

THE STATE OF SOUTH CAROLINA

RECEIVED
FEB 14 2024
SC Court of Appeals

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 21-ALJ-22-0490-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

South Carolina Department of
Employment of Workforce and
School District of Greenville County,

Respondents,

**MOTION TO RECONSIDER ORDER AND
TO REINSTATE APPEAL**

Plaintiff respectfully submits this Motion for Reconsideration under FRCP 52 (a). FRCP
In support of this Memorandum, Plaintiff shows the Court as follows:

LAW

“A motion under 52(a) provides that “a finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” Essentially, the appellate court must determine

that a finding is unsupported by substantial, credible evidence in the record to meet this standard — *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948).

ARGUMENT

The Appellant respectfully requests that this Court vacate the Order dated February 2, 2024, and Reinstate the Appeal because the Clerk of the Court has not presented any material facts or violation of laws to support its motion to dismiss the Appeal (*See Exhibit 1*). The Order of dismissal at issue here is dated February 2, 2024. The Order dismissal dismissed the Appellant’s case on two bases: material facts and principles of law. There is no finding of fact in the Order Denying Motion to Vacate or Reconsider Order of Dismissal under SCRCP 41(b) that the Appellant disobeyed any court order. This Court cannot identify a list of specific things the Appellant failed to do that could be supported by the record.

The Clerk alleged that the Record on Appeal was not filed with the Court, and the record shows that it was mailed to the Court on November 3, 2023, and the Court should have addressed this material fact. Thus, the Court dismissed the appeal out of its own inherent powers instead of pursuing the SCRCP 41 (b) guidelines, and dismissal by the Court’s own inherent power is reviewed for abuse of discretion. The Order itself reads: “The Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition is denied.”

An Order Denying Motion to Vacate and Or Reconsidering Order of Dismissal concludes, as a matter of law, “Dismissal is also an appropriate remedy where the record indicates that (1) the party’s refusal to obey a court order was willful or deliberate, (2) the party actions substantially prejudiced the opponent and (3) Court explicitly considered whether a lesser

sanction would have sufficed.” There is no finding of fact that the Appellant disobeyed a court order, nor is there any indication in the record that he did so.

As a result of the Court’s failure to make its ruling on the facts and the law, they have violated the Appellant’s due process rights by not allowing him to present evidence before reaching a final decision. The Order denying the Motion to Reinstate the Appeal contains a conclusion of law reciting that disobeying a court order is one of three necessary grounds for dismissal pursuant to the court's inherent powers. Accord, McDaniel v. Pressler, 3 Wash. 636, 639, 29 P. 209 (1892), (See Also) State v. Bevilacqua 447 S. E. 2d 213 (1994). But the Court cannot point to a Court order where the Appellant disobeyed the Court order. There is no such order. The Court abused its discretion in Denying Reinstatement of Appeal when a necessary finding of fact - disobedience of a court order is absent. “The Court has wide discretion in granting the reinstatement of an appeal, except where its order is predicated upon erroneous ruling.” Sargent v. Safeway Stores, Inc., 67 Wn. 2nd 941, 942, 410 P. 2nd 918 (1966) (See Also) State v. Martin 341 S. C. 480, 534 S. E. 2d 292 (Ct. App, 2000). Here, it was erroneous to deny reinstatement of appeal where disobedience to a court order was a necessary precondition, therefore, when there was no showing and no finding of disobedience to a court order.

FACT

The following facts are undisputed:

- The Clerk of Court dismissed the Appellant’s appeal because he failed to file a response to the Court’s October 16, 2023, order.
- On November 28, 2023, the Appellant filed a Motion to Dismiss Order and Reinstate the Appeal that included a copy of the USPS receipt showing that a copy of the Record on Appeal was mailed to the Court on November 3, 2023 and to all interested parties (*See Exhibit 2*). No wording in the Court’s order states this copy of the USPS receipt is not authentic.

- The South Carolina Rules of Civil Procedures (SCRCP) state that a defendant can move for dismissal for failure to prosecute or comply with these rules or any other court order. This law does not give the Clerk the authority.

The Order's analysis regarding the standard by which a case may be decided on facts is as follows. Reviewing a matter based on facts, the Appellate Court determines (1). If the ruling was arbitrary and capricious, by determining whether the administrative body made a ruling that was contrary to the fact of the case; (2). If the final ruling by the court is supported by substantial evidence in the record; (3). If the fact finder makes an erroneous ruling plus at odds with the evidence presented; and (4). In determining whether any triable issue of facts exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.

