

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Civil Action No. 2008-CP-27-0529
Appellate Case No. 2012-213115

Derrick Dupont.....Appellant,

v.

Jasper County Sheriff's Office.....Respondent.

MOTION TO REINSTATE

Fatima Alexis Zeidan
Clifford Bush III
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Attorneys for the Appellant

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SC Court of Appeals

Counsel for the Appellant hereby moves, pursuant to Rule 260(a), SCACR, for an Order of Reinstatement on the grounds that good cause exists to allow the Appellant to proceed with the above-entitled action.

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. Rule 260(a), SCACR. This rule mirrors Rule 55(c) of the South Carolina Rules of Civil Procedure. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601 (2009). Once a party has put forth a satisfactory explanation for default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08 (citing Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462 (Ct. App. 1989)).

I. Good Cause Exists to Allow Appellant to Continue with the Appeal

This appeal was involuntarily dismissed on July 1, 2013 for failed to file proof of service of the record on appeal as required by Rule 210, SCACR. Rule 210 states within thirty (30) days after service of the last brief, the Appellant shall serve a copy of the Record on Appeal on each party who has served a brief. As of date, Appellant has not received service or a copy of the Respondent's Initial Brief apparently filed with the Court.

Upon information obtained from the Court, the Certificate of Service filed by Respondent indicates that the brief was served on May 10, 2013 to 28 Old Jericho Road, Beaufort, South Carolina 29906 which is the physical address for Counsel. This brief was never received. Due to past servicing issues, the local branch of the United States Post Office (USPS) was contacted upon receipt of the Order of Dismissal on July 2, 2013 to ensure that mail sent to our office was not being held, especially since the mailing date would have indicated a Saturday delivery and the firm restricts Saturday delivery. That investigation is currently underway.

This was of particular concern due to a past issue with the USPS that caused the transcript in this case to be held at the local branch for several weeks, along with other larger size envelopes. On December 21, 2012, Counsel contacted the Court pursuant to Rule 207, SCACP, to inform all parties that the transcript had not been received timely. Counsel was contacted by Court Reporter, Rebecca Hill, on December 24, 2012 who informed Counsel that the transcript was mailed to our office earlier that month, but she was unable to provide tracking information. Counsel requested Ms. Hill resend the transcript and immediately contacted the local branch of the USPS. The USPS asserted that all mail parcels had been disbursed. A formal complaint was filed with the USPS. Later that evening, Counsel was contacted by the USPS and informed that several mail parcels dating back to October 2012 were found bearing the firm's address. Due to this servicing issue, Counsel was also held in default in another case pending in the trial courts; that entry was later vacated pursuant to Rule 55(c), SCRCF, by the trial judge after a hearing where the above information was presented to the Court.

Counsel has been actively anticipating this appeal and was surprised by the involuntary dismissal rendered by the Court in light of not receiving the precursory brief. Counsel had been contacted twice by the Respondent's Counsel regarding a motion for extension of time, in which

we graciously agreed to on both accounts. Over the last six weeks, Counsel for the Appellant has had three scheduled trials, the typical trial-level caseload and military orders during May and June. Due to this schedule, Counsel had been unable to ascertain whether or not Respondent had met the deadline granted by the Court; thus a Motion to Dismiss had not been filed. Further, Counsel had not received any Notice from the Court or any other party to the case indicating that the Respondent's Brief had been filed and that the Record for Appeal was due.

We are asking that Court reinstate the Appeal based on the grounds that good cause was shown that the Appellant has not received a copy of the Respondent's Initial Brief and therefore was unaware that the filing period required in Rule 210, SCACR, was approaching. If granted, Counsel is prepared to serve the Record of Appeal immediately.

