

Motion to Reinstate Appeal

Pro se

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED

FEB 18 2014

SC Court of Appeals

R. Lawton McIntosh Circuit (10th) Court Judge

Case No: 2012-207852

JERRY HOLTZCLAW, d/b/a
GREEN THUMB LANDSCAPE & IRRIGATION

Respondent

V

DENNIS WALDREP

Appellant

MOTION TO REINSTATE APPEAL

Dennis Waldrep
209 Amethyst Way
Seneca, SC 296

MOTION TO REINSTATE THE APPEAL OF APPELLANT DENNIS WALDREP

1. I, Dennis Waldrep, the Appellant in this matter submit this Motion for Reinstatement of my Appeal and certify that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

2. On Dec. 24, 2013 I received an Order/Letter from the Court indicating the Record on Appeal, as required by Rule 210 of the South Carolina Appellate Court Rules must be amended certain changes were outlined. A copy of this Order/Letter is attached hereto as Exhibit "A".

3. Additionally, Exhibit "A" set forth a ten (10) day time frame for submitting the Amended Record on Appeal.

4. Upon receipt and review of Exhibit "A", I contacted the Clerk of the Appellate court via telephone and letter to request additional time to submit the amended document. A copy of the letter sent to the Court is attached hereto as Exhibit "B".

5. The extension of time was requested because the initial notice arrived one day before the Christmas holiday and family obligations and schedule issues made it impossible to devote my full attention to the matter.

6. I began preparation of the Amended Record on Appeal as directed by the Court.

7. On January 14, 2014 I received a letter from the Appellate Court advising that an additional ten (10) days had been granted to the time for my response. This effectively made the deadline for response three additional days by the time the letter from the Court. A copy of this letter is attached hereto as Exhibit "C".

8. This compressed time frame made it extremely challenging to complete the required changes to the Amended Record on Appeal within the designated time frame. The documents exceed three hundred and sixty pages in length and the process of spending the material, copying such a lengthy document and transmitting to the Court and counsel was a lengthy process.

9. Moreover, one amendment to the documents involved removing handwritten notes that are placed on the transcript presumably by my trial counsel. This required taking the identified pages to a professional with the needed software to modify the pdf scans and remove the annotations. Ultimately, the Record on Appeal was modified as required by the notice from the Appellate Court.

10. Then, as a result of shortness of the extension time and the approaching deadline coupled with prior commitments I asked a colleague to perform the task of transmitting the Amended Record on Appeal to the Court and to Mr. Hood. This colleague advised he had documents to send out for a family matter and would send mine as well. He endeavored to perform this task on Friday, January 10th at a small shipping store in Orlando, Florida.

11. Believing that this had been accomplished, I was alarmed to receive the email from Mr. Hood advising that he had not received the Amended Record on Appeal. A copy of Mr. Hood's email is attached hereto as Exhibit "D".

12. Shortly, thereafter, I received communication from the Court that the document had not been received and dismissing my appeal. A copy of this letter is attached hereto as Exhibit "E".

13. Discussion with my colleague revealed that several document packages were transmitted on the date and it is surmised that an error was made in shipping preventing my documents from being sent to the correct recipients. This error could be considered analogous to a scrivener's error.

14. This error is essentially administrative or clerical in nature. The dismissal was not on the merits of the case but rather because of a mistake that was made in transmittal. The Amended Record on Appeal was completed in the required time and a "mailing" error prevented its receipt. A copy of the Amended Record on Appeal is partially attached as Exhibit "F". (A copy of the cover sheet is attached. However, the document exceeds 360 pages in length and for that reason the entire document has not been attached to this Motion.)

15. It is submitted that this error is minimal in nature and has no substantive or prejudicial effect or impact or prejudice on any party except the Appellant.

FACTUAL SETTING AND ARGUMENT

The Appellant respectfully requests that this matter be restored to the docket and permitted to proceed in the normal course. He acknowledges that the Amended Record on Appeal was not received by the Court in the proscribed period of time, however given the impact of the holiday period and the diminimus error in mailing by a colleague the Appellant and submits that the appeal should be reinstated and permitted to proceed. Rule 260 (set forth below) indicates that a Motion to Reinstate the appeal must be received by the Court within fifteen (15) days of the filing of the order of dismissal.

RULE 260
DISMISSAL AND REINSTATEMENT

- (a) Involuntary Dismissal and Reinstatement. 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. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).

The Appellant requested an extension of time within which to complete the required modifications of the document and transmission of this item to the Court and opposing counsel. The extension give at the Appellants was only ten (10) days. This

relatively short time frame coupled with the fact that it included two major holidays (Christmas and New Year's Eve) put additional pressure on the Appellant to perform these tasks. The task of making the required changes was performed but given time pressure and commitments the Appellant was required to rely on an outside person to accomplish the transmission of the amended document to the Court and counsel within the proscribed time. This is where there was a break down in the system. The Appellant requests that this Court reinstate his appeal. The appeal was dismissed, according to Exhibit "E" for a failure to file the requisite documents with the Court before the expiration of the deadline. Appellant submits that this failure does not result in any prejudice for the Respondent. If he ultimately prevails on the merits of this case he will be in a position to take whatever legal action is available to him and the reinstatement of the appeal will not foreclose any of those options. The entire case will have been delayed approximately one month for this "mailing" error. Additionally, the case will then be heard on its merits and if the Appellant is successful then justice will be served. No other delay or problems resulted from this error. Appellant further submits that it is more desirable to have the case heard and disposed of on its merits rather than dismissed by the Clerk for an administrative or procedural issue.

