

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh Circuit (10th) Court Judge

Case No: 2012-207852

JERRY HOLTZCLAW, d/b/a
GREEN THUMB LANDSCAPE & IRRIGATION

Respondent

V

DENNIS WALDREP

Appellant

RECEIVED

AUG 06 2013

MOTION TO REINSTATE APPEAL

SC Court of Appeals

Dennis Waldrep
209 Amethyst Way
Seneca, SC 29672
Proceeding Pro Se

MOTION TO REINSTATE THE APPEAL OF APPELLANT DENNIS WALDREP

64339

1. I, Dennis Waldrep, the Appellant in this matter submit this Motion for Reinstatement of my Appeal and certify that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

2. On July 22, 2013 I received an Order from the Court indicating in pertinent part that the “Appellant failed to file proof of service for the Record on Appeal, as required by Rule 210 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed”. A copy of this Order is attached hereto as Exhibit “A”.

3. In response to this Order I submit the following information in support of my request that my appeal be reinstated in this matter.

4. A review of the “Proof of “Service” that accompanied the transmission the Record on Appeal reveals what amounts to an administrative or “semantic’ error. I incorrectly designated that the document being served was a “Reply Brief” rather than a “Record on Appeal”. The document actually served was the Record on Appeal.

5. This error does not in any manner mitigate the effectiveness or accuracy of the documents that were served nor has it resulted in a failure of the Respondent or the Court to receive the Record on Appeal in accordance with Rule 210.

6. Specifically, the Proof of Service (a true and correct copy of this document is attached hereto as “Exhibit “B”) indicates that the documents indicates the a “Reply Brief” was being served as opposed to the “Record on Appeal” The remaining information on the Proof of Service is correct and the Record on Appeal was correctly attached.

7. The only error was the Proof of Service indicated incorrectly that the Reply Brief was attached as opposed to the Record on Appeal.

8. It is submitted that this error is minimal in nature and has no substantive or prejudicial effect or impact or prejudice on any party as all received the correct documents within the proscribed time period.

9. Delivery and service of the Record on Appeal occurred as follows:

a. On July 8, 2012 I personally mailed via United States Postal Service, with delivery receipt requested a copy of the document entitled "Record on Appeal" to Mr. Hood the attorney for the Respondent in this case.

b. As a result of the action taken to send this Record on Appeal to Mr. Hood I have received a receipt from the United States Postal Service indicating that the package was delivered to and received by Mr. Hood.

c. Additionally, the package containing the Record on Appeal was sent to the Court and a delivery receipt for this transmission was also received from the United States Postal Service indicating the it had indeed been received by the Court.

d. A copy of the delivery receipts for Mr. Hood and for the Court are attached hereto as Exhibit "C" and Exhibit "D" respectively.

e. The exhibits indicate that Mr. Hood and the Court received the Record on Appeal in accordance with the time proscribed in the Rules despite the "wording" error on the proof of service document.

FACTUAL SETTING AND ARGUMENT

The Appellant respectfully requests that this matter be restored to the docket and permitted to proceed in the normal course. He acknowledges that the proof of service document utilized for the transmission of the Record on Appeal incorrectly stated the words “Reply Brief” rather than the correct phrase “Record on Appeal”

The appeal was dismissed for Appellant’s failure to file a proof of service for the Record on Appeal as required by the Rules. The Appellant suggests that he did file a proof of service that was effective in delivering the Record on Appeal to the required parties and documenting the receipt of that service despite the fact he had the wrong designation in the proof of service. This error did not result in the delivery and/or receipt of the wrong documents; in point of fact the only error was the document was incorrectly designated in the proof of service. No delay or other problems resulted from this misidentification.

The Appellant has filed all documents and paid all fees required in this matter so far and this error in designation is minimal in nature. There is no prejudice, confusion or delay to the Respondent as he did receive the correct documents in a timely manner despite the fact that Appellant is a pro se litigant in this case. This is a procedural error and Appellant submits a minor one that can be easily corrected with submission of the Proof of Service with the wording corrected. A copy of the corrected Proof of Service is attached hereto as Exhibit “D”.

CONCLUSION

Appellant seeks the reinstatement of his appeal and its return to the Court’s docket and submits that there is good cause to set aside the dismissal and reinstate the case. The Appellant has made every effort to comply with the procedural rules governing this appeal and has done so until

this minor error in designating the incorrect document on a Proof of Service. Immediately upon learning that this had been done incorrectly, the Appellant responded in a prompt manner by contacting the Court and preparing and filing this motion. Further, the Appellant has a meritorious position in the matter he has asserted on appeal and respectfully requests that the Court have the opportunity to decide his appeal in its merits rather than suffer a dismissal for a small error of a procedural nature. Finally, the reinstatement of this case will not prejudice the Respondent in any manner. He has been served with the correct documents in a timely fashion as set forth in the Court rules. The only problem is that the proof of service that accompanied the documents designated "Reply Brief" rather than the correct "Record on Appeal". Delivery receipts indicate that the documents were received and therefore no substantive prejudice exists.

The Appellant is respectfully asking this court to reinstate his appeal based on a procedural error of a minimal nature.

Respectfully submitted,

 8-5-2013

DENNIS WALDREP APPELLANT

The South Carolina Court of Appeals

Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation, Respondent,

v.

Exhibit "A"

Dennis Waldrep, Appellant.

Appellate Case No. 2012-207852

The Honorable R. Lawton McIntosh
Oconee County
Trial Court Case No. 2008CP3700415

ORDER

Appellant has failed to file proof of service for the Record on Appeal, as required by Rule 210 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

FILED

RG 9-22-13

cc:

Exhibit 'B'

Corrected

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-207852

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

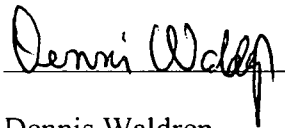
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by USPS to the Attorney of Respondent,
William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621

July 8, 2013



Dennis Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

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AUG 06 2013

SC Court of Appeals

CC: WILLIAM C HOOD

Exhibit B" - Originally sent by mistake
as Reply Brief

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R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-207852

Jerry Holtzclaw, dba
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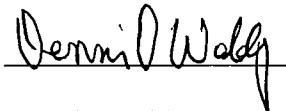
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Reply Brief by USPS to the Attorney of record, William C. Hood,
505 N. McDuffie Street, Anderson, South Carolina 29621

July 8, 2013



Dennis Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

CC: WILLIAM C HOOD

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Exhibit C

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SERVICE

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STATUS OF YOUR ITEM

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DATE & TIME

July 9, 2013, 1:35 pm

LOCATION

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FEATURES

Expected Delivery By:
July 9, 2013
Certified Mail™

Processed at USPS
Origin Sort Facility

July 8, 2013, 10:23 pm

GREENVILLE, SC 29607

Depart USPS Sort
Facility

July 8, 2013

GREENVILLE, SC 29607

Dispatched to Sort
Facility

July 8, 2013, 3:47 pm

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Acceptance

July 8, 2013, 2:53 pm

SENECA, SC 29678

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Certified Fee	3.19	
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 3.56	

Sent To **William C Hood**
 Street, Apt. No., or PO Box No. **505 N. McDuffie St**
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 PS Form 3800, August 2006 See Reverse for Instructions

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- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
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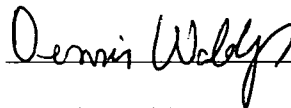
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

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William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621

August 5, 2013



Dennis Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

CC: WILLIAM C HOOD