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Feb 12 2025

SC Court of Appeals

MOTION TO REINSTATE APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

No. 2022-CP-44-00188

Sally T. Atwater and Ashley Atwater,
as Trustees of the Sally D. Atwater Revocable Trust,

Respondents,

vs.

Curtis Dunbar, Individually and as former
Co-Personal Representative of the Estate of Theo(Dosia) Dunbar,

Appellant.

MOTION TO REINSTATE APPEAL

Appellant moves the Court to Reinstate the Appellant's Appellate Case 2025-00165. Appellate failed to comply with the Appellate Rules by failing to Perfect the Appeal within thirty (30) days of service of the lower court's order. The defect of service was cured on the thirty first (31st) day after service of the circuit court's order. Appellate asserts that good cause exists, being an error of calculation of the calendar date, and this error was the reason for this defect.

February 7, 2025

s/ William D. All III
William D. All III (SC Bar #101660)
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MEMORANDUM IN SUPPORT MOTION TO REINSTATE APPEAL

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Appellant.

**MEMORANDUM IN SUPPORT OF
MOTION TO REINSTATE APPEAL**

Appellant respectfully submits this memorandum in support of the Motion to Reinstate Appeal and states as follows:

Appellant's appeal was originally filed on January 30, 2025. Subsequently, Appellant filed a motion requesting permission to serve the notice of appeal one day beyond the prescribed deadline. This motion was denied, and the appeal was dismissed for failure to timely serve the notice of appeal, as set forth in this Court's order dated February 3, 2025.

Pursuant to Rule 260, SCACR: “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. Appellant acknowledges the precedent established in *Morris v. BB&T Corp.*, 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023), which states, “The failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance.” However, Appellant asserts that, as in *Morris*, the calendaring error in the present case constitutes good cause for reinstatement.

The Appellant erred in calculating the thirty (30) days from receipt of the Order of the Trial Court, mistakenly identifying January 30, 2025, as the deadline to serve the notice of appeal instead of the correct date, January 29, 2025. This error arose from an inadvertent miscount of the days in December. Appellant contends that the calendaring error was unintentional and made in good faith. Upon realizing this mistake during a phone call with Respondent’s counsel on January 30, 2025, Appellant promptly contacted the Court and filed the motion seeking extension of time.

Appellant argued in that motion that the calendaring error was by mistake or inadvertence, his Appeal is taken in Bona Fide, and that the Appellant understood the Court may and should take action to protect the Respondent who has been delayed in the enforcement of his rights. (See *Wade v. Gore*, 154 S.C. 262, 151 S.E. 470, 472 (1930) A party seeking relief under that section will have to show clearly that the acts, which were necessary for him to do, were omitted ““through mistake or inadvertence,” that his appeal “was taken bona fide,” and he may expect the court, even if the

motion is granted, to impose such terms as we shall think just in the premises to protect the party who is being delayed in the enforcement of his rights.)

Additionally, Appellant emphasizes that the order triggering the appeal deadline was submitted to the Circuit Court on December 17, 2024, signed electronically on December 28, 2024, and notice of electronic filing was transmitted to the parties on December 30, 2024. In contemplation of an appeal, Appellant provided informal notice to Respondent of their intent to appeal via an email dated December 27, 2024, which stated: “Despite what we feel is *an egregious error of law on behalf of the court*, we are willing to make a settlement offer before continuing any further in this action, prior to mediation, and prior to *any appeals*.” (Emphasis Added). Given Respondent’s awareness of Appellant’s intent to appeal, Respondent will suffer no prejudice if the appeal is reinstated. Additionally the Appellant would show this Honorable Court, as a mere matter of practicality, during the thirty days there were two state holidays (New Years Day, Martin Luther King, Jr. Day), one day of such inclement winter weather that Union County Courthouse and the SC Judicial Branch closed early (Friday, January 10, 2025; See Court News issued on January 10, 2025), and another day of inclement weather that cause Union County Courthouse to delay opening and the Supreme Court to Issue a Winter Weather Advisory and Memorandum (See Memorandum Dated January 21, 2025).^{1 2} Given the limited availability of full working days during this period, the one-day delay in service of the notice of appeal results in minimal, if any, prejudice to Respondent.

¹ <https://www.sccourts.org/about/court-news/2025-01-10/bar-application-filing-deadline-extension>

² <https://www.sccourts.org/media/ecqhljle/winter-weather-memorandum-01212025.pdf>

Lastly, Appellant's appeal is taken in Bona Fide Good Faith as this appeal presents two legitimate issues for review: (1) whether a Deed of Distribution, which contains no express language designating it as a Private Agreement Among Successors under S.C. Code Ann. § 62-3-912, may nonetheless serve as such an agreement; and (2) whether a Deed of Distribution that conveys property to multiple heirs without specifying their respective interests is to be interpreted as vesting equal tenancy-in-common interests or whether the specific devises in the Testator's Last Will and Testament control the distribution. The lower court determined that the Deed of Distribution, despite lacking any reference to §62-3-912, constituted a private agreement among successors. Additionally, the court held that the property was distributed in equal, undivided interests as tenants in common, rather than in accordance with the specific devise set forth in the decedent's will. Appellant challenges these findings, asserting that the court's interpretation disregards both the statutory requirements and the Testator's intent as expressed in the will.

In light of the foregoing, Appellant respectfully requests that this Honorable Court grant the Motion to Reinstate Appeal, as good cause has been demonstrated, the appeal is taken in Bona Fide and reinstatement will not result in undue prejudice to Respondent.

Respectfully Submitted,

February 7, 2025

s/ William D. All III
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Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate Appeal and Memorandum on Tyler McLeod by emailing a .PDF of the Motion to Reinstate Appeal and Memorandum to tmcleod@bmemhlaw.com, being Tyler McLeod's primary e-mail address listed in the Attorney Information System (AIS), a copy of which is attached to this proof of service. Service by Email is made pursuant to Rule 262(a)(3), SCACR and South Carolina Supreme Court Order 2024-04-24-01, Section (d)(1).

February 12, 2025

s/ William D. All III

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Will All

From: Will All <wall@allandfrost.com>
Sent: Wednesday, February 12, 2025 4:48 PM
To: 'Tyler McLeod'
Cc: 'Erin Callahan'; 'Jenna McLeod'; 'marissa@allandfrost.com'
Subject: Service of Motion to Reinstate Appeal
Attachments: A11 - MOTION TO REINSTATE APPEAL.pdf; A12 - MEMORANDUM OF MOTION TO REINSTATE.pdf

Tyler,

Attached is a copy of the Motion to Reinstate Appeal and Memorandum in Case No. 2022-CP-44-00188; SC Court of Appeals Case No. 2025-000165.

This e-mail constitutes service of process of the Motion to Reinstate Appeal and Memorandum by e-mail made pursuant to Rule 262(a)(3), SCACR and South Carolina Supreme Court Order 2024-04-24-01, Section (d)(1).

With Best Regards,

William D. All, III
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