

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Eleventh Circuit

LEXINGTON COUNTY

William C. McMaster, Circuit Court Judge

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MAR 05 2025

SC Court of Appeals

Appellate Case No. 2024-001668

Estate of Carrie Muller Smith Lewis,Respondent

v.

Isaac Smith, Jr.,Appellant

INITIAL BRIEF OF APPELLANT

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Attorney for Respondent

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Arguments:

1. BECAUSE THE APPELLANT SERVICE OF PROCESS TO THE RESPONDENT CONTAINED A SCRIVENRS ERROR IN THE ADDRESS OF 270 STONERIDGE DRIVE, Columbia, SC 29210 RATHER THAN 220 STONERIDGE DRIVE, Columbia, SC 29210 CONSTITUTE NONE SERVICE ON THE RESPONDENT. DID NOT FOLLOW ESTABLISHED LAW AND PROCEDURE THE COURT ERRED IN NOT DISMISSING THE ACTION AGAINST APPELLANT.....2
2. BECAUSE DESPITE THE MINOR SCRIVENER ERROR ON THE MAILING ENVELOPEER, THE RESPONDENT RECEIVED THE NOTICE WITHIN TIME REQUIRED OF THE STATUTE DOES THAT WARRANT A LACK OF SERVICE OF PROCESS ON THE RESPONDENT.....2.

CASES

Tatnall V. Gardner, 564 S>E.2d 377, 378 (S,C. App. 2002.....2

State v. Devore, 416 S.C. 115 (S/C/ App. 2015),3

STATEMENT OF THE CASE

Appellant, Isaac Smith, Jr. appealed a probate court order to the circuit court. The Probate Court was served with notice of the Appeal to the circuit court. The circuit court dismissed the appeal citing a scrivener’s error. The error in no way affected the due process or the respondent. The dismissal, however denied the appellant his constitutional right to due process. The Appellant appeals.

FACTUAL BACKGROUND

The Plaintiff, Isaac Smith, Jr, requested the circuit court reconsider the denial of the plaintiff's motion so to ensure the plaintiff's right to due process under the constitution of the United States. Plaintiff's due process rights have been severely violated. The Counsel for the Respondent made a verbal motion to dismiss the Motion of the Plaintiff for lack of service of Process even though he acknowledges timely receipt of the notice of the Plaintiff's Motion. The Counsel for the Respondent only objection as to seek denial of the Motion was an incorrect number in the address of the Counsel for the Respondent. The envelope has 270 Stoneridge Drive, Columbia, SC 29210 rather than 220 Stoneridge Drive, Columbia, SC 29210. The incorrect number is a mere scrivener's error. The address included the Post Office Box address. The courts have long held that a Scrivener's error does not affect the merits of the case and definitely does not represent inadequate service of process. Specifically, the Defendant/Respondent, Kenneth Allen Davis never denied timely receiving the documents. The final order filed by attorney for the Defendant/Respondent, Kenneth Allen Davis cites *Tatnall v. Gardner*, 564 S.E.2d 377, 378 (S.C. App. 2002) neither determines a substantial matter "forming the whole or part of some cause of action," nor prevents "a judgment from being rendered in the action" from which Logan could then seek review. See *Peterkin*, 319 S.C. at 368, 461 S.E.2d at 810; *Mid-State Distribs.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.

The granting of the Counsel for the Respondent's to Dismiss the motion or the action would represent a severe miscarriage of justice. A Scrivener's error has never been a ground for denial of due process. The Appellant outlined the grounds for his motion and the Motion should not have been denied, especially because of a Scrivener's error.

The final order filed by attorney for the Defendant/Respondent, Kenneth Allen Davis basically changes the ruling trial judge, The Honorable William C. McMaster, III in Electronic

Form 4 Order electronically filed on August 13, 2024. The final order filed by attorney for the Defendant/Respondent, Kenneth Allen Davis should shock the conscience of the Court.

A "minor mistake" on the address of a service of process letter means a small error in the delivery address on a legal document sent to notify someone of a lawsuit, such as a transposed number, a wrong apartment number, or a minor spelling error in the street name, which could potentially impact the ability to serve the document properly.

THIS MATTER COMES before the Court by way of a Final Order filed Sept 20, 2024 drafted by the attorney for the Defendant/Respondent, Kenneth Allen Davis, Order Granting Denial of Plaintiff's Motion to Stay Action Until Completion of Richland County Malpractice Action seeking Motion to Reconsider of a Denial of Plaintiff, Isaac Smith, Jr., motion to Stay Action until completion of the Richland County actions, Electronic Form 4 Order electronically filed on August 13, 2024. The Electronic Form 4 Order electronically filed on August 13, 2024 was as follows:

“This matter came before the Circuit Court on July 31, 2024, pursuant to Appellant's Motion to Stay Action Until Completion of Richland County Malpractice Action. Kenneth Allen Davis appeared on behalf of the Respondent, Estate of Carrie Muller Smith Lewis, and Appellant, Isaac Smith Jr., appeared pro se. The hearing was initially scheduled to be heard on August 2, 2024, however, both parties consented to moving forward with the hearing on July 31, 2024, in the interest of judicial economy and for the convenience of the Parties. After consideration of arguments made by the Parties, the Court hereby Denies Appellant's Motion due to lack of proper service. Counsel for the Respondent is to prepare a proposed formal order. It is so ordered.”

The Plaintiff did not receive notice of the order by letter from the Defendant's attorney as was required in the electronic order. The electronic order specifically said that the Defendant's attorney would address the denial of the Plaintiff's motion due to lack of service. The Plaintiff has received nothing from the Defendants attorney addressing the electronic order. Instead the Defendant's attorney sent the Plaintiff forms for closure of the Estate of Carrie Muller Smith Lewis. The probate case is and open case under as stay and cannot be closed.

