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JUN 05 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

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Judge Frank Addy, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2013-002236

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African
Methodist Episcopal (A.M.E.) Church.....Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison,
..... Respondents- Appellants.

**APPELLANT-RESPONDENT'S REPLY IN OPPOSITION TO RESPONDENTS'-
APPELLANTS' MOTION FOR LEAVE TO FILE INITIAL APPELLATE BRIEF OF
RESPONDENTS-APPELLANTS OUT OF TIME**

Comes Now, Randall Rosel Williams counsel for the Appellant-Respondent, Samuel L.
McPherson, in opposition to Respondents-Appellants' Henry Banks, Mary Robinson, Delois
Phillips, Naomi Mattison, and Frank Mattison's Motion For Leave To File Initial Brief Of
Respondents-Appellants Out of Time and Designation of Matters To Be Included In The Record
On Appeal for the following reasons:

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1. Appellant-Respondent served the Respondents-Appellants counsel of record with the Notice of Appeal and filed the Notice of Appeal with the South Carolina Court of Appeals on October 15, 2013.

2. Appellant-Respondent believes that Respondents-Appellants served their Notice of Appeal on October 16, 2013. However, counsel is not sure as the Notice Of Appeal was served without certificate of counsel or certificate of service.

3. By Correspondence dated October 30, 2013, the Deputy Clerk of the South Carolina Court of Appeals informed the parties that the Appeals were consolidated and anticipated one (1) Record On Appeal. The parties were further advised that Samuel L. McPherson will be known as Appellant-Respondent and Henry Banks et. al will be known as Respondents-Appellants.

4. Also, by a second correspondence dated October 30, 2013, the Deputy Clerk of the South Carolina Court Of Appeals advised counsel for Appellant-Respondent that Samuel L. McPherson will serve as Appellant-Respondent and Henry Banks, et. al will serve as Respondents-Appellants. Respondent-Appellants were notified of the second correspondence dated October 30, 2013.

5. Appellant-Respondent requested an extension of time to file his initial brief in order to obtain the transcripts of the Summary Judgment hearing and the Reconsideration hearing pursuant to correspondence and motion dated January 30, 2014.

6. Appellant-Respondent served Respondents-Appellants with an Initial Brief, certificate of counsel and certificate of service and filed the Initial Brief and Designation of Matters To Be Included In The Record On Appeal along with an original certificate of counsel and certificate of service with the South Carolina Court of Appeals on April 22, 2014.

7. Respondents-Appellants served Appellant-Respondent on May 16, 2014 with a document titled Respondents-Appellants Response Brief and Initial Cross-Appeal Brief without a certificate of counsel or certificate of service. Further, Respondents-Appellants waited until May 20, 2014 to file their Initial Brief with the South Carolina Court Of Appeals without sending a copy of the certificate of counsel or certificate of service to Appellant-Respondent.

8. Appellant-Respondent was under the impression that Respondents-Appellants' Initial Brief and Designation of Matters To Be Included in the Record on Appeal was filed on May 16, 2014. As a result, Appellant-Respondent filed his Reply To Respondents-Appellants' Response Brief and Initial Cross-Appeal Brief within 10 days of his receipt of the Response Brief and Initial Cross-Appeal Brief of May 16, 2014. He should have been allowed to file his Reply within 10 days after the filing and service of Respondent-Appellants filing with the South Carolina Court of Appeals on May 20, 2014. Appellant-Respondent was prejudiced thereby.

9. Appellant-Respondent also has complied with the requirements set by the Clerk of Court of the South Carolina Court of Appeals and the rules of procedure for appeals to the South Carolina Court of Appeals. It is bad faith to serve Appellant-Respondent one day with an initial brief and then wait four days to file their initial brief and designation of matters with the Appeal's Court. Respondents-Appellants prevented Appellant-Respondent from utilizing his full ten days to respond.

10. By correspondence dated May 21, 2014 the Deputy Clerk of the South Carolina Court of Appeals advised Respondents-Appellants that he did not file a certificate of counsel as to their Designation of Matter and gave Respondents-Appellants 10 days from the date of the letter to correct the problem.

11. Pursuant to correspondence dated May 22, 2014 the South Carolina Court of Appeals informed Respondents-Appellants that the caption/title did not comply with Rule 267 (a). Respondents-Appellants were advised that the caption for their final briefs should be titled Respondent's Final Brief of Respondents-Appellants and Final Brief of Respondents-Appellants.

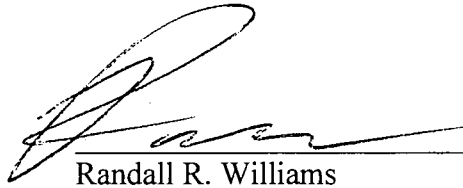
12. Respondents-Appellants now attempt to file their Motion for Leave To File Their Initial Brief and Designation of Matters To Be Included In The Record On Appeal without a memorandum or certificate of counsel.

13. Respondents-Appellants blame their late filing on the clerk of the South Carolina Court of Appeals. Respondents-Appellants assert that the October 30, 2014 correspondence from the Clerk of the Court's office caused them to believe that the Appeals were consolidated and "reinforced by the knowledge that there would be only one Record On Appeal."

14. Additionally Respondents-Appellants attempts to blame Rule 206 SCACR as the culprit in this matter. They claim that the Rule does not specifically address the timing of brief filings in the case of cross-appeals.

15. Respondents-Appellants gross non-compliance and lack of dilligence should result in the dismissal of their appeal of the trial judge's ruling that the A.M.E. Church, Inc. has an equitable interest in the 13.10 acre tract.

The Appellant-Respondent having Replied to Respondents-Appellants' Motion For Leave respectfully asks this court to deny their Motion For Leave To File An Initial Appellate Brief Of Respondents-Appellants Out Of Time.



