

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED
OCT 17 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 RECALL REMITTITUR

Dennis Waldrep
209 Amethyst Way
Seneca, SC 296

MOTION TO RECALL REMITTITUR

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 April 2, 2014 I received an Order from the Court indicating that my appeal filed in this matter had been dismissed and my Motion to Reinstate had been denied. Order attached as Exhibit "A"

3. Within the prescribed fifteen days on April 14, 2014 I filed a Motion for Reconsideration of that Order. A copy of that motion is attached hereto as Exhibit "B"

4. Subsequently, I received a letter from the Appellate Court dated May 30, 2014 indicated that the matter had been dismissed and the case had been remitted to the trial court. A copy of the Order in Exhibit "A" was attached to the letter. A copy of the letter dated May 30, 2014 is attached hereto as Exhibit "C".

5. Appellant submits that this remittitur to the trial court was improper because the Motion filed on April 14, 2014 (Exhibit "B" attached hereto) was still pending. The Motion was filed and received by the Court and opposing counsel. The motion was not returned for improper filing or otherwise disposed of by any Order of the Court prior to receiving the letter May 30, 2014. Additionally, the letter dated May 30, 2014 did not indicate a disposition of the Motion.

6 The Motion was not returned to the Appellant nor was any notice or communication received that the motion had been improperly filed

7. Believing I was taking the proper procedural course, Appellant attempted to file an appeal with the Supreme Court of the State of South Carolina

8. On June 19, 2014 Appellant received an Order from the Supreme Court for the State of South Carolina indicating that the appeal was not filed in a timely manner and therefore improper. A copy of this Order is attached hereto as Exhibit "D"

9 Appellant wrote a letter to the Clerk of the Appellate Court on June 25, 2014 to inquire as to the disposition of the motion that was pending when the remittitur as done. A copy of that letter is attached hereto as Exhibit "E"

10 A letter dated July 18, 2014 was received by Appellant from the Clerk of the Appellate Court but did not specifically address the disposition of the motion and did not include any Order either denying granting or dismissing the motion. A copy of this communication is attached hereto as Exhibit "F"

11 At that time the Appellant again wrote to the Clerk of the Appellate Court in an effort to ascertain the circumstances surrounding the disposition of that motion. A copy of that letter is attached hereto as Exhibit "G".

12 As of the date of filing this motion, the Appellant has not received any communication from the Clerk of the Appellate Court in response to this letter.

FACTUAL SETTING AND ARGUMENT

The Appellant respectfully requests that this matter be restored to the docket and permitted to proceed in the normal course. Appellant submits that a Motion was filed on April 14, 2014 in this case that was never addressed by the Appellate Court. Accordingly, it was technically pending when the remittitur was entered and the case returned to the trial court. I am Pro Se in this matter and filed the motion myself and submitted the correct number of copies and served a copy on Mr. Hood the counsel for the Appellee.

Appellant filed the Motion under Rule 240 and relies on several sections of that text. Specifically Section H indicates “**(h) Hearing. Unless otherwise ordered by the court, motions or petitions shall be decided without oral argument.**” There was no order or decision on the motion that was filed by the Appellant. It was not returned as filed improperly nor was any other procedural or administrative error identified as the reason. Next, section i indicates “**(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.” The Order of the Appellate Court dated 4/2/14 is an order that had the effect of dismissing and finally deciding the appeal. That was the reason the Appellant filed the Motion.

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).

Appellant complied with the mandates of Rule 260 in filing with the proscribed time period but there was no disposition of the Motion. This led Appellant to believe that the matter was still pending and as a result he did not file an appeal to the state Supreme Court with the time allowed. By the time the May 30, 2014 remittitur was received the time for filing an appeal had already run

It is not unreasonable for the Appellant to have believed that the proper filing of a motion, paying the fee and waiting for disposition of that motion would be improper. Accordingly, Appellant seeks reinstatement of the appeal in this matter

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

The remittitur in this case effectively removes the case from the jurisdiction of the appellate court. Appellant submits that this remittitur took place while a motion filed by the Appellant was still pending and the effect of the remittitur had preclude the Appellant from exercising any other appeal option in an effort to remedy the errors in the trial court. As a result the Appellant is requesting that the Court recall the remittitur thereby allowing the Appellant's motion to be disposed of in due procedural course. *Wise v. SC Dep't of Corrs.*, 372 S C 173, 174, 642 S E.2d 551, 551 (2007). When the remittitur is sent the court no longer retains

jurisdiction. The only exception to this rule is when the remittitur is improperly sent by mistake, error or inadvertence. *Mickle v. Blackmon*, 255 S.C. 136, 177 S.E.2d 548 (1970); *Thomas v Lynch*, 87 S.C. 44, 68 S.E. 817 (1910); *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903); *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). It appears that inadvertence may have occurred in this matter by sending the remittitur when the motion filed by Appellant had not yet been disposed of

For these reasons, I submit that good cause exists to recall the remittitur and allow the case to proceed in due course

CONCLUSION

The Appellant has made efforts to comply with the procedural rules governing this appeal and requests that the Court recall the remittitur due to the motion that was filed and pending. 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.

