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**Jul 22 2024**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

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The Honorable Shannon M. Phillips  
Presiding Circuit Court Judge

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C.A. No.: 2021-CP-42-03180  
Appellate Case No. 2024-000160

Kaleb Jowers..... Appellant,

v.

Spartanburg Methodist College..... Respondent

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**INITIAL BRIEF OF RESPONDENT**

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Respectfully submitted,

**HOLCOMBE BOMAR, P.A.**

s/ A. Todd Darwin

\_\_\_\_\_  
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July 21, 2024  
Spartanburg, SC

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## **STATEMENT OF ISSUES ON APPEAL**

- I. DID THE CIRCUIT COURT CORRECTLY FIND THAT APPELLANT FAILED TO PROPERLY SERVE THE SUMMONS AND COMPLAINT ON THE RESPONDENT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS AND PROPERLY DISMISS THE CASE
  
- II. DID THE FILING OF AN ELECTRONIC NOTICE OF APPEARANCE BY COUNSEL FOR THE RESPONDENT OBVIATE THE NEED FOR APPELLANT TO SERVE THE SUMMONS AND COMPLAINT ON RESPONDENT'S COUNSEL

## **STATEMENT OF THE CASE**

Kaleb Jowers (“Appellant”) filed a Summons and Complaint on September 23, 2021, alleging negligence on behalf of Spartanburg Methodist College (“Respondent”), based on an incident occurring on April 11, 2019. (Complaint, ¶ 7R. at \_\_\_\_). The applicable statute of limitations pursuant to S.C. Code §15-3-530 expired on Appellant’s claim on April 11, 2022. Prior to the expiration of the statute of limitations, counsel for the Appellant never served the Respondent or counsel for the Respondent with filed copies of the Summons and Complaint. (Hearing on Motion to Dismiss Tr. 5:16-20, R at \_\_\_\_).

On October 7, 2021, counsel for the Respondent filed an electronic Notice of Appearance on behalf of the Respondent. (Ex. A, to Appellant’s Return to Motion to Dismiss R. at \_\_\_\_). On December 3, 2021, counsel for Respondent sent an email to counsel for the Appellant in which he advised counsel for the Appellant that he was authorized to accept service of the pleadings on behalf of the Respondent, asked counsel for the Appellant to “please send an acceptance form.” (Ex. B to Appellant’s Return to Motion to Dismiss, R. at \_\_\_\_). Counsel for the Appellant did not send an acceptance of service form to Respondent’s counsel until May 4, 2022, thirteen days after the Spartanburg County Clerk of Court had filed a Dormant File Notice on April 21, 2022 in the

case, stating that no proof of service had been filed since the case filing, and advising that the case would be dismissed pursuant to Rule 5(d), SCRPC if Appellant's counsel filed proof of service within ten (10) days. (Dormant File Notice R., at \_\_\_).

Respondent timely filed a Motion to Dismiss on June 3, 2022, and Appellant filed a Return to Motion to Dismiss on October 17, 2022, the same day the Court held the hearing on Respondent's Motion to Dismiss. (Motion to Dismiss R. at \_\_\_) and (Return to Motion to Dismiss, R. at \_\_\_). The Court filed its Order dismissing the case on October 28, 2022 (Order, R. at \_\_\_), and Appellant filed his Motion to Reconsider, Alter, or Amend on October 28, 2022 (Motion, R. at \_\_\_\_). On January 29, 2024, the Court filed its Form 4 Order denying the Appellant's Motion to Reconsider (Form 4 Order, R. at \_\_\_\_\_), and Appellant filed his Notice of Appeal on February 2, 2024.

### **STANDARD OF REVIEW**

The trial court's finding of fact regarding validity of service of process are reviewed under an abuse of discretion standard. *Christian v. Healy*, 435 S.C. 507, 868 S.E.2d 403 (Ct. App. 2021) citing *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012). An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions. *Kiriakides v. Sch. Dist. of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).