II. Vacation of the Default Entry Would Serve the Interests of Justice

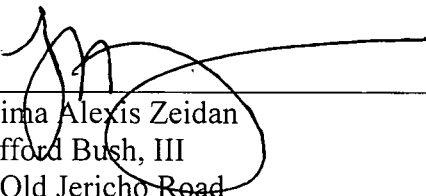
The judicial system is formulated to allow litigants to present their issues before a neutral party and have their cases fairly and justly decided. While it is apparent that litigants must follow rules prescribed by the Court, litigants should not be faulted where good cause is shown that the rules were inadvertently violated. In the instant case, Appellant diligently prepared the appeal and timely filed all required documents with the Court. Had the Respondent's Initial Brief been received by the Appellant, Counsel has demonstrated that the requirements under Rule 210, SCACR would have been satisfied. While Counsel cannot provide a precise reason the Brief was not received, as it was apparently filed the Court, Counsel can provide a recent example of a systematic failure at the USPS. In light of this information, it would greatly serve the interests of justice to allow the Appellant to continue with his appeal and allow for his case to be adjudicated based on the merits.

III. In addition to the standard presented under Rule 260(a), Appellant is entitled to relief pursuant to the Wham factors.

Counsel received an Order from the Court on July 2, 2013 indicated that the case was involuntarily dismissed based on failure to file proof required by Rule 210, SCACR. Counsel immediately filed this Motion to Reinstate with the Court. Appellant has a meritorious defense in that Counsel has yet to receive service of the Respondent's Initial Brief and only became aware that the Brief was filed with the Court upon receiving the Order from the Court. Further, Respondent would not be prejudiced should the Appeal be reinstated. Should the Appeal be reinstated, the Record for Appeal would be immediately served and the case would not be unnecessarily delayed.

Based on the foregoing, Appellant is respectfully requesting that the Court reinstate the instant case.

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Beaufort, South Carolina

July 3, 2013

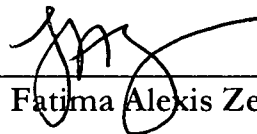
STATE OF SOUTH CAROLINA)
CITY OF BEAUFORT)

AFFIDAVIT OF COUNSEL

PERSONALLY appeared before me Fatima Alexis Zeidan, who, being duly sworn, states that the following is true and correct:

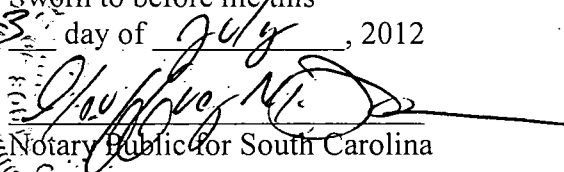
1. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a citizen of the State of South Carolina and am competent to swear to the matters set forth below and do so of my own free will.
3. I am an attorney for the Appellant, Derrick Dupont, in the above captioned matter.
4. To date, I have not received service or a copy of the Respondent's Initial Brief.
5. After receiving the Order of Dismissal from the Court on July 2, 2013, the local branch of the United States Postal Service was contacted in regards to this matter, due to previous servicing issues that impacted this appeal and my firm.
6. I declare under penalty of perjury, under the laws of the United States of America and of the State of South Carolina, that the above is true and correct.

AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.



Fatima Alexis Zeidan

Sworn to before me this
day of July, 2012



Notary Public for South Carolina

My Commission Expires:

**My Commission Expires
April 28, 2014**

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CERTIFICATE OF SERVICE

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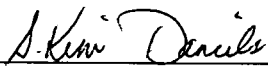
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I, the undersigned, S. Kim Daniels, a paralegal at the Law Office of Clifford Bush III, attorneys for Appellant, do hereby certify that on July 3, 2013, I served a true and accurate copy of the **Motion to Reinstate** on the below-listed party by personally depositing a copy of the same in the United States Postal Service Mailbox, first class postage pre-paid, addressed as follows:

Marshall H. Waldron, Jr.
O. Edworth Liipfert III
Matthew D. Cavender
Griffith Sadler and Sharp, PA
Post Office Drawer 570
Beaufort, SC 29901



S. Kim Daniels

Beaufort, South Carolina

July 3, 2013