

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Commons Pleas

Hon. Dale E. Van Slambrook, Master In Equity

Case No. 2023-CP-08-1531
Appellate Case No.: 2024-000867

Michael L. Woods.....Appellant

vs.

Wyman Jean Woods, Jr., Trustee of the Wyman and
Marguerite Woods Family Trust utd 01/16/98..... Respondent

RETURN TO APPELLANT’S MOTION FOR PERMISSION TO SERVE AND FILE
OUTSIDE OF TIME

Respondent respectfully objects to Appellant’s Motion.

Appellant asked for and received an Order of this Court filed July 1, 2024 granting him an additional thirty (30) days until July 31, 2024 to file and serve his initial brief and designation of the matter.

Respondent failed to comply with this Court’s July 1, 2024 Order.

By letter of the Deputy Clerk of the Court of Appeals dated August 7, 2024, Counsel for the Appellant was advised that within ten (10) days of that letter Appellant’s initial brief and designation of the matter must be served and filed. Appellant failed to comply.

On 6:13 PM on August 19, 2024, Counsel for the Appellant e-mailed a package to the Court of Appeals, which included the subject motion.

No explanation was offered for the failure to timely file any of the papers. No just cause was proposed. No affidavit accompanied his submittals.

To give this Court additional context for consideration, the neglect and failure of Appellant to comply with filing requirements is not new to this appeal. It is a pattern of conduct.

Appellant failed to comply with statutory filings deadlines in the underlying case. As a result Respondent filed a motion to dismiss for lack of prosecution and a memorandum.

Appellant did not deny that statutory deadlines were missed. The Circuit Court chose not to dismiss the appeal. See Exhibit "A" attached hereto and made a part hereof by reference.

No just cause having been shown for permitting the filings which were due and which were not timely filed, Respondent respectfully submits that in the interest of the integrity of this Court's proceedings Appellant's motion should be denied.

Respectfully submitted,

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August 20, 2024

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EXHIBIT "A"

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BERKELEY COUNTY PROBATE COURT

Hon. Keith W. Kornahrens, Probate Judge

Berkeley County Probate Case No. 2021ES08-0715
Circuit Court Case No. 2023-CP-08-1531

Michael L. Woods.....Appellant

vs.

Wyman Jean Woods, Jr., Trustee of the Wyman and
Marguerite Woods Family Trust utd 01/16/98..... Respondent

MOTION TO DISMISS FOR LACK OF PROSECUTION

Respondent, by and through his undersigned attorney, hereby moves for an Order of Dismissal With Prejudice of the appeal from the Probate Court due to Appellant's failure to timely comply with the applicable filing requirements of S.C. Code Ann. § 62-1-308 as will the index of filings in the Office of the Clerk of Court for Berkeley County more fully and at large appear.

Respectfully submitted,

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August 9, 2023

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

APPEAL FROM BERKELEY COUNTY PROBATE COURT

Hon. Keith W. Kornahrens, Probate Judge

Berkeley County Probate Case No. 2021ES08-0715
Circuit Court Case No. 2023-CP-08-1531

Michael L. Woods.....Appellant

vs.

Wyman Jean Woods, Jr., Trustee of the Wyman and
Marguerite Woods Family Trust utd 01/16/98..... Respondent

RESPONDENT’S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

Respondent submits this memorandum in support of his motion to dismiss the Appellant’s appeal from a Final Order of the Berkeley County Probate Court due to his failure to make timely filings as mandated by S.C. Code Ann. § 62-1-308.

II. BACKGROUND

Berkeley County Probate Judge Keith Kornahrens entered his Final Order in Case No. 2021ES08-0715 on April 17, 2023 and his Order denying Appellant’s Motion To Alter or Amend Judgment or For a New Trial on May 23, 2023. Appellant filed his Notice of Appeal on June 5, 2023. His next filing was made on August 9, 2023, when he untimely filed his Statement of

Issues and Designation of Matter. He did not apply for an extension. The Clerk of Court's Public Index is attached hereto as Exhibit "A".

III. ARGUMENT

A. Appellant's Non-Compliance with S.C. Code Ann. § 62-1-308.

S.C. Code Ann. § 62-1-308 governs appeals from the Probate Court. It provides:

(a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

(b) Within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the **appellant must file** with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.

(c) Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant **shall, within ten days after the date of service of the notice of intention to appeal**, make satisfactory arrangements with the court or court reporter for furnishing the transcript. If the appellant has not received the transcript within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant may make a motion to the circuit court for an extension to serve and file the parties' briefs and Designations of Matter to be Included in the Record on Appeal, as provided in subsections (d) and (e).

(d) **Within thirty days after service of the Statement of Issues on Appeal**, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.

(e) At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, **the appellant shall serve one copy of his brief** on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The appellant's brief shall be in a format described in Rule 208(b)(1), SCACR. Within thirty days after service of the appellant's brief, the respondent shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The respondent's brief shall be in a format described in Rule 208(b)(2), SCACR. Appellant may file and serve a brief in reply to the brief of the respondent. If a reply brief is prepared, the appellant shall, within ten days after service of the respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of circuit court one copy of the reply brief with proof of service. The appellant's reply brief shall be in a format described in Rule 208(b)(3), SCACR.

(f) Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and file with the clerk of the circuit court one copy of the Record on Appeal with proof of service.

(g) Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules. Upon final disposition of the appeal, all exhibits filed separately (as described in Rule 210(f), SCACR), but not included in the Record on Appeal, must be forwarded to the probate court.

(h) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(i) The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(j) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court. Within forty-five days after receipt of written notice of the final decision and judgment in cases appealed, the prevailing party shall provide a copy of such decision and judgment to the probate court.

