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Mar 05 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2024-000271

STEPHANIE KOZAK,
(Personal Representative of the Estate of John Witkowski),
Appellant,

vs.

CHRIS CUTWAY,

Respondent.

MOTION TO RECONSIDER

Pursuant to Rules 263(b) and 240, S.C.A.C.R., the Appellant, by her counsel undersigned, moves this Court for an order to reconsider the Order of March 4, 2024. to recall the Remittitur and allow the filing of the Record on Appeal.

1. The Order of the Court filed March 4th, 2025 incorrectly recites the history of this appeal.
2. Counsel for the Appellant was in treatment for a wound in November, 2024. On November 11, 2024 he was hospitalized for this reason. On November 12, 2024 he was operated on. He remained in hospital until ca. December 16, 2024.
3. While in hospital, counsel filed a Motion to reinstate the appeal, which had been dismissed. This resulted in an Order of November 26, 2024 allowing an extension of time until January 3, 2025.
4. After ca. December 16, 2024, counsel was transferred to a rehabilitation facility. He was prevented from filing the Record on Appeal by January 3, 2025 by reason of a loss of the hearing transcript, which was later recovered.
5. An Order of Remittitur was filed January 8, 2025. From counsel's rehab facility, Appellant's Motion to Recall Remittitur and the Record on Appeal were filed on January 15, 2025. Counsel's secretary had been absent for medical reasons of her own in this period, preventing an earlier response.
6. The Order of this Court filed March 4, 2025 cites an 1893 case that would require "some

mistake or inadvertence on the part of this Court or its officer”. It is the assumption of counsel that appellant’s attorney is comprehended as an officer of this Court.

7. Counsel would argue two points to the Court:

- a) There has been no prejudice worked by the facts recited above, either to this Court or to the Respondent;
- b) Allowing for human error, counsel is at a loss to understand why the facts recited do not constitute such mistake inadvertence as would allow the relief requested in this Motion. It is argued that a denial of this relief, given the circumstances, would be unjust.

The basis of this Motion is the within-cited Rules, and the records of this appeal, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves for a reconsideration and amendment of the Order filed March 4, 2025, that the Remittitur be recalled and the filing of the Record on Appeal be allowed, on the grounds stated herein.

January 15, 2025

/s/ John Martin Foster
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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellant in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Motion to Reconsider; and
this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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January 15, 2025