

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

APPELLATE CASE NO. 2014-000091

John R. Rakowsky, Respondent
Adrian Falgione, Respondent

v.

James Spencer, Appellant

MOTION TO REINSTATE THE APPEAL
AS COURT FAILED TO TAKE INTO ACCOUNT
RULE 208 (a) (1) WHICH STATES
THE APPELLANT'S INITIAL BRIEF IS NOT DUE
UNTIL THRITY DAYS AFTER
RECEIPT OF THE TRANSCRIPT

RECEIVED

AUG 07 2014

SC Court of Appeals

INTRODUCTION

NOW COMES THE APPELLANT, on a *Pro Se* basis and moves the Court to reinstate the Appeal as the *Pro Se* Appellant had filed the proper paperwork with the Court documenting that Appellant had both ordered and also paid for the transcript of the hearing and was, therefore, in compliance with Rule 208 section (a) (1) For Initial Briefs, which states the Appellant's Initial Brief is not due until thirty days after the receipt of the transcript.

BACKGROUND

On May 21, 2014, the Court both turned down Appellant's Motion for *In Forma Pauperis* standing and Ordered the Appellant to pay the filing fees within fifteen (15) days from the date of the Order. The filing fees were paid within the fifteen days.

On June 14, 2014, a transcript was ordered from the Court Reporter by the Appellant and the document ordering the transcript was put on the Court Record on June 18, 2014.

On July 14, 2014, the Clerk of Court wrote a cover letter to the Appellant. The letter misstated the Appellant's Initial Brief was overdue when in fact it was not due until thirty days after receipt of the transcript under Judicial Rule 208 section (a) (1). The Clerk of Court apparently missed the fact the Appellant Ordered the transcript several weeks earlier from the Court Reporter as documented on the Court Record.

Upon Appellant's receipt of this cover letter, on or about July 17, 2014, Appellant immediately contacted the Clerk of Court's Office and spoke to Assistant Clerk of Court, Ms. Elizabeth Carter, who is the case manager of the case captioned above. Ms. Carter advised Appellant to submit documentation to the Court at least every thirty days so the Court would be kept advised of the Appellants progress in regards to obtaining the transcript and further advised that the letter from the Court dated July 14, 2014, was simply a procedural practice to keep the

case moving forward.

Ms. Carter advised Appellant, after cautioning she was not providing legal advice, that the Court would not be expecting an initial brief until after Appellant's receipt of the transcript, but for Appellant to check the law himself. Appellant reviewed Judicial Rule 208 section (a) (1) For Initial Briefs, which states the Appellant's Initial Brief in the Court of Appeals is not due until thirty days after the Appellant's receipt of the transcript he had notified the court he ordered.

Appellant, in an act of precaution, immediately mailed a copy of the email confirmation from the Court Reporter stating she had received payment for the Transcript on or about July 3, 2014, and she was proceeding to produce the Transcript. The Appellant mailed this information to the Clerk of Court on July 20, 2014 which was posted on the Court record on July 23, 2014.

Despite Appellant's redundant documentation regarding the ordering of the transcript being received and posted on the Court Record twice by the Clerk of Court, on July 31, 2014, The Clerk of Court issued a Clerk's order dismissing the case for Appellant's failure to file an initial brief.

DISCUSSION

The day the Appellant received the copy of Clerk's Order of dismissal, August 5, 2014, Appellant called the Clerk of Court's Office and spoke again to Ms. Elizabeth Carter. Ms. Carter advised Appellant there was nothing the Clerk's office could do at this point, even though this Order appeared to be due to an oversight by the Clerk of Court of Appellant's filings regarding the ordering of the transcript from the Court Reporter with the Clerk of Court's office. The Appellant was advised to look up the Rules and file a motion to appeal the Clerk of Court's basis for dismissing the above captioned case and request a reinstatement of the appeal. Appellant was quite upset because of the situation and the \$25.00 cost for the motion and petition to reinstate was

going to have to come out of money for life sustaining medications which the indigent and 100% medically disabled Appellant requires.

It was clear on the Court record that Appellant had notified the Court that Appellant had both ordered and paid for a Transcript from the Court Reporter which means the indigent Appellant was having to pay for an oversight with the loss of needed medicine to pursue his legal rights.

Given the circumstances regarding the fact that the Appellant is on a *Pro Se* basis and has virtually made every pertinent filing in duplicate while staying in continual contact with his case manager, the Court should liberally construe this *Pro Se* Appellant's Motion for Reinstatement of the above captioned appeal as in proper form under South Carolina Judicial Rule 221.

APPLICABLE LAW

Under South Carolina Judicial Rule 221, petitions for a reinstatement have to be received by the Appellate Court no later than fifteen (15) after the Clerk of Court's dismissal of the appeal which occurred in this case on July 31, 2014. Further Rule 221 requires, "A petition for rehearing shall be in accordance with Rule 240 and shall state with particularity the points supposed to have been overlooked or misapprehended by the court."