The Appellant is respectfully asking this court to recall the remittitur and allow the case to proceed .

Respectfully submitted,

Dennis Waldrep

DENNIS WALDREP, APPELLANT

Dated:

OCT. 15, 2014

Petition for rehearing 221 filed in accordance with rule 240

Exhibit "A"

The South Carolina Court of Appeals

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

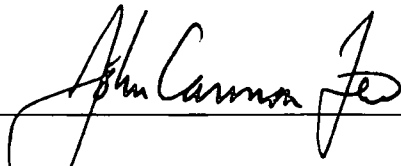
v.

Dennis Waldrep, Appellant.


Appellate Case No. 2012-207852

ORDER

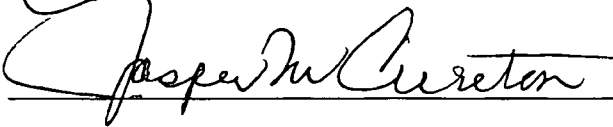
Appellant has filed a motion to reinstate this appeal, which this Court construes as a petition for rehearing from the dismissal of this appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked 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

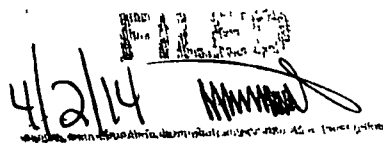
4/2/14


Exhibit "B"

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

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.

Motion to Reinstate Appeal
Pro se

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.

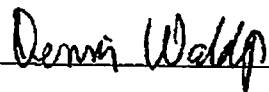
Further, the Appellant has a meritorious position in the matter he asserted on appeal and respectfully requests that the Court have the opportunity to decide his appeal in its merits rather than suffer a dismissal for an error of a procedural nature. Finally,

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:

April 14, 2019

Exhibit "C"



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May30, 2014

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: Holtzclaw, Jerry v. Waldrep, Dennis
Lower Court Case No. 2008CP3700415
Appellate Case No. 2012-207852

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of Jenny Abbott Kitchings in cursive script.

CLERK

Enclosure

cc: Dennis Waldrep
William C. Hood, Esquire

The Supreme Court of South Carolina

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

v.

Dennis Waldrep, Petitioner.

Appellate Case No. 2014-001286

Lower Court Case No. 2008-CP-37-00415

ORDER

By order dated January 27, 2014, the South Carolina Court of Appeals dismissed the appeal in this matter.¹ On April 4, 2014, the Court of Appeals denied a motion to reinstate which it construed as a petition for rehearing. The remittitur was sent on May 30, 2014.

Petitioner has now filed a petition for a writ of certiorari. This petition is dated June 11, 2014, and was received by this Court on June 16, 2014.

The petition is dismissed for two reasons. First, it is untimely under Rule 242(c) of the South Carolina Appellate Court Rules.

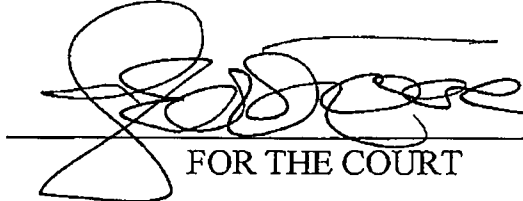
Second, when no petition for a writ of certiorari was served and filed within the time provided by Rule 221(b), SCACR, the Court of Appeals properly sent the remittitur.² The sending of the remittitur ended appellate jurisdiction and no

¹ The Appellate Case Number before the Court of Appeals was 2012-207852.

² After the order was issued denying the petition for rehearing, the petitioner filed a motion for reconsideration dated April 14, 2014. There is simply nothing in the SCACR that allows for a rehearing of an order denying a petition for rehearing, and the filing of this motion did not prevent the Court of Appeals from sending the remittitur.

further motions or petitions can be considered. *Wise v. South Carolina Department of Corrections*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, the petition for a writ of certiorari is dismissed.


C.J.
FOR THE COURT

Columbia, South Carolina
June 19, 2014

cc: William C. Hood, Esquire
Mr. Dennis Waldrep
The Honorable Jenny Kitchings
The Honorable Beverly H. Whitfield

Exh. b.1 "E"

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

June 25, 2014

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

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

Dear Ms. Allen:

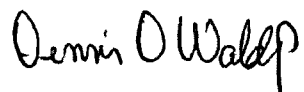
I am writing to inquire about a procedural issue in the above referenced case. On April 2, 2014 the Court entered an Order. On April 14, 2014 I filed a Motion for Reconsideration. According to my telephone conversation with Diane Green on June 24, 2014, the Court received that Motion of April 16, 2014. Subsequently, on May 30, 2014 I received a letter from the Court indicating that the case had been remitted with no reference to the disposition of the Motion. I have attached a copy of the Motion and the May 30, 2014 correspondence for your reference.