On November 22, 2023, the Clerk issued an order dismissing the Appellant's appeal under Rule 210 and failure to follow the Court's October 16, 2023, order (*See Exhibit 3*). The Appellant called the Clerk's office on November 28, 2023, to clarify their decision to dismiss his appeal. The Appellant was informed that the Clerk's office never received his Record on Appeal, which is why the appeal was dismissed. At the Court's request, the Appellant faxed and emailed the court a copy of the U. S. mail receipt.

Consequently, on its face, the Clerk's motion to dismiss is not factual and supported by law. As stated by her office, they never received the Appellant's Record on Appeal. Thus, The Clerk had no documents to review to arrive at the above language in deciding to dismiss this appeal. This play on words by the Clerk would falsely mislead neutral readers of this Order to believe that the Record on Appeal was submitted in a timely manner, but the contents of the Record on Appeal were not done in accordance with the Court's order. Consequently, a more truthful and accurate statement would have been that the appeal was dismissed because it was not filed timely with the court, which would have been false.

In the Court's Order dated October 16, 2023, the Appellant was given thirty days from this Order to file the Record on Appeal (*See Exhibit 4*). Thus, the Appellant had until November 16, 2023, to file the Record on Appeal. According to the registered mail receipt, the Record on

Appeal was mailed on November 3, 2023. Mullens v. LQ Development 825 P. 2n 13 76 (1992).

CFR § 70.305 (d)(1) states the following:

“...delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender’s receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer, or office.

For the Court to have jurisdiction to hear a motion to dismiss an appeal. The Respondent needed to file a motion to dismiss the appeal for failure to comply with a court under the SCRCP 41(b), and the record bears out this was not done. Therefore, the matter of dismissing the appeal is improperly before the Court. Moreover, the Clerk of the Court must hold the necessary legal title or legal authority to dismiss this appeal. In this situation, the law forbids her from taking this action. However, she might have this authority under S.C. App. Ct. R. 260 until it was revised to include SCRCP Rules 41. And because there was no filed opposition to the Appellant’s motion to reinstate the appeal, the Court has no discretion to dismiss this case under SCRCP 41(b).

Likewise, assuming *arguendo* that the standard is an abuse of discretion, as in the case of dismissal pursuant to the court’s inherent authority, “an abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable ground or for an ‘untenable reason.’ A discretionary decision rests on ‘untenable grounds’ or is based on untenable reasons’ if the court relies on unsupported facts or applies the wrong legal

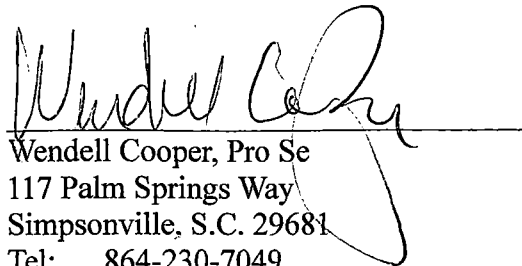
standard; the court decision is ‘manifestly unreasonable in the court despite applying the correct legal standard to the supported facts, adopt a view that no reasonable person would take.’ Mayer v. Sto Indus., Inc, 156 Wn. 2d 677,684 P.3d.115(2006.)

The Court should reinstate the appeal because the Court did not follow SCRCP 41 (b). In addition, the law does not give the Clerk the authority to dismiss the appeal under the above circumstances; the Appellant timely filed the Record on Appeal, even though the Clerk stated it was never received. As a result of the Court not following the rule of law, the Appellant's due process rights were violated. Furthermore, in the Court's order, they denied him a rehearing of the case, which is supposed to be the review of the administrative court law judge's decision as well as the Appellant did not ask the Court to rehear his case, which raises the if the Appellant motion was actually read. Lastly, there are material facts and laws that the Court failed to apply in reaching its decision to dismiss the appeal.

CONCLUSION

The Appellant respectfully requests the Court to vacate the Order and reinstate the appeal for the outlined above.

Respectfully submitted.


Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville, S.C. 29681
Tel: 864-230-7049
Wendelldoncooper@yahoo.com

February 10, 2024

The South Carolina Court of Appeals

Wendell D. Cooper, Appellant,

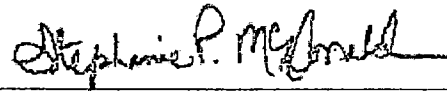
v.

South Carolina Department of Employment and
Workforce, and School District of Greenville County,
Respondents.