### **ARGUMENT**

- I. **THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT FAILED TO SERVE THE SUMMONS AND COMPLAINT ON THE RESPONDENT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS AND PROPERLY DISMISSED THE CASE.**

After considering the Respondent's Motion to Dismiss and the Appellant's Return

to Motion to Dismiss with exhibits, and hearing the arguments of counsel during the motion hearing on October 17, 2022, the Presiding Judge found in favor of the Respondent and dismissed the Appellant's Summons and Complaint. In the dismissal Order the Court held that, despite any argument to the contrary, Appellant failed to serve the summons and complaint in the case. Pursuant to Rule 5(d), SCRPC, "[p]roof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party." (Order Granting Defendant's Motion to Dismiss, R. at \_\_\_). Furthermore, pursuant to Rule 4(d), SCRPC, the summons and complaint must be served together. The trial Court properly found and held that Respondent never served a copy of the summons and complaint on the Respondent, despite counsel for the Respondent's request that he be sent an acceptance of service form.

The plaintiff has the burden to establish that the court has personal jurisdiction over the defendant. *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (1996). As the trial Court found, he failed to meet that burden in this case. Counsel for the Appellant acknowledges that he failed to send an acceptance of service form to counsel for the Respondent until after the statute of limitations had expired, but argues that because counsel for the Respondent had access to the pleadings the case should not have been dismissed. However, with the introduction of the Court's electronic filing system, that argument could be made of any case filed. All anyone needs to do is to search a party's name on the Public Index to ascertain if there is a pending case against that party. Just because an attorney may know of a pending lawsuit against her/his client based on a random search of the Public Index, that does not alleviate the need for the plaintiff to follow the Court rules

and properly serve the summons and complaint in an manner consistent with the requirements of Rules 4 and 5, SCRCP.

**II. THE FILING OF AN ELECTRONIC NOTICE OF APPEARANCE BY COUNSEL FOR THE RESPONDENT DID NOT OBLIVATE THE NEED FOR APPELLANT TO SERVE THE SUMMONS AND COMPLAINT ON RESPONDENT'S COUNSEL.**

Appellant first asserts that service was effective on the Respondent when counsel for the Respondent filed an electronic Notice of Appearance on October 7, 2021, arguing that the notice filed by counsel constituted a voluntary appearance by the Respondent which was the equivalent to personal service under Rule 4(d), SCRCP. (Return to Motion to Dismiss, R. at \_\_\_\_). The trial Court considered this argument and summarily rejected it. There are any number of reasons counsel for a party might file an electronic Notice of Appearance, the most obvious reason being that they want to be notified whenever anything new is filed on that matter, like an Affidavit of Service indicating that their client has been served with the pleadings, any motions that might be filed, etc. The simple act of filing an electronic Notice of Appearance cannot be a substitute for the duty to properly serve the pleadings pursuant to the South Carolina Rules of Civil Procedure. That would be akin to arguing that a high profile case that makes it in print newspapers or on the evening news and references the filing of a lawsuit against a particular defendant constitutes service on the defendant, because that defendant has been provided with notice of the filed action, and the Public Index affords access to the pleadings to anyone with a computer and internet access.

Appellant next argues that if that Notice of Appearance did not constitute a voluntary appearance, then the December 3, 2021 email from counsel for the Respondent to counsel for the Appellant stating that he was authorized to accept service on behalf of the

Respondent and specifically asking Appellant's counsel to send him an acceptance of service form definitely constituted service. However, counsel for the Appellant also admits in his Return to Motion to Dismiss that counsel for the Respondent "confirmed, in writing, that he **would [emphasis added]** accept service" (had he been provided with an acceptance of service form from counsel for the Respondent), and that he "subsequently failed to send a formal Acceptance of Service form" to counsel for the Respondent until May 4, 2022. In fact, there is no record of any contact from Appellant's counsel to Respondent's counsel between December 3, 2021 and May 4, 2022. Counsel for the Appellant further "admits that he should have sent the Acceptance of Service form to Counsel for the Defendant in a timely manner." (Return to Motion to Dismiss, R. at \_\_\_\_). Moreover, if counsel for the Appellant truly believed that service had been perfected on the Respondent, then he should have advised the Court that the summons and complaint had already been served in response to the Court's April 21, 2022 Dormant File Notice.

Once again, the trial Court considered these arguments and found that counsel for the Respondent had not made a voluntary appearance under Rule 4(d), SCRC. Courts decide on a case by case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction. *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 644 S.E.2d 793 (2007). In this case, the presiding Judge found that Respondent's actions had not demonstrated the requisite intent to submit to the court's jurisdiction, and because that finding was not an abuse of discretion it should not be disturbed on appeal.

**CONCLUSION**

Because the trial Court correctly found that Appellant had failed to timely effect service of process on the Respondent, this Court should affirm the trial Court's decision in all respects.

Respectfully submitted,

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