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Feb 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Philips, Master-in-Equity

Case No.: 2019-CP-42-03758

Greenwich Revolving Trust by Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner TrusteeRespondent,

v.

Clinton Justus aka Clinton B. Justus, Brandy L. Justus, and The South Carolina Department of Motor Vehicles,.....Defendants,

of whom Clinton B. Justus is the Appellant.

RESPONDENT’S RETURN TO MOTION TO REINSTATE APPEAL

On August 1, 2023, Appellant filed a notice of appeal *pro se*, followed by an Initial Brief, also filed *pro se*, on October 24, 2023. Respondent filed a Motion to Dismiss for failure of Appellant to comply with Rule 208, SCACR. This Court denied the Motion on January 2, 2024; however, it ruled that if the Appellant failed to file an Amended Initial Brief that complies with Rule 208, SCACR, within 30 days from the date of the order, then the appeal would be dismissed. Appellant failed to file an Amended Initial Brief within the required time frame. Consequently, the appeal was dismissed on February 8, 2024. On February 23, 2024, Appellant’s counsel in the court below moved to reinstate the appeal, arguing that he and Appellant had no agreement for representation at the appellate level, and that Appellant did not receive a copy of the Court’s

January 2, 2024 Order. For the reasons set forth below, Appellant’s Motion to Reinstate should be denied.

ARGUMENT

Rule 260(a), SCACR, provides that an appeal “shall not be reinstated except by leave of the court, upon good cause shown” Appellant argues that good cause exists because:

Counsel for Appellant did not forward the communications to Appellant, on the assumption that Appellant received notice as stated on the Order. Further, Appellant was proceeding *pro se* in preparing and filing all documents himself, and Counsel was only listed as Appellant’s attorney due to his involvement with the Common Pleas case. Mot. Reinstate, p. 3.

Although Appellant noticed an appeal *pro se*, Rule 264(a) makes clear that attorneys in the court below “shall be deemed the attorneys ... of the same parties in the appellate court until withdrawal is approved” Therefore, unless and until this Court approves the withdrawal of Appellant’s attorney, Appellant’s attorney is bound by Rule 1.4 of the Rules of Professional Conduct to “keep the client reasonably informed about the status of the matter.” Appellant’s counsel admitted that he failed to inform his client of the January 2, 2024 Order. Respectfully, Respondent asserts that failure to comply with Rules of Professional Conduct does not constitute good cause to reinstate an appeal. See Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (stating that negligence of an attorney is imputed to a defaulting litigant and cannot constitute good cause to set aside default).

CONCLUSION

For the reasons set forth above, Respondent prays for an Order denying Appellant's Motion to Reinstate Appeal.

s/Heidi B. Carey _____

Heidi B. Carey, S.C. Bar # 7020

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **RESPONDENT’S RETURN TO MOTION TO REINSTATE APPEAL** has this day been caused to be served via electronic mail to counsel’s AIS e-mail address, and by first class postage prepaid to Mr. Justus as follows:

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Columbia, SC
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