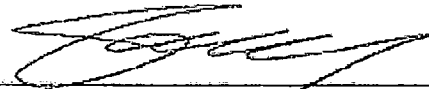
Appellate Case No. 2022-001433

ORDER

Appellant has filed a motion to set aside the dismissal of this appeal. We construe the motion as a petition to rehear the dismissal. After careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:
Wendell D. Cooper
Benjamin Thomas Cook, Esquire

FILED
Feb 02 2024

FILED
Feb 02 2024

School District of Greenville County
The Honorable Deborah Brooks Durden

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM THE ADMINISTRATIVE LAW
The Honorable Deborah Brooks Durden, Administrative
Law

Docket No. 21-ALJ-22-0448-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

South Carolina Department
Of Employment and Workforce, and
School District of Greenville County,

Respondents.

APPELLANT'S MOTION TO SET ASIDE DISMISSAL,
REMEDY DEFAULT, REINSTATE APPEAL, AND/OR

MOTION FOR LEAVE TO FILE DOCUMENTS AND
CORRECT CLERICAL ERRORS OUT OF TIME AND
REMEDY DEFAULT AND/OR

MOTION TO STAY MANDATE OR RECALL MANDATE

Wendell D. Cooper, Pro Se
117 Palm Springs Way
Simpsonville SC, 29681
(864) 230-7049

Comes Now, Appellant Wendell Cooper, who files this Appellant's Motion to *Set Aside Dismissal, Remedy Default, and Reinstate Appeal; and /or Motion for Leave to File Documents Out of Time and Correct Clerical Errors Remedy; Remedy Defaults; and/or Motion to Stay Mandate or Recall Mandate.*

On November 22, 2023, the Clerk issued an order dismissing the Appellant's appeal on grounds under Rule 210 and failure to follow the Court's October 16, 2023, order. In reviewing this order, it lacks the specificity behind the reason to dismiss the Appellant's Appeal. Thus, the Appellant called the Clerk's office on November 28, 2023, to clarify their decision to dismiss his appeal. The Appellant was informed that they never received a copy of his Record on Appeal. The Appellant told the Clerk's office that he mailed the Record on Appeal on November 3, 2023 (*See Exhibit 1*).

Due to the Appellant's limited experience in appeals and the fact there are numerous South Carolina Appellate Court Rules and Procedures. Consequently, the Appellant Rules of Procedure are quite challenging to understand, coupled with the Appellant's limited resources have made this process very difficult. In another matter, the Administrative Law Court closed the case, thus denying the Appellant access to review the record online. Therefore, the documents that need to be included in the Record on Appeal were emailed to him twice because the documents could not be opened for review. The Appellant spent countless hours and resources trying to open these files. However, once the files were opened, some would not print. Nevertheless, the Appellant has attempted to follow the above rules and procedures. Moreover, the Appellant is not sure of the proper titling for this Motion; therefore, in an abundance of caution, the Appellant attempts to cover all possibilities and scenarios applicable given the limited information the Clerk has provided for dismissing his appeal.

Conclusion

The Appellant prays that this Court will be lenient, understand the Pro Se status, and grant this Motion or Motions based on the above information. The appellant has made a good-faith effort to remedy any defaults, and he quickly complied with the Courts on October 16, 2023.

Respectfully submitted this 28th day of November 2023.



Wendell D. Cooper, Pro Se
117 Palm Springs Way
Simpsonville SC, 29681
(864) 230-7049
Email-wendelldoncooper@yahoo.com

Exhibit 1

POSTALANNE+ #370
2607 Woodruff Road Suite E
Five Forks Food Lion Shopping Center
Simpsonville, SC 29681
864-288-1171 Phone
864-288-7701 Fax
www.postalannex.com/370

ipment-----

USPS Media Mail

Ship To:

BENJAMIN T COOK
PO BOX 8597
COLUMBIA, SC 29202-8597

Package ID: 638408 8.70

Contents:

DOCUMENTS

Tracking #: 9449011206209304432883

Pkg Dims: 11.00 x 8.00 x 2.00

USPS Tracking [\$0.00]

ipment-----

USPS Media Mail

Ship To:

COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SC 29201

Package ID: 638409 10.10

Contents:

DOCS

Tracking #: 9449011206209304412793

Pkg Dims: 11.00 x 10.00 x 2.00

USPS Tracking [\$0.00]

ipment-----

USPS Media Mail

Ship To:

GPS GENERAL COUNSEL
PO BOX 2848
GREENVILLE, SC 29602-2848

Package ID: 638411 8.70

Contents:

DOCS

Tracking #: 9449011206209304441007

Pkg Dims: 11.00 x 9.00 x 2.00

USPS Tracking [\$0.00]

USPS 17.00

SUBTOTAL 44.50

TAX 0.00

TOTAL 44.50

MasterCard 44.50

Number of shipments: 3

SHIPPER: WENDELL

Date: 11/03/2023

Time: 05:35 PM

Station: 24 - Auxiliary Front

Manifest #: c439dfda-7849-4e44-83f5-47037541e353

The South Carolina Court of Appeals

Wendell D. Cooper, Appellant,

v.

