

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JAN 07 2014

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas  
Sixth Circuit Court  
J. Ernest Kinard, Jr., Chief Administrative Judge

Court of Appeals

Case No. 2013-CP-12-00267

T. B. Patterson, Jr.,

Appellant,

v.

Justo P. Carmona Ortega,


Respondent.

RETURN TO MOTION TO DISMISS

I, as the pro se appellant in this matter, timely served a notice of appeal on counsel for respondent on December 12, 2013, and forwarded that notice to the Court of Appeals on December 13, 2013, where it was received on December 17, 2013; I apparently misaddressed the copy of the notice to be filed in the trial court, so that it was not received by the Chester County Clerk of Courts until December 27, 2013.

The respondent is not entitled to have this appeal dismissed, as it has been perfected within the terms of Rules 262(b) and 203(b)(1) of the SCACR. A memorandum in opposition to the motion to dismiss follows.

January 7, 2014

  
\_\_\_\_\_  
T. B. Patterson, Jr.  
Post Office Box 340  
Lancaster, South Carolina 29721-0340  
(803) 286-6999  
Attorney for Appellant (Pro Se)

MEMORANDUM OF APPELLANT IN OPPOSITION  
TO MOTION TO DISMISS

Respondent's memorandum in support of his motion to dismiss incorrectly asserted that appellant failed to serve a notice of appeal within thirty days of written notice of entry of the judgment; that claim is untrue. The reason that the notice of appeal was timely was that it was served on December 12, 2013, thirty days or less after the receipt of written notice of the entry of judgment.

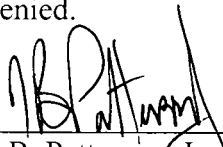
Rule 203(b)(1), SCACR provides that "A notice of appeal shall be served on all respondents within thirty (30) days after **receipt** of written notice of entry of the order or judgment." (Emphasis added). Appellant did receive the letter of counsel for respondent that is dated November 11, 2013 (exhibit F to respondent's memorandum, including a copy of the filed-stamped judgment) and is not certain whether it was received with or before the mailing from the clerk on November 13 that also included the order. The absolute earliest it could have been received was November 12, 2013 (one day after mailing); that would have been the first written notice to appellant that the order had been entered. All the other documents were correspondence; none included a filed-stamped copy of the judgment or even a statement in any form that the judgment had been entered.

Under Rule 262(b), SCACR, service by mail is complete upon mailing. Thus, it did not matter that counsel for respondent did not receive the notice of appeal until December 16, because service was completed on December 12, 2013, by the act of mailing the notice to counsel for respondent. The notice of appeal was timely and was served timely.

The argument of the respondent in support of the motion to dismiss misstated the express provisions of the applicable Rules of the SCACR to attempt to justify a dismissal.

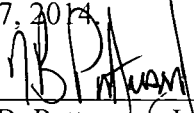
The actual provisions of the cited Rules establish the entitlement of appellant to proceed with his appeal. The motion to dismiss should be denied.

January 7, 2014

  
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CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 240(c)(1) SCACR, I hereby certify that a copy of this return was mailed to Mr. Michael S. Traynham, Post Office Box 12009, Columbia, South Carolina 29211-2009, on January 7, 2014.

  
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T. B. Patterson, Jr.