(k) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(l) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules. (emphasis added).

The following mandatory filings did not happen per the statute:

- a. Appellant did not comply with subsection (b). Appellant's Statement of Issues was filed on August 9, 2023 and only then after Respondent filed his Motion To Dismiss.
- b. Appellant did not comply with subsection (c) regarding ordering of a transcript. He did not move for an extension.
- c. Appellant did not comply with subsection (d) regarding the timely filing of Designation of Matter.

- d. Appellant did not comply with subsection (e) regarding the timely filing of his brief and proof of service.

B. The Plain Meaning Rule

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). Hodges v. Rainey, 341 S.C. 79, 533 S. E. 2d 578 (2000).

There can be no serious argument that S.C. Code Ann. § 62-1-308 is anything but plain and unambiguous. The legislature's repeated use of imperatives in the statute such as "must" and "shall" under the Plain Meaning Rule must be accepted and enforced by the courts.

C. Untimeliness of Filings Must Result in Dismissal of an Appeal

It is well settled law in South Carolina that failure to comply with statutory filing deadlines is grounds for dismissal. State v. Brown, 358 S.C. 382, 596 S.S. 2d 39 (2004).

Citing State v. Brown, our Supreme Court addressed the issue of failure to meet statutory deadlines in the Probate Court context in the matter of In re: Estate of Charles Cretzmeier, 365 S.C. 12, 615 S.E. 2d 116 (2005), where the Court opined:

We decline Appellant's invitation to construe the statute in a manner inconsistent with its unambiguous terms. Our settled rules of statutory construction mandate the result we reach, for the statute is clear that the notice of appeal "must be filed" in the circuit court within the ten-day period. See Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) ("When a statute requires the filing of a paper or document, it is filed when delivered to

and received by the proper officer.”); *see also State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction).

IV. CONCLUSION

Given the clear mandates of S.C. Code Ann. § 62-1-308 and Appellant’s failures to adhere to the same and upon the well-settled law on the subject, Respondent respectfully submits that this Court must dismiss Appellant’s appeal.

Respectfully submitted,

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Attorneys for Respondent

October 16, 2023

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EXHIBIT "A"



Berkeley County 9th Judicial Circuit Public Index








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Switch View					
Michael L Woods VS Wyman Jean Woods Jr.					
Case Number:	2023CP0801531	Court Agency:	Common Pleas	Filed Date:	06/05/2023
Case Type:	Appeal	Case Sub Type:	Probate Court 940	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials	
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Hammes, Roman Vincent	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
Hammes, Roman Vincent	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
Shepherd, Andrew T.	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
Shepherd, Andrew T.	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
West, John Samuel	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
West, John Samuel	10/16/2023_MOTHEA_Roster/Notice of Motions Roster Publicatio	Action		10/06/2023-10:41		
Woods, Wyman Jean Jr.	NEF(09-06-2023 10:08:40 AM) Notice/Other	Filing		09/06/2023-10:32		
Woods, Wyman Jean Jr.	Service/Certificate Of Service	Filing		09/06/2023-10:08		
Woods, Wyman Jean Jr.	Notice/Other	Filing		09/06/2023-10:08		
Woods, Michael L	NEF(08-09-2023 05:08:57 PM) Appeal/Designation of Matter	Filing		08/10/2023-09:21		
Woods, Wyman Jean Jr.	NEF(08-09-2023 04:59:06 PM) Motion/Dismiss	Filing		08/10/2023-09:19		
Woods, Michael L	Appeal/Designation of Matter	Filing		08/09/2023-17:08		
Woods, Michael L	Statement/Statement	Filing		08/09/2023-17:08		
Woods, Wyman Jean Jr.	Service/Certificate Of Service	Filing		08/09/2023-16:59		
Woods, Wyman Jean Jr.	Motion/Dismiss	Motion	Motion Docket Week of Oct 16,	08/09/2023-16:59		

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			2023 - Courtroom E			
Woods, Wyman Jean Jr.	NEF(08-09-2023 04:57:04 PM) Notice/Notice of Appearance	Filing		08/09/2023-16:57		
Woods, Wyman Jean Jr.	Notice/Notice of Appearance	Filing		08/09/2023-16:57		
Woods, Michael L	Appeal/Notice of Appeal (Workflow)	Action		06/15/2023-12:15		
Woods, Michael L	Filing/Other	Filing		06/05/2023-12:15		
Woods, Michael L	Motion/Appeal	Motion	Motion Docket Week of Oct 16, 2023 - Courtroom E	06/05/2023-12:15		
Woods, Michael L	Appeal/Notice of Appeal	Filing		06/05/2023-12:15		  

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Michael L Woods
PLAINTIFF(S)

Wyman Jean Woods, Jr.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

A Motion to Appeal and a Motion to Dismiss were heard before the Court on October 18, 2023. After consideration of the issues, the Motion to Appeal is granted and the Motion to Dismiss is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/25/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Michael L Woods VS Wyman Jean Woods Jr.

Case Number: 2023CP0801531

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

RECEIVED

Aug 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Commons Pleas

Hon. Dale E. Van Slambrook, Master In Equity

Case No. 2023-CP-08-1531
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Michael L. Woods.....Appellant

vs.

Wyman Jean Woods, Jr., Trustee of the Wyman and
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PROOF OF SERVICE

I certify that I have served Respondent's Return To Motion on Michael L. Woods, by depositing a copy of it in the US Mail, postage prepaid, on August 20, 2024, addressed to his attorney Andrew T. Shepherd, Esq., 204 Brighton Park Blvd., Suite B, Summerville, SC 29486.

Respectfully submitted,

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August 20, 2024