

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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May 13 2024

SC Court of Appeals

APPEAL FROM OCONEE COUNTY

PlanetONE Packaging, LLC, Respondent,

V.

American Pharma Machinery, LLC, and Dorothy Piercea/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a QueenDorothy Amolo, Defendants,

Of whom Dorothy Pierce a/k/a Dorothy Wells a/k/aDorothy Aleweny a/k/a Queen Dorothy Amolo is the Appellant.

Appellate Case No. 2024-000334

MOTION FOR REHEARING

Introduction

1. This Request for Rehearing is submitted by Dorothy Pierce ("Appellant"), who has been significantly disadvantaged by the rigid procedural requirement that mandates pro se litigants to use postal mail for all pleadings and documents. This appeal underscores a crucial disparity within the South Carolina legal framework that systematically hinders pro se litigants by denying them access to electronic service—a privilege exclusively reserved for attorneys. This procedural bias not only undermines the principle of equal access to justice but also places an undue burden on individuals navigating the legal system without legal representation. There is need for change in the South Carolina Appellate Court Rules regarding the service of process for pro se litigants. The present mandate that proscribes electronic service for individuals representing themselves poses a systemic issue that has placed the Appellant—and countless others in similar circumstances—at a considerable procedural disadvantage. This Court is respectfully urged to recognize the necessity for rule amendments that mirror our society's advancement and promote equal access to justice.

2. The law must evolve to address the disparities between represented and unrepresented parties. This brief sets forth a detailed argument advocating for legislative and judicial reform of the rules regarding service of process for pro se litigants in the State of South Carolina. The current dichotomy, wherein pro se litigants are denied use of electronic service mechanisms available to licensed attorneys, exacerbates inequalities and hampers access to justice—a fundamental right enshrined in the ethos of American jurisprudence.

Factual Background

3. In early May, the Appellant was compelled to travel to Uganda due to the tragic demise of her dearest friend, Col. Charles Okello Engola Macodwogo, the respected former State Minister for Labor, Employment, and Industrial Relations in the Government of Uganda, who suffered an untimely death at the hands of his bodyguard on May 2, 2023. The Appellant had already made travel plans. Prior to her departure, on May 9, 2023, the Respondent served the Appellant with a copy of the summons and Complaint.
4. On June 1, 2023, burdened by the constraints placed on pro se litigants and the inability to utilize electronic service—as is allowed for attorneys in South Carolina—the Appellant mailed a copy of the Motion to Dismiss Appeal through Posta Uganda to the Court and the respondents. The document was subsequently returned as undeliverable, an issue discovered through the Clerk of the court upon Appellant's return to the United States. The Appellant was unaware of the non-delivery until her return to the United States and promptly took necessary corrective action to remedy the service error.
5. During a hearing held on October 31, 2023, the court directed the Appellant to produce evidence substantiating the mailing to the Respondent. This was in addition to the receipts already provided to the Respondents. In response, on November 8, 2023, Oscar Ojok, the appellant's personal assistant who executed the original dispatch of the Motion to Dismiss on behalf of the Appellant on June 1, 2023, emailed the Respondent and the court, attaching a sworn affidavit attesting under oath to the dispatch of the said documents. An original copy of the affidavit was subsequently sent to the P.O. box address provided by the Respondent.
6. On January 16, 2024, despite diligent efforts, the court found the Appellant in default. Nevertheless, the Appellant filed a Motion to Reconsider which was ultimately denied by Judge McIntosh on February 06 2024. The Appellant received notice of this denial on

February 10, 2024, which pertained to the Appellant's initial Motion for Reconsideration filed on January 16, 2024.

7. In pursuit of appellate relief, on March 6, 2024, the Appellant filed a Notice of Appeal with this Court and served the Respondent via the same email. On March 12, 2024, the Court of Appeals informed the Appellant that her Proof of Service was not in compliance with SCACR Rule 262(c)(3), which precludes anyone other than attorneys admitted to practice in South Carolina from serving other lawyers using the primary email address registered in the AIS system. The Court mandated the correction of this deficiency within a prescribed ten-day period.
8. The Appellant adhered to the Court's directive, mailing the physical Proof of Service to the Respondent on March 19, 2024, thereby aligning with the Court's service requirements. This was specific in indicating the actual date of mailing in juxtaposition with the electronic service initially performed on March 6, 2024.
9. Notwithstanding the Appellant's sincere efforts to comply with and correct the service method as per the Court's instructions, on March 28, 2024, the Court of Appeals issued an order dismissing the Appellant's appeal due to an asserted lack of jurisdiction.

ARGUMENT

A. Procedural Disadvantage Faced by Pro Se Litigants

10. The dismissal issued by this Court on March 28, 2024, underscores a significant and systemic obstacle faced by the Appellant—a non-attorney litigant required to utilize postal service, despite demonstrated inadequacies and timely compliance with electronic service.
11. The Appellant contends that this procedural imbalance, which reserves electronic service exclusively for attorney-represented parties, infringes upon the principle of equal protection under the law for all litigants.

B. Good Faith Efforts to Comply with Service Requirements

12. The Appellant has made a good faith effort to comply with the service rules, even under the burden of bereavement and international travel. Upon learning of the returned mail, the

Appellant utilized the only available means to address and remedy the service defaults as evidenced by the affidavit from Mr. Oscar Ojok confirming the initial dispatch on June 01, 2023.

