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Nov 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master in Equity

NASSCO, Inc., Respondent,

v.

Byunghwan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay,

Of whom Byunghwan Chay is the Appellant.

Appellate Case No.: 2024-001489

RETURN TO MOTION TO RECALL REMITTITUR
AND REINSTATE APPEAL

Respondent, through undersigned counsel, opposes Appellant's Motion to Recall Remittitur and Reinstate Appeal based on the following South Carolina Appellate Court Rules. At the outset, Respondent argues that the has no jurisdiction to consider this post-Remittitur motion. Respondent disagrees with Appellant's assertion that the Remittitur was issued because of "mistake, error or inadvertence of the Court" regarding Jason M. Ward, Esq.'s representation of him in this appeal. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551 (2007).

Pursuant to Rule 264, SCACR, Mr. Ward represented Appellant at the trial level and as such, "shall be deemed the attorney[s]...of the same parties in the appellate court until withdrawal is approved and notice is given." This designation is regardless of his filing of the Notice of Appeal

in this matter. For this reason, this Court lacks appellate jurisdiction to consider this post-Remittitur motion.

Further, this appeal was dismissed by Order dated October 11, 2024. The Order cites a September 24, 2024, letter from the Court informing Appellant that the matter will be dismissed for failure to order the transcript of the trial, the first step after the notice of appeal. The Court's letter as well as the Order of dismissal were provided to Appellant, through Counsel Ward, who took no action within the fifteen (15) days following the issuance of the Order as required by Rule 260, SCACR.

The pro se "Motion to Reinstate" should not be considered as Mr. Chay cannot make pro se filings as a represented party. Even if this court were to allow such a filing, it does not comply with the requirements for filing a motion before this Court, nor does it follow the requirements of the September 24, 2024, letter from the Court.

First, the "Motion to Reinstate" was not served on the parties to this matter, nor was it accompanied by a filing fee. Further, the form used to "order" the transcript by Mr. Chay, notes the date of the hearing as September 9, 2024. The actual date of the trial was July 2, 2024, which Mr. Chay would know if he had chosen to appear or participate in the trial. Additionally, there is no proof that the form provided was ever actually sent to the court reporter and/or court administration.

Finally, the Court's September 24, 2024, letter required the filing of a motion to order the transcript out of time to be filed, along with a filing fee. Neither of those requirements were met. Appellant's pro se "Motion to Reinstate" should not be considered.

It is also telling that Appellant Michelle M. Chay has not made any such arguments regarding the dismissal of her appeal, despite being the party most affected by the trial court's

Order. For the above-stated reasons, this Court should decline to consider or, if considered, should deny, Appellant's Motion to Recall Remittitur and Reinstate Appeal.

Respectfully submitted,

s/ Jonathan D. Waller
Jonathan D. Waller
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312 Richland Avenue W
Aiken, South Carolina 29801
ATTORNEY FOR RESPONDENT

November 27, 2024

Aiken, South Carolina

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Motion to Recall Remittitur and Reinstate Appeal in the above-referenced case has been served upon Adam Sinclair Ruffin, Esquire and Jason M. Ward, Esquire, at the primary e-mail addresses listed in the Attorney Information System (AIS), this 27th day of November, 2024.

s/ Jonathan D. Waller
Jonathan D. Waller

Aiken, South Carolina
This 27th day of November, 2024