South Carolina Department of Employment and
Workforce, and School District of Greenville County,
Respondents.

Appellate Case No. 2022-001433

The Honorable Deborah Brooks Durden
Trial Court Case No. 2021ALJ220448AP

ORDER

Appellant has failed to provide the record on appeal, as required by Rule 210 of the South Carolina Appellate Court Rules (SCACR) and this Court's order filed October 16, 2023. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Wendell D. Cooper
Benjamin Thomas Cook, Esquire
School District of Greenville County
The Honorable Deborah Brooks Durden

FILED
Nov 22 2023

EX. 3

The South Carolina Court of Appeals

Wendell D. Cooper, Appellant,

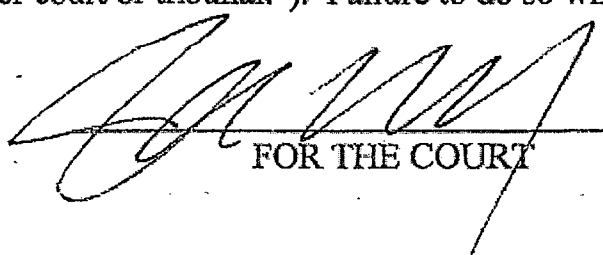
v.

South Carolina Department of Employment and
Workforce, and School District of Greenville County,
Respondents.

Appellate Case No. 2022-001433

ORDER

After careful consideration, Respondent South Carolina Department of Employment and Workforce's motion to dismiss is denied. However, within thirty days of the date of this order, Appellant shall file an amended record on appeal that includes all of the Department's designated matters. *See* Rule 210(c), SCACR ("The Record on Appeal shall include all matter designated to be included by any party under Rule 209 The Record shall not, however, include matter which was not presented to the lower court or tribunal."). Failure to do so will result in dismissal of the appeal.



FOR THE COURT

Columbia, South Carolina

cc:

Wendell D. Cooper
Benjamin Thomas Cook, Esquire
School District of Greenville County

FILED
Oct 16 2023

EX 4

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED
FEB 14 2024
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

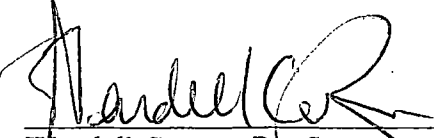
South Carolina Department of
Employment of Workforce, and
School District of Greenville County,

Respondents,

PROOF OF SERVICE

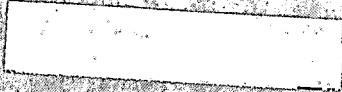
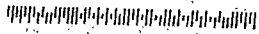
I certify that I have served the Motion to Reinstate Appeal and Reinstall the Appeal on the South Carolina Department of Employment of Workforce and School District of Greenville County by depositing a copy of it in the United States Mail postage paid on February 10, 2024, addressed to their attorney of record, Benjamin T. Cook, Post Office Box 8597, Columbia, SC 29202, and General Counsel for School District of Greenville County Post Office Box 2848, Greenville SC 29602.

February 10, 2024,



Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville, South Carolina 29681
864-230-7049

117 PA
SIMPSONVILLE

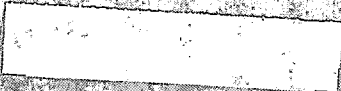


RECEIVED

FEB 14 2024

SC Court of Appeals

Court of Appeals
1220 Senate Street
Columbia, SC 29201



F

\$9.92 US POSTAGE
FIRST-CLASS
Feb 11 2024
Mailed from ZIP 29681
FIRST-CLASS MAIL FLAT RATE
ZONE 2
10710029



06260014940883

FIRST-CLASS MAIL

WENDELL COOPER
117 PALM SPRINGS WAY
SIMPSONVILLE SC 29681

C076

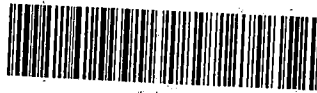
Shipped using Priority Mail®
PSN: 35453

RETURN RECEIPT REQUESTED

SHIP TO:

COURT OF APPEALS
1220 SENATE STREET
COLUMBIA SC 29201

USPS CERTIFIED MAIL



9414 7112 0621 0530 1124 73