13. As directed by the Court's notice on March 12, 2024, the Appellant corrected the proof of service deficiency by duly mailing a hard-copy within the specified ten-day window, demonstrating a continuous commitment to adhere to this Court's procedural directives.

C. Timeliness of the Appellant's Actions and Subsequent Compliance

14. The Appellant efficaciously filed a Notice of Appeal and serviced the Respondents on March 06, 2024, evidencing diligence and timeliness in moving the case forward.
15. The prompt correction of service, as evidenced by the physical mailing on March 19, 2024, is an explicit reflection of the Appellant's consistent endeavor to progress within the procedural contours set forth by this Court.

D. Equitable Treatment and Access to Justice

16. The premise of this motion rests on the bedrock principle that access to justice must be extended equitably to all litigants—whether represented or appearing pro se. The challenge of electronic service access faced by the Appellant is emblematic of a broader systemic issue that warrants this Court's equitable intervention.

E. The Need for Change

17. Every individual deserves equal access to justice, regardless of legal representation status. The current regulations mandating pro se litigants to employ only traditional mailing services not only impede timely and reliable service but also place an undue procedural burden on these individuals. The legal system's paramount goal should be to foster a fair and efficient resolution of disputes, not to entrench procedural roadblocks.

F. Current Framework of Service for Pro Se Litigants in South Carolina

18. As per the South Carolina Appellate Court Rules (SCACR) and specifically Rule 262(c)(3), the privilege of utilizing electronic service is confined to attorneys. This rule fails to account

for the paradigm shift toward digital correspondence and ubiquity of electronic communication in modern society.

19. In a society increasingly reliant on digital communication, it is incongruous for the law to withhold from pro se litigants the tools that ensure expedient and verifiable service. Electronic service offers a trackable, efficient, and cost-effective method, aligning with the digital competence that the majority of citizens now possess.

G. Jurisprudential Basis for Equitable Service of Process

20. Legal precedents have long underscored the need for an equal playing field in litigation. The U.S. Supreme Court in *Caperton v. A.T. Massey Coal Co., Inc.*, emphasizes a "fair trial in a fair tribunal," which extends beyond the trial itself to encompass all procedures, including service of process. The principles of equity obligate the law to facilitate, rather than frustrate, the right to be heard.

H. Policy Considerations for Amending Service Regulations

21. The amendment of service rules to embrace electronic service for pro se litigants aligns with policy goals, including:
- a) Mitigating the risk of service failures associated with mail, thus decreasing default judgments against pro se litigants.
 - b) Reflecting technological advancements in legal procedures akin to electronic filing systems adopted by courts nationwide.
 - c) Ensuring equal treatment under the law and upholding the principle of procedural justice.

I. Proposed Amendments to the South Carolina Appellate Court Rules (SCACR)

22. In acknowledgment of the need for equitable service options, the following amendments are proposed:
- a) Pro se litigants should have the option to use electronic service in a manner consistent with that of licensed attorneys, as long as it ensures receipt by the opposing party or their counsel.
 - b) The SCACR should establish clear guidelines for electronic service, including confirmation of receipt, to be utilized by pro se litigants.

PRAYER FOR RELIEF

On these grounds, the Appellant, Dorothy Pierce, prays:

- A. For this honorable Court to grant the Motion for Rehearing, thereby reconsidering the previous order dismissing the Appellant's appeal.

- B. That the Court reflect upon the procedural inequities and the Appellant's diligent efforts to comply with service requirements.

- C. For this honorable Court to use its discretion to facilitate not just a reconsideration of this case on its merits, but also to consider the weight of procedural barriers that could thwart a pro se litigant's right to a fair appellate review;

- D. To order any other relief and considerations that the Court deems equitable, fair, and in the interest of justice, particularly for those navigating the complexities of the legal system without professional representation.

Respectfully submitted,

Dated this April 1, 2024.

A handwritten signature in black ink, appearing to read 'DOROTHY PIERCE', written over a horizontal line.

DOROTHY PIERCE -Appellant (Pro se)
750 Mourning dove lane, Seneca, SC.29678.

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CERTIFICATE OF SERVICE

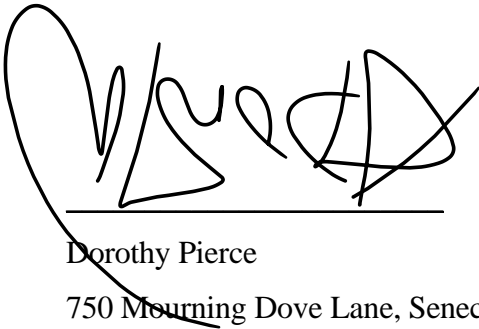
I certify that on this April 1, 2024, I served the foregoing Motion for Rehearing to the respondent utilizing Certified Mail Service as follows:

CHRISTOPHER B. MAJOR

cmajor@hsblawfirm.com

One north main 2nd floor

Greenville South Carolina 29601

A handwritten signature in black ink, appearing to read 'Dorothy Pierce', is written over a horizontal line. The signature is stylized and somewhat cursive.

Dorothy Pierce

750 Mourning Dove Lane, Seneca, SC 29678

Dorothypierce84@gmail.com

Pro se Plaintiff