Therefore, this petition is both timely filed within the fifteen day time limit and in accordance with Rule 240. Furthermore, the Appellant states the following points appear to have been overlooked or misapprehended by the Clerk of Court:

- The indigent Appellant paid the filing fees within fifteen days of the May 21, 2014 Order turning down his motion for *In Forma Pauperis* standing. (See **Attached hereto Exhibit "A"**).
- On June 14, 2014, the Court was notified that a transcript was ordered by the Appellant

from the Court Reporter which the Clerk of Court posted on the Court Record on June 18, 2014. (See Attached hereto Exhibit "B").

- On July 14, 2014, the Clerk of Court wrote a cover letter to the Appellant. The letter misstated the Appellant's Initial Brief was overdue when in fact it was not due until thirty days after receipt of the transcript under Judicial Rule 208 (a) (1). The Clerk of Court apparently missed the fact the Appellant Ordered the transcript several weeks earlier from the Court Reporter as documented on the Court Record. (See Attached hereto Exhibit "C").
- Upon Appellant's receipt of this cover letter, on or about July 17, 2014, Appellant immediately contacted the Clerk of Court's Office and spoke to Assistant Clerk of Court Ms. Elizabeth Carter who is the case manager of the case captioned above.
- Ms. Carter advised Appellant to submit documentation to the Court at least every thirty days so the Court would be kept advised of the Appellants progress in regards to obtaining the transcript and was further advised that the cover letter from the Court dated July 14, 2014, was a procedural practice to keep the case moving forward.
- Appellant, in an act of precaution, mailed a copy of the email confirmation from the Court Reporter stating she had received payment for the Transcript on or about July 3, 2014, and was proceeding to produce the Transcript. The Appellant mailed this information to the Clerk of Court on July 20, 2014 which was posted on the Court record by the Clerk of Court on July 23, 2014. (See Attached hereto Exhibit "D").
- Despite Appellant's redundant documentation regarding the ordering of the transcript being received and posted on the Court Record by the Clerk of Court, on July 31, 2014,

The Clerk of Court issued a Clerk's order dismissing the case for Appellant's failure to file an initial brief. (See Attached hereto Exhibit "E").

The Appellant sets forth the foregoing as a true and accurate chronological chain of events which clearly shows the *Pro Se* Appellant followed the Rules and the law and somehow, the due date of the Informal Brief was misconstrued by the Clerk of Court as she failed to account the Appellant ordering the transcript when she issued the July 31, 2014 Order dismissing the appeal.

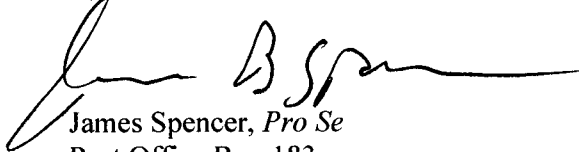
All fees have been paid to the Court and the Clerk was notified, as verified by the Court Record, that the transcript of the hearing is pending receipt by Appellant which establishes a due date for the Appellant's Initial Brief thirty (30) days after receipt of the Transcript under Rule 208 section (a) (1).

CONCLUSION

THEREFORE, the *Pro Se* Appellant humbly moves for leave of the Appellate Court to reinstate the Appeal forthwith for good cause under Judicial Rule 260 and/or other applicable Rules.

Respectfully submitted this 7th day of August, 2014,

By:

A handwritten signature in black ink, appearing to read 'James Spencer', written over a horizontal line.

James Spencer, *Pro Se*
Post Office Box 183
Columbia, South Carolina 29212
Appellant

The South Carolina Court of Appeals

James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc, Plaintiffs,

Of whom James Spencer is the Appellant,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants,

Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

Appellate Case No. 2014-000091

ORDER

On March 17, 2014, this Court dismissed this appeal and declined to act on Appellant's previously filed motion to proceed *in forma pauperis*. Subsequently, Appellant filed what this Court construes as a motion to reinstate this appeal. After careful consideration, the motion to reinstate this appeal is granted. However, Appellant's motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.


FOR THE COURT

Columbia, South Carolina

FILED

May 21, 2014

Exhibit "B"

**James B. Spencer
7001 Saint Andrews Road
Suite 183
Columbia, South Carolina, 29212
803-414-0889**

June 14, 2014

Ms. Mary-Ann Nevers
Post Office Box 90202
Columbia, SC 29290

RECEIVED

JUN 18 2014

SC Court of Appeals

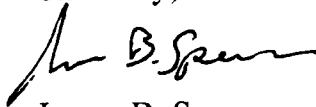
Re: **Case No. 2012-CP-32-3428**
James Spencer, et al. v. John R. Rakowsky, Adrian L. Falgione and the Law
Offices of Adrian Falgione, LLC

Dear Ms. Nevers:

Please let me the cost for the transcript of the hearing on the above captioned case held on June, 5, 2013, before the Honorable Frank R. Addy, Jr., Circuit Court Judge, in Laurens County. You can mail me the cost to the above address or if it is more convient call me at the above telephone number..