My question is, what was the disposition of the Motion for Reconsideration received by the Court of April 16, 2014. There was not any indication in the May 30, 2014 correspondence regarding the Motion and how it was resolved. I did not receive any letter nor was the Motion returned as improperly filed as previously from the court in the past.

Additionally, I received a call from Monica the Supervisor at the Court on June 24, 2014 and she indicated that "most likely the Court saw no grounds for the Motion for Reconsideration". While this may be the disposition, I have never received any communication regarding the disposition of the Motion for Reconsideration from the Court.

Accordingly, please advise as to specifics regarding the disposition of the Motion for Reconsideration received by the Court on April 16, 2014. I greatly appreciate your time and consideration to this Critical matter for me acting Pro Se.

Thank You,


Dennis D. Waldrep

DDW: ms

cc: William C Hood, Attorney

Exhibit " F "



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 18, 2014

Dennis Waldrep
209 Amethyst Way
Seneca SC 29672

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

Dear Mr. Waldrep:

This office is in receipt of your letter dated June 25, 2014. You inquire about the "Motion for Reconsideration" dated April 14, 2014. No action will be taken on the "Motion for Reconsideration." I call your attention to Footnote 2 in the order of the Supreme Court dated June 19, 2014. A copy of the order is enclosed. The second sentence of Footnote 2 provides the reasoning for no action by the Court of Appeals on the "Motion for Reconsideration." The remittitur has been issued and appellate jurisdiction has ended.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: William C. Hood, Esquire
Enclosure

Exhibit "G"

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

July 25, 2014

Re: Holtzclaw, Jerry v. Waldrep, Dennis
Appellate Case. 2012-20

Dear Ms. Allen:


I am in receipt of your letter dated July 18, 2014 regarding the Motion for Reconsideration that I filed in the above matter. I am forwarding this correspondence to request clarification of the information contained in your letter.

Specifically, your letter indicates that "No action will be taken on the "Motion for Reconsideration". When I filed the motion it was not returned to me nor was notification received that it was improperly filed or procedurally inappropriate. Does this mean that the Court's decision of "no action" is a denial of the motion? If it is a denial of that motion is there a Corresponding Order from the Appellate Court indicating that the Motion was denied or "no action" was taken because I never received any type of Denial from the Court. I have checked the Court docket and was unable to locate any Order relating to the disposition of the motion. As I did not receive notification from the Court that the Motion was either improperly filed or procedurally incorrect this seemed to be the appropriate analysis as I had received in the past from the this Court.

Additionally, I am confused as to how the Order of the Supreme Court can be dispositive of a Motion filed in the Appellate court. The last Order entered by the Appellate Court that I was able to locate was entered on April 2, 2014 approximately twelve days prior to the filing of my Motion. I did not file an appeal from that Order because I had an outstanding Motion pending that was not returned or otherwise sent back. On May 30, 2014 I received a letter from the Appellate Court with a copy of the April 2, 2014 Order advising of the remitter but making no mention of the Motion (Attached). Accordingly, I inquire as to the existence of any Order or other document of the Appellate Court entered post April 14, 2014 detailing the disposition of the motions which you advised was one of "no action"

Thank you for your consideration.

Respectfully,



Dennis D Waldrep

cc: William C Hood, Attorney

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

RECEIVED
OCT 17 2014
SC Court of Appeals

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

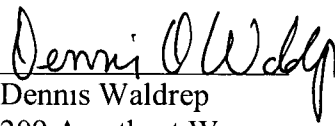
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion for Reconsideration by depositing a copy of it in the US Mail, postage prepaid, on October 15, 2014 addressed to the Respondent's Attorney of record William C Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621.

October 15, 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

October 15, 2014

RECEIVED

OCT 17 2014

SC Court of Appeals

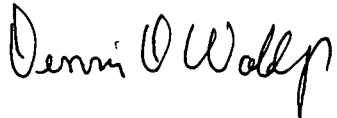
Ms. V. Claire Allen.
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201-3726

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

Dear Ms. Allen:

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

Respectfully Submitted,



Dennis D Waldrep

cc: William Hood

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL



PRIORITY[®]

★ MAIL ★

-  DATE OF DELIVERY SPECIFIED*
 -  USPS TRACKING[™] INCLUDED*
 -  INSURANCE INCLUDED*
 -  PICKUP AVAILABLE
- * Domestic only

FROM: Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

RECEIVED
OCT 17 2014
SC Court of Appeals

TO: SC Court of Appeals
1015 Sumter St
Columbia SC 29201
ATT. Ms V. Claire A



USPS TRACKING #



9114 9011 2308 6479 6351 22

Label 400 Jan 2013
7680-16-000-7948



PS00001000014

EP14F July 2013
OD: 12.5 x 9.5

VISIT US AT USPS.COM[®]
ORDER FREE SUPPLIES ONLINE

