

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

R. Lawton McIntosh Circuit (10th) Court Judge

RECEIVED

JUN 16 2014

S.C. SUPREME COURT

Case No: 2012-207852

Dennis D. WaldrepAppellant/Petitioner

v.

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

PETITION FOR WRIT OF CERTIORARI

Court of Common Pleas

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

original

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QUESTIONS PRESENTED

1. Did the Appellate Court err in failing to reinstate Appellant's appeal?
2. Should Appellant's appeal have been reinstated based on the reasons presented?

STATEMENT OF THE CASE

This case is an appeal from a trial that was held in November of 2012 and resulted in a verdict in favor of the Plaintiff. The underlying action was instituted by the Plaintiff claiming that Waldrep owed money for work performed at a property owned by Waldrep. The action was essentially a breach of contract matter wherein the Plaintiff claimed that Waldrep had failed to pay in full for the work that had been performed as his property. A trial was held and a verdict was entered in favor of the Plaintiff. Waldrep has filed an appeal to the Appellate Court based on several factors. First, although Waldrep was represented by counsel during the course of the trial, counsel was ineffective in its representation of Waldrep and that ineptitude of counsel was to such a degree that it warranted a reversal of the verdict and a new trial.

Next, Appellant appealed from the trial court verdict citing errors made during the course of the trial rising to the level of reversible error of the trial court. Specifically, the "sua sponte" motion for reconsideration was improperly denied and the court granted improper inferences in favor of plaintiff that were not supported by or properly introduced into evidence. Accordingly, Waldrep should have been entitled to a new trial.

In April, 2014 Waldrep filed a Motion for Reconsideration of Order dated April 2, 2014. Procedurally, on February 2, 2014 Appellant I filed a Motion to Reinstate his appeal. The Appeal had been dismissed by Order dated January 27, 2014 for failure to file the Record on Appeal within the proscribed time frame. The Motion detailed an administrative error that resulted in late presentation of the Record on Appeal. Shortly thereafter, an Amended Record on Appeal was properly provided to the Court and to opposing counsel. The April 2 Order indicated the Motion to Reinstate filed by me had been construed as a Petition for Rehearing from the dismissal of this

appeal and the newly named Petition for Rehearing was denied. Accordingly, Waldrep filed a Motion for Reconsideration from that Order. On June 2, 2014 Waldrep received an letter from the Court of Appeals with another copy of the April 2, 2014. A copy of the letter and Order of the Court are attached hereto as "Exhibit A". It may be worth of note that the Order of the Appellate Court indicates that the "rehearing" is denied. This is somewhat confusing to the Petitioner as the motion filed was a "motion for reinstatement". The Petitioner is not aware of any hearing that was held or made known to the Petitioner.

ARGUMENT

- I. The Appellate Court erred in failing to grant Appellants Motion to Reinstate his Appeal.

Petitioner submits this Writ of Certiorari pursuant to Rule 242 (b) 1 based on novel questions of law. Specifically, the Petitioner's appeal in the court below was dismissed for failure to file the Record on Appeal within the proscribed time frame. The facts surround this incident illustrate the novel nature of the matter. The Petitioner had prepared a Record on Appeal and due to a conflict asked a college to handle to mailing to the documents to opposing counsel and the Court. Unfortunately, this did not happen with the time allotted. Shortly, thereafter, the Record on Appeal was presented to the Court and sent to opposing counsel. In the meantime the appellate court dismissed the appeal for this failure to file. The Petitioner was pro se in this matter and with the filing of the Record on Appeal this case had

reached an advanced stage nearing disposition. The Petitioner asserts that this dismissal based on a minor delay in submitting the Record on Appeal was an error by the lower Court. The dismissal is against the interests of justice and is strictly procedural in nature. The dismissal and failure to reconsider the dismissal based on Petitioner's motion (attached hereto as "Exhibit B") deprived the Petitioner of the opportunity to have this case disposed on the merits rather than for a minor procedural error. The Supreme Court has the power and authority for correction of errors. Petitioner submits that this dismissal and failure to reinstate is an "error" within the contemplation of South Carolina law.

II. Appellants Motion to Reinstate was based on de minimus administrative error and should have been reinstated

Petitioner submits that the error in providing the Record on Appeal to the court within the directed time is a "de minimus" error and should not result in the dismissal of the appeal. As set forth above, the dismissal of Petitioner's appeal was based on a failure to present the Record on Appeal by the stated deadline. Unforeseen circumstances caused this delay and it was corrected within a very short time frame. The delay caused no prejudice to the Respondent and was strictly procedural in nature.

It is acknowledged that the Amended Record on Appeal was not received by the Court in the proscribed period of time, however there was good cause to reinstate the appeal and no prejudice will result to the opposing party. The motion was filed 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 de minimus 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.

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 was nearing its natural end through adjudication. The dismissal has resulted in the case continuing by this appeal in an effort for the Petitioner 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 that was corrected in short order. The Motion to Reinstate was filed shortly after this error was realized and the Record on Appeal was 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.

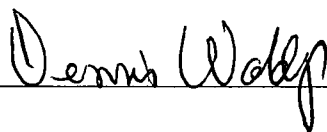
TABLE OF AUTHORITIES

1. SC Rule 242 (b) 1
2. Elam v. South Carolina Dep't of Transp., S.C. Ct. App. Order dated July 25, 2002.
3. Fairchild v. South Carolina Department of Transportation," (385 S.C. 344, 683 S.E.2d 818 (Ct. App. 2009)
4. ROWE v. CITY OF WEST COLUMBIA, 334 S.C. 400 (1999), 513 S.E.2d 379, (1999).
5. Code of Laws South Carolina 1942.

CONCLUSION

The Petitioner respectfully requests for the reasons set forth above that this Court grant the petition for a writ of certiorari. I certify that a motion for reinstatement was made and finally ruled on by the Court of Appeals as indicated by Exhibit A attached hereto and incorporated by reference.

Respectfully submitted,



DENNIS WALDREP, APPELLANT

Dated: June 11, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-207852

Jerry Holtzclaw, dba
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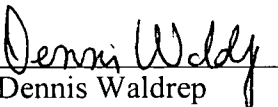
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the PETITION FOR WRIT OF CERTIORARI by depositing a copy of it in the USPS, postage prepaid, on June 11, 2014 addressed to the Respondent's Attorney of record William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621.

June 11, 2014


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

cc: William C Hood
cc: SC Court of Appeals

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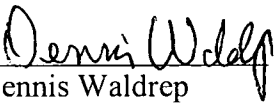
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I certify that I have served the PETITION FOR WRIT OF CERTIORARI by depositing a copy of it in the USPS, postage prepaid, on June 11, 2014. Addressed to the South Carolina Court of Appeals, Post Office Box 11629 Columbia SC 29211, Attention V. Claire Allen .

June 11, 2014


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209 Amethyst Way
Seneca, South Carolina 29672
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