I will immediatley send payment to you for the transcrpt, I look forward to hearing back from you at your earliest connvenience.

Sincerely,



James B. Spencer

Cc:
South Carolina Court Administrator
Clerk of Court, South Carolina Appellate Court
Amanda Dudgeon
Benjamin Bruner



Exhibit "C"

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 14, 2014

James Spencer
7001 Saint Andrews Road
Suite 183
Columbia SC 29212

Ms. Amanda Kurzen Dudgeon, Esquire
40 Calhoun St., Ste. 400
Charleston SC 29401

Re: James Spencer v. John Rakowsky (3)
Appellate Case No. 2014-000091

Dear Mr. Spencer and Counsel:

Enclosed please find a copy of the Court's order in the above matter on appeal.

Our records reflect appellant's initial brief and designation of matter should have been filed with the Court. Within ten days of the date of this letter, the appellant must serve and file the appellant's initial brief and designation of matter along with a motion requesting permission to file the document out-of-time. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Exhibit "D"

**James B. Spencer
7001 St. Andrews Rd.
Suite 183
Columbia, South Carolina, 29212
803-414-0889**

RECEIVED

JUL 23 2014

SC Court of Appeals

July 20, 2014

Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **Appellate Case No: 2014-000091**
James Spencer, Appellant,

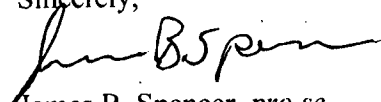
v.

John R. Rakowsky, Adrian L. Falgione, and the Law Offices of Adrian
Falgione, LLC, Respondents

Dear Ms. Elizabeth Carter:

Per our conversation, attached please find confirmation I have both ordered and have had paid for the court transcript necessary for the pending appeal captioned above.

Sincerely,


James B. Spencer, *pro se*

CC:
Court Administrator
Amanda Dudgeon
Benjamin Bruner

Attachment

James B. Spencer

Subject:

Spencer, et al. v. Rakowsky, et al., 2012-CP-32-3428

-----Original Message-----

From: Nevers, Maryann S. [<mailto:mnevers@sccourts.org>]

Sent: Monday, July 14, 2014 3:43 PM

To: JamesBSpencer@sc.rr.com

Subject: Spencer, et al. v. Rakowsky, et al., 2012-CP-32-3428

~~Mr. Spencer, please be advised that I received an advance deposit on your behalf on July 3, 2014, in regards to the above-referenced matter. Pursuant to Rule 607 of the South Carolina Rules of Appellate Procedure, the transcript will be completed within 60 days of the date of receipt of the advance payment. By my calculations you may expect to receive the transcript on or before September 1.~~

THANKS

Maryann S. Nevers, CVR-M-CM

Certified Verbatim Reporter -- Master, Certificate of Merit Official Court Reporter Eighth
Judicial Circuit - At Large Post Office Box 90202 Columbia, SC 29290

mnevers@sccourts.org<<mailto:mnevers@sccourts.org>>

The South Carolina Court of Appeals

James Spencer, individually and on behalf of the Estate
of Doris Holt and on behalf of Southern Holdings, Inc,
Plaintiffs,

Of whom James Spencer is the Appellant,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law
Offices of Adrian Falgione, LLC, Defendants,

Of whom John R. Rakowsky and Adrian L. Falgione are
the Respondents.

Appellate Case No. 2014-000091

The Honorable Frank R. Addy, Jr.
Lexington County
Trial Court Case No. 2012CP3203428

ORDER

Appellant has failed to serve and file the appellant's initial brief and designation of matter and failed to serve and file a motion requesting permission to file the document out of time, as requested in the Court's letter of July 14, 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
CLERK

FILED

July 31, 2014

CERTIFICATE OF SERVICE

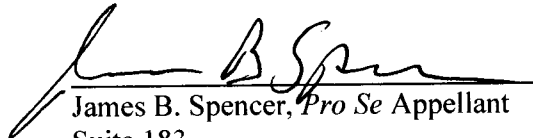
The undersigned hereby certifies that on August 7, 2014, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail.

Documents served: MOTION TO REINSTATE THE APPEAL
AS COURT FAILED TO TAKE INTO ACCOUNT RULE 208 (a) (1) WHICH
STATES THE APPELLANT'S INITIAL BRIEF IS NOT DUE UNTIL THRITY
DAYS AFTER RECEIPT OF THE TRANSCRIPT

Parties Served:

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, South Carolina 29260-1110


James B. Spencer, *Pro Se* Appellant
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

RECEIVED

AUG 07 2014

SC Court of Appeals