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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-000739

Dorothy Pierce Appellant,

V.

Jerry Edwards, Edwards Group Holdings, Inc., Edwards Printing, Richard Hunt McDuff; MJM Law, LLC; Riley Morningstar; The Journal Newspaper; Hal Welch.. . . . Respondents.

**APPELLANT'S RESPONSE TO RESPONDENTS' RETURN TO MOTION TO ACCEPT
LATE FILING**

COME NOW, Appellant Dorothy Pierce, and respectfully submits this Response to Respondents' Return to Appellant's Motion to Accept Late Filing, and states as follows:

I. **Appellant could not respond to Motion to Dismiss without actual copy of Motion**

In their latest Return filed on June 26, 2024, Respondents now argue that Appellant was aware of the Motion to Dismiss in a letter from the Court of Appeals on May 31, 2024. However, being aware of a motion which was not served upon the Appellant does not immediately require the

Appellant to respond. To respond to a Motion to Dismiss, one must know the grounds for dismissal, which are only contained in the actual Motion to Dismiss.

This critical document was not served upon the Appellant even by the time of the Appellant's filing on June 10, 2024. As a result, the Appellant filed her motion to dismiss the Respondents' Motion to Dismiss, citing lack of service and the failure to provide any copy of the Motion to Dismiss. Without the actual motion and its specified grounds for dismissal, the Appellant was unable to formulate an appropriate and informed response, underscoring the fundamental importance of proper service in ensuring due process.

II. **Respondents have admitted to not serving Appellant with Documents**

The Respondents have admitted several key points that directly impact the validity of their Motion to Dismiss Appeal and support the Appellant's position:

- a. **Non-Service of Critical Documents:** Respondents acknowledge and admit that the physical mail sent to the Appellant inadvertently contained the wrong document. This mistake constitutes non-service of critical legal documents. Proper service is a cornerstone of judicial proceedings, ensuring all parties have the opportunity to be informed and respond appropriately. The failure to serve the correct documents deprives the Appellant of her right to due process and undermines the fairness of the proceedings.
- b. **Lack of Consent for Electronic Service:** Respondents confirm that the Appellant did not consent to electronic service, yet they relied on email service despite the Appellant's pro se status. According to Rule 5 of the South Carolina Rules of Civil Procedure, proper service methods must be followed to ensure due process. The reliance on unauthorized electronic service is a clear violation of procedural rules and further invalidates the Respondents' actions.
- c. **Procedural Missteps in Serving Draft and Final Orders:** Respondents admit to procedural missteps in serving the draft order and subsequent documents crucial to the Appellant's case. This admission is significant because it highlights the lack of proper notice and opportunity for the Appellant to review and challenge these documents. Such

procedural errors directly impact the validity of the judicial proceedings and the Appellant's ability to defend her rights.

The Respondents' admissions highlight significant procedural errors, including the failure to serve the draft order and the final order properly. Under South Carolina law, proper service is a fundamental requirement to ensure due process. The Respondents' failure to serve the draft order to the Appellant deprived her of the opportunity to review and challenge it, rendering any subsequent orders based on this draft moot. This procedural defect alone justifies dismissing the Respondents' Motion to Dismiss Appeal. These admissions by the Respondents underscore the fundamental procedural errors that have occurred in this case. The improper service and failure to follow due process principles have compromised the Appellant's rights and the integrity of the judicial proceedings. Therefore, the Respondents' Motion to Dismiss Appeal must be stricken, and the Appellant's Motion to Accept Late Filing should be granted to ensure fairness and justice in the proceedings.

III. **Respondents willfully and repeatedly failed to serve appellant**

It is clear and indisputable that the Respondents have failed to serve the Appellant with the pivotal documents in her own appeal process, specifically neglecting to provide the Appellant with a copy of the Motion to Dismiss her Appeal, as well as the draft and the final order following the Motion for Summary Judgment. This oversight constitutes a failure in the service process essential for advancing the proceedings and respecting the Appellant's right to due process.

Bakala v. Bakala, 576 S.E.2d 156 (S.C. 2003): This case establishes that there is a presumption of receipt of mailings, but this presumption can be rebutted by evidence of procedural irregularities and improper service. In this case, the procedural irregularities and improper service by the Respondents, as admitted by them, rebut the presumption of receipt.

Stokes v. Spartanburg Regional Medical Center, 382 S.C. 10, 674 S.E.2d 434 (2009): This case emphasizes the necessity of proper service for due process and how procedural errors can impact the validity of judicial proceedings. The procedural errors committed by the Respondents

in serving the Appellant have compromised the validity of the proceedings and her due process rights.

Rule 5, South Carolina Rules of Civil Procedure: This rule mandates that all pleadings subsequent to the original complaint, motions, and other papers be served upon each of the parties. Proper service methods are essential to ensure all parties have the opportunity to respond appropriately. The Respondents' failure to adhere to Rule 5 further supports the Appellant's position that her due process rights were violated, necessitating the acceptance of her late filing.

IV. **Conclusion and Prayer for Relief:**

For the foregoing reasons, Appellant respectfully requests that this Court grant her Motion to Accept Late Filing, strike the Respondents' Motion to Dismiss Appeal, and allow her substantive response to the Motion to Dismiss. Furthermore, Appellant requests any other relief that this Court deems just and proper to ensure fairness and justice in the proceedings.

Respectfully Submitted, this July 5, 2024

By  _____

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FOR THE APPELLANT