails received, it was my task to manage the calendar and important communications while he focused purely on the brief and approaching deadline as well as the difficult trial ahead.
5. Again, from my confirmation of the extension and his reliance upon my information as his primary staff member of reliance, Mr. McKibbon proceeded to complete and to file the Initial Brief and Designation of Matter by March 11, his good faith belief as the deadline for appeal. His General Sessions trial then began Monday March 13, during which time Mr. McKibbon was absent from the office and in court from approximately 8 a.m. until 6 every evening until Friday early afternoon, with follow-up preparation for the next day.
6. From the moment opposing counsel consented to an extension within which to file an Initial Brief, I drafted and sent to Mr. McKibbon on February 9, 2023 the motion for extension of time, which he validated and executed. At all times thereafter, Mr. McKibbon relied upon my assurances to him that the extension had been submitted and granted and that March 11 was in fact the new due date for the Appellate Brief.
7. I committed, as executive assistant, with a primary responsibility of both scheduling and calendar management, the purely accidental error of not submitting the motion. This was purely accidental error because I believed throughout this time that I had submitted the matter to the Court, and though I was wrong, I was confident when I assured Mr. McKibbon of the

March 11 extension date. I even made this assurance earlier this week when Mr. McKibbon asked the status of the opposing party's initial brief. Prior to that, for over two weeks, Mr. McKibbon was fully engaged in the matters of the brief preparation and the General Sessions trial, and I failed my clerical duties of appropriate calendar management and date confirmations. Based on my representations to Mr. McKibbon, however, he did not fail in those duties and proceeded in good faith to make timely filings.

8. It is with sincere regret that I have to submit this affidavit in view of the vast magnitude of monetary dispute over a family estate. I also regret that I am having to do so because of an accidental oversight where an email for e-filing and to opposing counsel was not sent, and Mr. McKibbon's reliance on my incorrect time management upon which Mr. McKibbon daily relies is the sole reason that we are at this juncture.
9. I would ask the Court to reinstate the appeal, as dismissal would be entirely based on my sole clerical error and calendar mis-confirmation to Mr. McKibbon in his appellate brief submission. I am hopeful that under all these circumstances, the Court will find good cause to allow the case to continue.

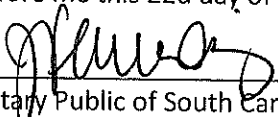
FURTHER AFFIANT SAYETH NOT.



Bradly Allamon  
Executive Assistant to Attorney McKibbon

SWORN AND SUBSCRIBED

Before me this 22d day of March, 2023

  
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Notary Public of South Carolina

My commission expires:

Jessica Franquiz Notary Public, State of South Carolina My commission expires: August 28, 2025
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, Campbell v. City of North Charleston , 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020) ;  
Dixon v. Besco Eng'g, Inc. , 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995). Id. at 403-  
404.

Jordan v. Hartford, Appellant submits, is highly instructive upon this Court's own  
2021 analysis, and as this is not a brief but a motion for the Court's consideration and  
prayer for relief to grant leave and reinstatement of Appellant's appeal, Appellant  
requests and appreciates this Court's due consideration of the matters addressed herein,  
and requests such reinstatement right be granted to Appellant.

Respectfully submitted,



William R. McKibbon III

S.C. Bar #86454

601 E. McBee Ave. Ste.104

Greenville, SC 29601

864.235.0071 (o), 864.235.0072 (f)

[will@legalcarolina.com](mailto:will@legalcarolina.com)

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Individuals.....Respondents.

**CERTIFICATION**

I hereby certify, pursuant to Rule 209(c), that Appellant’s Motion to Reinstate Appellant’s Appeal has been served upon the Court of Appeals and opposing counsel this 22 day of March, 2023, by email to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org); [tpclark@sccourts.org](mailto:tpclark@sccourts.org); and [knoxhaynsworth@bmemlhaw.com](mailto:knoxhaynsworth@bmemlhaw.com).

March 22, 2023



William R. McKibbon III  
SC Bar No. 68454  
601 E. McBee Ave, Ste. 204  
Greenville, SC 29601  
864.235.0071, 864.235.0072 (f)  
[will@legalcarolina.com](mailto:will@legalcarolina.com)  
Attorney for Appellant