

Motion to Reinstate Appeal
Pro se

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

MOTION FOR RECONSIDERATION

Dennis Waldrep
209 Amethyst Way
Seneca, SC 29672

RECEIVED
APR 16 2014
SC Court of Appeals

MOTION FOR RECONSIDERATION OF ORDER DATED APRIL 2, 2014

1. I, Dennis Waldrep, the Appellant in this matter submit this Motion for Reconsideration of Order dated April 2, 2014 and certify that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

2. On February 2, 2014 I filed a Motion to Reinstate my appeal in this matter.

3. The Appeal had been dismissed by Order dated January 27, 2014 for failure to file the Record on Appeal within the proscribed time frame.

4. The Motion indicated that an administrative error had occurred and resulted in the late presentation of the Record on Appeal.

5. Subsequently, an Amended Record on Appeal was properly provided to the Court and to opposing counsel.

6. On or about April 2, 2014 I received a call from the Appellate Court and was advised that I would receive an email from the Court regarding this case.

7. Shortly thereafter, I received an email with a copy of an Order, attached hereto as Exhibit "A". the order indicated that:

a. The Motion to Reinstate filed by me had been construed as a Petition for Rehearing from the dismissal of this appeal

b. The newly named Petition for Rehearing was denied.

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

9. Accordingly, I file this Motion for Reconsideration from that Order.

FACTUAL SETTING AND ARGUMENT

The Appellant respectfully requests that this Order be reconsidered and the matter be restored to the docket and permitted to proceed in the normal course. I acknowledge that the Amended Record on Appeal was not received by the Court in the proscribed period of time, however I submit that there is good causes to reinstate the appeal and not prejudice will result to the opposing party.

I file this motion pursuant to Rule 240, specifically Rule 240 (i) given that the order of the court had the effect of dismissing my appeal.

(i) Rehearing. The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. Given the impact of the holiday period and the diminimus error in mailing by a colleague, the Appellant 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.

I request leave of Court that good cause exists for the reinstatement of my appeal in this matter. The factors in the case taken together constitute good cause for continuation of this appeal.

First, this appeal has proceeded through a long course and is nearing it's natural end through adjudication. To effect a dismissal at this stage might only cause the case to continue by additional motions or appeals in an effort for the Appellant to seek justice. Next, the underlying case is one of breach of contract and manifest error by the trial court. It would be unfair to allow

the Respondent to prevail based on this error in the Court below. Third, the reason for the initial dismissal of the appeal was a result of an administrative error. It stems from the late filing of the Record on Appeal. Clearly, this was not an error that cause prejudice to the Respondent but rather a simple error in filing a document later than the day indicated by the Court. The Motion to Reinstate was filed shortly after this error was realized and the Record on Appeal has been presented to the Court and opposing Counsel.

Additionally, to deny the Appellant the opportunity to have a full adjudication of this matter would result in extreme prejudice to the Appellant by denying me the chance to have the error of the trial court remedied by this Appellate Court.

For these reasons, I submit that good cause exists to allow my appeal to move forward and be heard to a final hearing by the Appellate Court.

CONCLUSION

The Appellant has made efforts to comply with the procedural rules governing this appeal and requests that the Court reconsider its dismissal of the Appeal and for good cause shown to allow my Appeal to move forward. Appellant seeks the reinstatement of this 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.

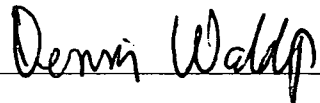
Further, the Appellant has a meritorious position in the matter he asserted on appeal and respectfully requests that the Court have the opportunity to decide his appeal in its merits rather than suffer a dismissal for an error of a procedural nature. Finally,

Motion to Reinstate Appeal
Pro se

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, APPELLANT

Dated:

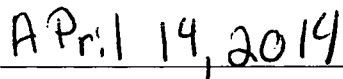


Exhibit "A"

The South Carolina Court of Appeals

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

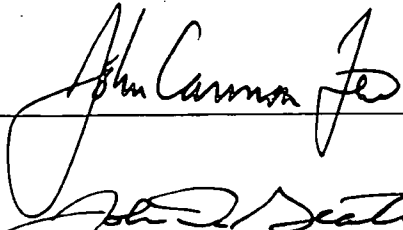
v.

Dennis Waldrep, Appellant.


Appellate Case No. 2012-207852

ORDER

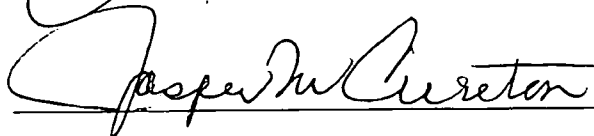
Appellant has filed a motion to reinstate this appeal, which this Court construes as a petition for rehearing from the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



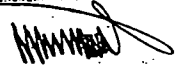
J.



A.J.

Columbia, South Carolina

cc:
Dennis Waldrep
William C. Hood, Esquire

FILED
4/2/14


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.

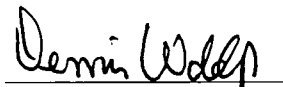
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion for Reconsideration by depositing a copy of it in the USPS, postage prepaid, on April 14, 2014 addressed to the Respondent's Attorney of record William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621.

March 14, 2014



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

cc: William C Hood

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

April 14, 2014

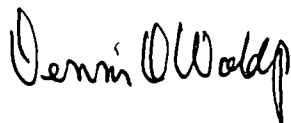
Ms. V. Claire Allen:
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201-3726

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

Dear Ms. Allen:

Please find the Motion for Reconsideration for my Appeal along with a Proof of Service to Mr. William C. Hood.

Respectfully Submitted,



Dennis D Waldrep

RECEIVED
APR 16 2014
SC Court of Appeals

cc: William Hood