There is no prejudice, confusion or delay to the Respondent as he did suffer any lengthy delay or abridgment of his rights in this matter. The Appellant is a pro se litigant in this case and while he acknowledges that does not excuse all errors, he asked the Court to consider the compressed time from for response, the timing of the holiday season and the challenge of making some of the amendments directed by the Court. these issues caused the work to continue to the final hour when it became impossible for the Appellant to hand transmission himself and the mailing error occurred.

CONCLUSION

The Appellant has made efforts to comply with the procedural rules governing this appeal and has done despite a short time and rather challenging issues to address especially for a pro se litigant. Appellant seeks the reinstatement of his appeal and its return to the Court's docket and submits that there is good cause to set aside the dismissal and reinstate the case. When learning that this had been done incorrectly, the Appellant responded responded in a prompt manner by preparing and filing this motion.

Further, the Appellant has a meritorious position in the matter he asserted on appeal and respectfully requests that the Court have the opportunity to decide his appeal in its merits rather than suffer a dismissal for an error of a procedural nature. Finally, the reinstatement of this case will not prejudice the Respondent in any manner as set forth above.

The Appellant is respectfully asking this court to reinstate his appeal based on a procedural error of a minimal nature.

Respectfully submitted,

Dennis Waldrep 2-6-2014

DENNIS WALDREP, APPELLANT

The South Carolina Court of Appeals

Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation, Respondent,

v.

Dennis Waldrep, Appellant.

Appellate Case No. 2012-207852

ORDER

On July 22, 2013, this appeal was dismissed for the appellant's failure to file a proof of service for the record on appeal. A motion to reinstate was timely filed on August 6, 2013. On September 9, 2013, the Court reinstated the appeal because the appellant provided a corrected proof of service for the record on appeal. However, we cautioned the appellant that he must correct the deficiencies in the record on appeal as set forth in our letter dated September 13, 2013.

On October 3, 2013, the appellant filed an amended record on appeal. This attempt was also riddled with deficiencies, which were set forth in a letter from the Court dated October 14, 2013. Counsel for the respondent subsequently filed a motion to dismiss, alleging the appellant's record on appeal fails to comply with the South Carolina Rules of Appellate Procedure (SCACR) in at least nine respects. The appellant filed a return asking for an opportunity to correct the deficiencies so the appeal could move forward. The respondent filed a return, noting that in addition to the deficiencies noted by the Court, the record on appeal also failed to include matter designated for inclusion. On October 25, 2013, the appellant filed a second amended record on appeal that still fails to comply with the SCACR. The respondent filed a response to the second amended record on appeal, noting it included matter not designated by either party, omitted matter that was designated for inclusion, and failed to comply with form requirements in the SCACR.

After careful consideration, the respondent's motion to dismiss is denied. However, the appellant must file a corrected record on appeal within ten days of the date of the order. The appellant must rectify the following deficiencies in the second amended record on appeal:

- The documents in the record on appeal are not in order as contemplated by Rule 210(c), SCACR. Specifically, the record on appeal should be arranged in the following order: the title page, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate of counsel. Additionally, the transcript does not appear in the record on appeal in chronological order.
- Pages 13-17 of the record on appeal contain material that was not designated by the parties; accordingly, the Court strikes these pages from the record on appeal.
- Page 264 and pages 330-377 of the record on appeal contain material that was not designated by the parties and was not presented to the lower court; accordingly, the Court strikes these pages from the record on appeal.
- Pages 132, 133, 142, 143, 148-150, 152-153, 155, 159, 164, 170, 199, 207, 230, 234, 248, 321, 323, and 325-328 contain handwritten comments that were not presented to the lower court; accordingly, the Court orders the appellant to remove the handwritten marks from the record on appeal. If counsel for the respondent has a clean copy of these pages, counsel must provide a clean copy to the appellant for inclusion in the third amended record on appeal.
- The record on appeal does not contain the following documents designated by the respondent:
 - Trial transcript pages 55-42, 143-155, 182-188, 350-354, 429-457
 - The order and judgment dated July 19, 2011
 - The reply to the answer to the complaint
 - Plaintiff's exhibits 3, 4, 13, and 14
- The certificate of counsel does not comply with Rule 210(g), SCACR. Specifically, it should indicate that the record on appeal contains all material proposed to be included by any of the parties and not any other material.

Failure to rectify each of these deficiencies within ten days of the date of this order will result in dismissal of the appeal.

