

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No.: 2005-CP-40-04191

Elizabeth McCullar and J.W. McCullar, Appellants,

v.

Joanne Dukes Campbell, as Personal Representative of the Estate of William Cox
Campbell, M.D., Respondent.

RETURN TO MOTION FOR REINSTATEMENT

Kay G. Crowe
SC Bar No.: 1481
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorney for Respondent

Other Counsel of Record:

Kevin Hayne Sitnik
The South Carolina Law Firm, PC
PO Box 389
Irmo, South Carolina 29063
(803) 520-6573
Attorney for Appellants

RECEIVED

JUL 18 2013

SC Court of Appeals

STATEMENT OF THE CASE

The Appellants filed a Notice of Appeal in the instant case on May 9, 2013. The Clerk of Court of the Court of Appeals issued an order of dismissal on June 25, 2013, because the Appellants had failed to “provide information regarding the transcript and/or have failed to serve and file the appellant’s initial brief and designation of matter” On July 16, 2013, the Appellants filed a motion for reinstatement on the grounds that Appellants’ counsel requested the hearing transcript on May 28, 2013, before the appeal was dismissed. The Appellants’ Motion to Reinstate Appeal should be denied because this is not a proper ground for an appeal to be reinstated. Furthermore, the Court no longer has jurisdiction of this matter because the remittitur was properly sent to the lower court before the Appellants’ motion was filed.

ARGUMENT

In Wise v. S. Carolina Dep’t of Corr., the Court of Appeals dismissed an appeal on October 12, 2006. 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007). On October 27, 2006, the Court of Appeals received a motion to reinstate that did not contain a proof of service. Id. The remittitur was sent to the lower court on October 30, 2006. Id. The appellant then filed a motion to alter or amend the judgment in the South Carolina Supreme Court. The Supreme Court dismissed, explaining in part:

When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court.

Id. at 174, 642 S.E.2d at 551. See also Mickle v. Blackmon, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970) (holding that there is no appellate jurisdiction once the remittitur is sent to the lower court).

In the instant case, the remittitur was properly sent to the lower court before the Appellants filed a motion to reinstate. Therefore, the Court of Appeals no longer has jurisdiction of the matter and cannot hear the Appellants' motion.

Rule 260(a) of the South Carolina Appellate Court Rules (SCACR) states that after a case has been dismissed “[t]he clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).” In the instant case, the Clerk of Court issued an order of dismissal on June 25, 2013. In accordance with SCACR 221(b), the Clerk of Court waited more than 15 days and sent the remittitur to the circuit court on July 11, 2013. On July 16, 2013, more than 15 days after the issuance of the order of dismissal, the Appellants filed a Motion to Reinstate Appeal. This sequence of events shows that the remittitur in the instant case was properly sent to the lower court. And “when the remittitur has been properly sent to the court below, the [Appellate] Court loses jurisdiction, and thereafter neither the court nor any justice thereof can make any order in the case.” Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817 (1910).

Even if the Appellants had filed a motion to reinstate within 15 days of the order of dismissal, their motion does not allege sufficient grounds to reinstate this Appeal. Rule 260(a) of the South Carolina Appellate Court Rules (SCACR) states, in part, that “[a] case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” The motion does not contain allegations showing “good cause.” SCACR 207(a)(1) requires the appellant to order the transcript within ten days “after the date of service of the notice of appeal.” The rule further states that when

ordering a transcript the “[a]ppellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” The Notice of Appeal was filed on May 9, 2013, and according to the Motion to Reinstate Appeal, the transcript was not requested until May 28, 2013. The documents filed with the motion do not indicate that the Appellants furnished copies of the correspondence with the court reporter to the clerk of court, Court Administration or opposing counsel. Therefore, the Appellants have failed to comply with either requirement of SCACR 207(a)(1). The fact that Appellants’ counsel appears to have made some effort to order the transcript before the appeal was dismissed—efforts not in compliance with court rules—does not show good cause for the failure to order the transcript within 10 days, copy the Court, Court Administration, and opposing counsel contemporaneously on all correspondence with the court reporter, or file a motion for reinstatement within 15 days of the order.

CONCLUSION

For the above-stated reasons, the Respondent respectfully requests that this Court dismiss the Appellants’ Motion to Reinstate Appeal.



Kay G. Crowe
SC Bar No.: 1481
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No.: 2005-CP-40-04191

Elizabeth McCullar and J.W. McCullar, Appellants,

v.

Joanne Dukes Campbell, as Personal Representative of the Estate of William Cox
Campbell, M.D., Respondent.

CERTIFICATE OF SERVICE

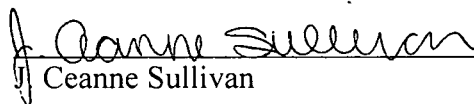
I, J. Ceanne Sullivan, an employee of Barnes, Alford, Stork & Johnson, L.L.P., do hereby certify that on July 18, 2013, I served the **RETURN TO MOTION TO REINSTATE APPEAL** by mailing copies of the documents in the United States mail, with postage prepaid, at Columbia, South Carolina, addressed as follows:

Kevin Hayne Sitnik
The South Carolina Law Firm, PC
PO Box 389
Irmo, South Carolina 29063
(803) 520-6573
Attorney for Appellants

RECEIVED

JUL 18 2013

SC Court of Appeals


Ceanne Sullivan

WELDON R. JOHNSON*
DAVID G. WOLFF
KAY GAFFNEY CROWE*
RICHARD C. THOMAS
ROBERT T. STRICKLAND
CURTIS W. DOWLING
MATTHEW G. GERRALD
BRIAN E. SOPP
EMILY COLLINS BROWN
CATHERINE AVA KOPIEC

* CERTIFIED CIVIL
COURT MEDIATOR



BARNES ALFORD

Barnes Alford Stork & Johnson L.L.P.

ATTORNEYS AT LAW

OF COUNSEL
WILLIAM C. STORK
ALAN J. REYNER †
ROGER A. WAY, JR. †

† CERTIFIED SPECIALIST
IN TAXATION & MEMBER
OF SEPARATE L.L.C.

RUDOLPH C. BARNES
(1917-1995)
JAMES W. ALFORD
(1930-2008)

July 18, 2013

HAND-DELIVERED

The Honorable Jenny Abbott Kitchings
SC Court of Appeals, Clerk of Court
1015 Sumter Street
PO Box 11629
Columbia, SC 29211

Re: Elizabeth B. McCullar, J.W. McCullar vs. The Estate of Dr. William Cox
Campbell, Palmetto Health Alliance, d/b/a Palmetto Health Baptist, John
Does 1-50
Case No. 2013-001216
BASJ File No. 6.16751
Client File No. CB031174M

Dear Ms. Kitchings:

Enclosed for filing with the Court of Appeals is the original and seven (7) copies of Respondent's Return to Appellants' Motion to Reinstate Appeal in the above-referenced matter. Please file the original and six (6) copies and return a stamped copy of the Return to our courier. By copy of this letter, counsel for the Appellants is being served with the enclosed document.

With kindest regards, I remain

Very truly yours,

Brian E. Sopp

BES/bes

cc: Kevin H. Sitnik, Esquire
Enclosures

POST OFFICE BOX 8448
OFFICE: 803.799.1111

BRIAN E. SOPP
1613 MAIN STREET (29201)
FAX: 803.254.1335
WWW.BARNESALFORD.COM

COLUMBIA, SC 29202
BRIAN@BASJLAW.COM

RECEIVED
JUL 18 2013

SC Court of Appeals