The Honorable William C. McMaster, III in Electronic Form 4 Order electronically filed on August 13, 2024, ruled This matter came before the Court on July 31, 2024, pursuant to Appellant's Motion to Stay Action Until Completion of Richland County Malpractice Action. Kenneth Allen Davis appeared on behalf of the Respondent, Estate of Carrie Muller Smith Lewis, and Appellant, Isaac Smith Jr., appeared pro se. The hearing was initially scheduled to be heard on August 2, 2024, however, both parties consented to moving forward with the hearing on July 31, 2024, in the interest of judicial economy and for the convenience of the Parties. After consideration of arguments made by the Parties, the Court hereby Denies Appellant's Motion due to lack of proper service. Counsel for the Respondent is to prepare a proposed formal order. The Counsel for the Respondent is not as of today prepare a proposed formal order. Instead the Counsel for the Respondent mailed paperwork to the Plaintiff distributing the property currently in litigation and closing the Estate of Carrie Muller Smith Lewis. The Counsel for the Respondent is acting in egregious bad faith and the court should punish the Counsel for the Respondent for his disregard of an order of the court.

The Honorable William C. McMaster, III in Electronic Form 4 Order electronically filed on August 13, 2024 granted denial of Plaintiff's Appellant's Motion due to lack of proper service. The order denied only Appellants Motion to Stay the Action until completion of the Richland County actions. Addressing anything else in the formal order of the Court would be an act of contempt of court by the Counsel for the Respondent. The Counsel for the Respondent has committed contempt of Court.

The attorney for the Defendant/Respondent, Kenneth Allen Davis specifically and intentionally committed an act of contempt of court. The Final order filed with the clerk of court but not signed by the trial judge was never approved by the Plaintiff/Appellant, Isaac Smith, Jr.,

acting Pro Se, before the filing of the document with the Clerk of Court. The Respondent, Kenneth Allen Davis prepared and filed a final order that was contrary to the ruling of the trial judge, The Honorable William C. McMaster, III in Electronic Form 4 Order electronically filed on August 13, 2024

ARGUMENT

Appellant appeals a decision of the Circuit Court dismissing Appellants appeal of a probate court order. Probate appeals are governed according to the following statutory provision:

(5) Appeals from Probate Court. When a direct appeal is authorized by S.C. Code Ann. § 62-1-308(g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

Respondent argues that Appellant did not make a timely served of the Notice of Intent to appeal to him because of a mistake in the address on the envelope that sent the service of the notice of appeal. Respondent does not argue he received the notice outside of the time required by the statute but rather he refers a numerical misstate on the address that did not affect the timely delivery of the service letter. Respondent concedes the notice of intent to appeal was timely filed.

The court cited *State v. Devore*, 416 S.C. 115 (S.C. App. 2015). Timely service of the Notice of Appeal is jurisdictional; it may not be extended by the Appellate Court, and failure to comply with procedural requirements for an appeal divests the Appellate Court of appellate jurisdiction. *State v. Devore*, 416 S.C. 115 (S.C. App. 2015). There was no issue of timely service of process. The Respondent received the service within the time required by the statute.

Similarly, the order cites *Tatnall v. Gardner*, 564 S.E.2d 377, 378 (S.C. App. 2002). The issue of subject matter jurisdiction may be raised at any time. *Tatnall v. Gardner*, 564 S.E.2d 377, 378 (S.C. App. 2002). In this case there was proper service of process.

WHEREFORE the Appellant respect request that the court reverse the final order filed by attorney for the Defendant/Respondent, Kenneth Allen Davis and require an order consistent with Electronic Form 4 Order electronically filed on August 13, 2024 respectfully reconsidering

the Denial of the Plaintiff Motion to Stay. The court should rule in the interest of fairness and justice and the in the interest giving the Plaintiff's constitutently guaranteed right to due process.

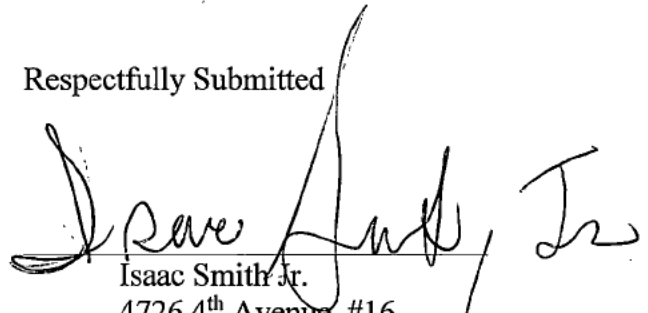
CONCLUSION

The Court erred in granting responent's motion dismissing appellant's probate court appeal because the appellant complied with all the requirements of Rule 203 (SCACR) and S.C. Code Ann. Section 62-1-308(g).

Certificate of Counsel

The undersigned hereby certifies that the Initial Briefing complies with Rule 211(b), SCACR.

Respectfully Submitted



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Columbia, South Carolina
March 4, 2025

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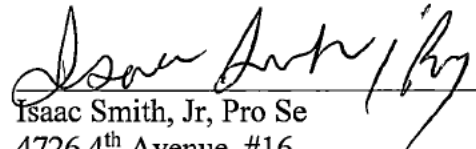
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v.

Isaac Smith, Jr.,Appellant

PROOF OF SERVICE

I, Isaac Smith, Jr., Appellant, served upon the Respondent this notice of appeal by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown below this 4th day of March, 2025.

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