H B Wilson, J.
FOR THE COURT

Columbia, South Carolina

cc:
Dennis Waldrep
William C. Hood

FILED
12/20/13 *MH*

Exhibit B

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672
December 30, 2013

The South Carolina Court of Appeals
Post Office Box 112629
Columbia SC 29211 1015

1015 Sumter Street
Columbia SC 29201

Re: Holtzclaw, Jerry v. Waldrep, Dennis
Case # 2012-207852

Motion for Extension

Dear Ms. Allen:

I am requesting from the SC Court of Appeals an Extension of 10 days from the Date above to complete the Record on Appeal on the Case Listed. I apologize for any inconvenience this may have caused the Court but due to the delayed mail and the Holidays the additional time is needed. If there would be any questions regarding my request please do not hesitate to call me at 864-230-4020.

Respectfully submitted,


Dennis D Waldrep

cc: **William C. Hood**

The South Carolina Court of Appeals

Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation, Respondent,

v.

Dennis Waldrep, Appellant.

Appellate Case No. 2012-207852

The Honorable R. Lawton McIntosh
Oconee County
Trial Court Case No. 2008CP3700415

ORDER

The time for serving and filing the appellant's second amended record on appeal is hereby extended until January 17, 2014. No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT

BY

Janya Kitchin
CLERK

Columbia, South Carolina

FILED
1-13-14

cc: Dennis Waldrep
William C. Hood, Esquire

Exhibit D

William C. Hood
Attorney at Law
505 North McDuffie Street
Anderson, South Carolina 29621
Telephone 864-375-0530 • Fax 864-375-0640

January 24, 2014

Ms. V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Holzclaw, Jerry v. Waldrep, Dennis
Appellate Case No. 2012-207852

Dear Ms. Allen:

This is to inform you that I have not received the second amended Record on Appeal which was due January 17.

Very truly yours,

William C. Hood

WCH/
cc Dennis Waldrep

The South Carolina Court of Appeals

Jerry Holtzclaw, d/b/a Green Thumb Landscape &
Irrigation, Respondent,

v.

Dennis Waldrep, Appellant.

Appellate Case No. 2012-207852

The Honorable R. Lawton McIntosh
Oconee County
Trial Court Case No. 2008CP3700415

ORDER

Appellant has failed to serve and file the second amended record on appeal pursuant to the Court's order of January 13, 2014. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy

FILED

ARG 1-27-14

Columbia, South Carolina

cc:

William C. Hood, Esquire

Exhibit "P"

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh Circuit (10th) Court Judge

Case No: 2012-207852

JERRY HOLTZCLAW, d/b/a
GREEN THUMB LANDSCAPE &
IRRIGATION

Respondent

V

DENNIS WALDREP

Appellant

AMENDED RECORD ON APPEAL

Dennis Waldrep
209 Amethyst Way
Seneca, SC 29672
Proceeding Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-207852

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

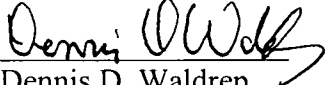
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate Appeal by depositing a copy of it in the USPS, postage prepaid, on February 6, 2014 addressed to the Respondent's Attorney of record William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621.

February 6, 2014


Dennis D. Waldrep
209 Amethyst Way
Seneca, South Carolina 29672
(864) 230-4020

cc: William C Hood

RECEIVED

FEB 18 2014

SC Court of Appeals

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

February 6, 2014

Ms. V. Claire Allen:
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

FEB 18 2014

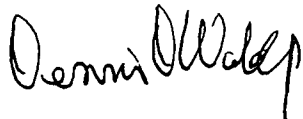
SC Court of Appeals

Re: Holtzclaw, Jerry d/b/a, v. Waldrep, Dennis
Appellate Case No. 2012-207852

Dear Ms. Allen:

Please find my Motion for Reinstatement for my Appeal which includes the Motion fo Reinstatement the exhibits and the Proof of Service.

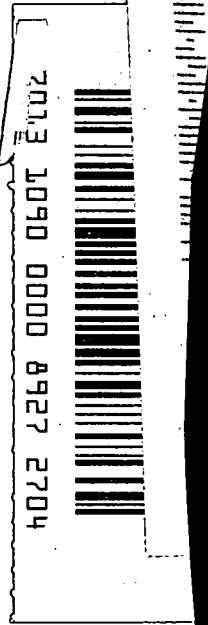
Respectfully submitted.



Dennis D Waldrep

cc: William Hood

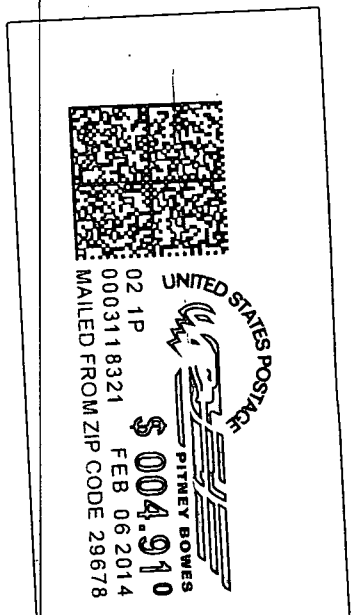
Dennis W.
209 Amethyst Way
Seneca SC 29672



SC Court of Appeals
PO Box 11629
Columbia SC 29211

ATT, Mrs. V. Claire Allen

WV
2-11



RECEIVED

FEB 18 2014

SC Court of Appeals