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Greenwood, South Carolina,
June 2, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

Judge Frank Addy, Jr., Circuit Court Judge

Case No. 2013-002236

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African
Methodist Episcopal (A.M.E.) Church.....Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison,.....
..... Respondents- Appellants.

**APPELLANT-RESPONDENT'S MEMORANDUM IN OPPOSITION TO RESPONDENTS'-
APPELLANTS' MOTION FOR LEAVE TO FILE INITIAL APPELLATE BRIEF OF
RESPONDENTS-APPELLANTS OUT OF TIME**

The Respondents-Appellants' Motion For Leave To File Initial Appellate Brief of
Respondents' -Appellants Out of Time should be denied. The Respondents-Appellants failure to
file their initial brief and designation of matters to be included in the record on appeal on April 22,
2014 is evidence of their lack of due diligence and adherence to the rules of appellate procedure.

The Respondents-Appellants' failed to show due diligence. In *Keys v. Corlton* 221 N. Vo.
699 (S.D. 1928) an appeal was taken from part of a judgment. The Notice of Appeal was timely
filed although there was no extension of time granted for filing briefs. Appellant therein did not

file an initial brief. The motion to be relieved of the default was based on the proposition that two attorneys were involved in the appeal and through misunderstanding and inadvertence justifiably assumed that the other would apply for an extension of time. The attorneys attempted to file a stipulation to cure the default, but it was not accepted by the clerk of the appeals court. Appellants were advised by the clerk that the matter required the permission of the court and thereafter took no action until notified by the court that the matter was deemed abandoned. The South Dakota court held that the utter and entirely unexplained lack of diligence for a period of 60 days thereafter must bar the Appellants from the relief sought.... *Keys* at 700.

Similarly, the Respondents-Appellants herein after receiving correspondence from the Clerk of the South Carolina Court of Appeals dated October 30, 2013 intentionally did not file their initial brief. They waited 28 days after the filing date to file their initial brief on May 20, 2014. Their failure to file the initial brief and designation of matters is evidence of a lack of diligence in filing their initial briefs and accordingly their motion should be denied.

Also, in *Procter v. Ranger Insurance Co.* 817 A. 2d 805 (200) the Supreme Court of Delaware ruled as did the court in *Keys*. In *Procter v. Ranger Insurance Co.* the moving party was granted two extensions of sixty days each and one extension of 35 days. Although the moving party was subsequently granted 3 additional motions to stay, the court finally advised him to file his initial brief. The moving party placed the blame for his failure to file his initial brief on the court and the law librarian. The court held "this court will not countenance *Procter's* attempt to blame others for his repeated failure to file the opening brief...*Procter* filed the appeal in this court. It is his duty to diligently prosecute the appeal." Id at 807 In this scenario, Respondents-Appellants as did the moving party in *Procter* blame their failure to file the initial brief and

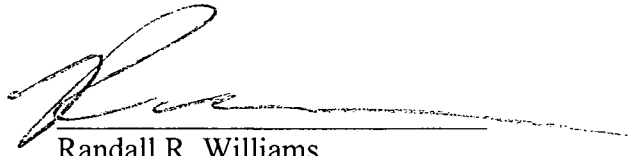
designation of matters on others such as the Clerk of the Court of Appeals or the rules themselves instead of acknowledging their lack of diligence. They write “after the correspondence from the clerk of the courts office it was Respondent-Appellant’s belief that the Cross-appeal was consolidated. This was reinforced by knowledge that there would be only one Record of Appeal. Additionally, Rule 206 SCAR which discusses cases involving multiple notices of appeal does not specifically address the timing of brief filing in the case of cross-appeals.”

Further, Respondents-Appellants state that they filed an initial brief with the South Carolina Court Of Appeals on May 20, 2014, but failed to mention that the initial brief was served on Appellant-Respondent without certificate of counsel or certificate of service on May 16, 2014. This caused Appellant-Respondent to serve his Initial Reply ten days from May 16, 2014 as counsel was not aware that Respondent-Appellant initial brief had not and was not going to be filed with the Court of Appeals until May 20, 2014. Appellant-Respondents’ time to reply to Respondent-Appellants’ initial brief should have begun to run from the date of filing with the South Carolina Court Of Appeals, which was May 20, 2014 until May 30, 2014 . Appellant-Respondent was prejudiced thereby.

Also, Respondent-Appellant has not followed the appellate rules. Not only was the initial brief filed without a certificate of counsel or certificate of service, but the case was captioned improperly. The Motion For Leave To File Initial Appellate Brief of Respondents-Appellants Out of Time as filed improperly as counsel did not file a certificate of service or a memorandum as per the appellate rule.

CONCLUSION

The Respondent-Appellants have not been diligent in the pursuit of their appeal of the trial judge's order. They have also flagrantly disregarded the rules of appellate procedure. Accordingly, the Respondent-Appellants motion to file his initial brief out of time should be denied.



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June 2, 2014



The South Carolina Court of Appeals

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October 30, 2013

Mr. Randall Rosel Williams
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Mr. Marvin R. Watson
PO Drawer 799
Greenwood SC 29648

Re: Samuel L. McPherson v. Henry Banks
Appellate Case No. 2013-002236

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. The times for perfecting this appeal will run from the service of the last notice of appeal.

In light of this consolidation, the title of this case is amended as follows:

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church, Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank
Mattison, Respondents-Appellants.

Very truly yours,

V. Claire Allen, Deputy

CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 30, 2013

Mr. Randall Rosel Williams
110 Riley Avenue
Post Office 3461
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Re: Samuel L. McPherson v. Henry Banks
Appellate Case No. 2013-002236

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church, Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison, Respondents-Appellants.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Marvin R. Watson