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May 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2024-000165

Latisha Wallace, individually, and as Parent and Natural Guardian of A.W. (minor
under the age of fourteen years old) and Donald Wallace Jr., Appellants

v.

Jawar Hamin, Respondent.....

REPLY BRIEF OF APPELLANT

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TABLE OF CASES

No cases, statutes, or regulations cited to within this Reply Brief.

ARGUMENT

Pursuant to Rule 208(a)(3), *SCACR*, the Appellant replies to the Respondent's brief as follows:

- I. *All Arguments asserted in Appellants' Initial Brief are based on facts on record, and as such none of them have been waived.*

Respondent first argues that Appellants should be barred, on appeal, from asserting that they acted with due diligence in attempting to serve Respondent, because the issue purportedly was not raised below. This argument strains credibility. In fact, the very issue raised by the Respondent's Motion to Dismiss was *whether the Appellants had exercised due diligence in attempting to effectuate service of the Respondent*. That is, by legal definition, the question that was presented for consideration by the Court below. While Respondent has every right to argue that Appellants failed to exercise due diligence, the facts of record for consideration by the Court below were clear from the *filed* Affidavits for the Sheriff and the private process server retained by Appellants to attempt service on this Respondent. (See p.7 of Appellants' Initial Brief, with record citations).

Respondent next argues that Appellants cannot argue, on appeal, that the trial court should have permitted service by publication as an alternative to dismissing Appellants' claims, despite the fact that Appellants had filed a Motion to allow Service by Publication *prior* to the hearing on Respondent's Motion to Dismiss and prior to the lower Court's disposition of Respondent's Motion. The Motion to allow service by Publication was under consideration by the very Court that ruled on Respondent's Motion to Dismiss *on December 28, 2023* – some **8 months after** Appellants' Motion to allow service by Publication

had been filed on April 24, 2023. To argue that the issue of, whether service by publication should have been considered as an alternative to dismissing Appellants' complaint, was not presented to the court below is nonsensical when the facts of record are considered in totality. Further, there is no prejudice to Respondent because the Motion to allow service by Publication was pending before the lower court at the time of the hearing, Respondent had every opportunity to respond to that Motion, and the trial judge most certainly considered all relevant facts prior to making his ruling.

CONCLUSION

Appellants' issues on appeal were raised in, and considered by the court below; thus, they are free to raise both issues on appeal. Appellants contend that the Circuit Court erred in failing to allow Appellants to serve Respondent beyond the 120-day period found in S.C. Code Ann. § 15-3-20(B) either because they had exhibited good faith efforts to effectuate service, or because they should have been allowed to effectuate service by publication, or both. Accordingly, the trial court erred in granting Respondent's Motion to Dismiss, and its ruling should be reversed and remanded to the Court of Common Pleas for Lexington County with any further instruction as this Court deems proper.

Respectfully Submitted this 20th day of May, 2024

/s/ Angela de Turbi
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