

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2014-001853

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SC Court of Appeals

The State,

Respondent,

v.

Donna Boyd,

Appellant.

INITIAL BRIEF OF APPELLANT

sl. *Donna Boyd*
Post Office Box 1168
Mauldin, South Carolina 29662
Pro Se

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THERE WAS AN ABUSE OF DISCRETION WHEN THE CIRCUIT COURT DISMISSED THE APPELLANT'S CASE FOR FAILURE TO PROSECUTE?
2. WHETHER THE APPELLANT'S ACTIONS DEMONSTRATED AN UNREASONABLE NEGLIGENCE OF HER CASE?

STATEMENT OF THE CASE

On June 25, 2014, the Appellant was convicted of the misdemeanor charge of filing a false police report. The Appellant timely filed an appeal to the Circuit Court of Common Pleas on July 7, 2014. On August 14, 2014, the Appellant's case was dismissed by the Honorable D. Garrison Hill for failure to prosecute.

This appeal follows.

FACTS

Appellant appealed her criminal conviction on July 7, 2014 and on July 10, 2014; she received a letter dated July 9, 2014 from the Greenville County Court of Common Pleas stating that the matter was scheduled for August 12, 2014. On July 18, 2014, Appellant sent a certified letter to Judge Dean Ford requesting the transcript of the hearing. On July 24, 2014, the Appellant received an undated letter response from Judge Ford informing her that, "no recordings were available for that session of court. The audio tool used malfunctioned." Magistrate Return filed on July 23, 2014. The envelope containing the undated letter response from Judge Dean Ford was postmarked July 23, 2014. Appellant made a complaint against Judge Dean Ford with the Office of Disciplinary Counsel July 28, 2014. Appellant received a letter dated August 4, 2014, from the Office of Disciplinary Counsel asserting that a complaint against George K. Lyall had been received although the Appellant had not made a written complaint against him at that time.

On August 11, 2014, the Appellant sent an email to the Chief Administrative Judge, requesting that the charge against her be dismissed without a hearing on August 12, 2014. On August 21, 2014, Appellant received a letter dated August 14, 2014, from the Greenville County Court of Common Pleas, asserting that her appeal was dismissed for failure to prosecute signed by Judge D. Garrison Hill. Also, the additional information section asserts that, this action came to trial or hearing before the court. The issues have been tried and a decision rendered.

ARGUMENTS

I. THE COURT ERRED IN DISMISSING THE APPELLANT'S CASE BECAUSE THE SANCTION OF DISMISSAL WAS TOO HARSH GIVEN THE FACTS AND CIRCUMSTANCES.

Whether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and his decision will not be disturbed, except upon a clear showing of an abuse of discretion. Small v. Mungo, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970).

The Plaintiff has the burden of prosecuting her own action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with her cause. Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58 S.E.2d 757 (1983).

The Appellant argues that the dismissal of her case for failure to prosecute was too harsh and unwarranted because the facts and circumstances do not support an unreasonable neglect in proceeding with her cause. After being convicted on June 25, 2014, of the misdemeanor charge of filing a false police report, the Appellant asserts that she exercised great effort and took the necessary steps to prosecute her case. The Appellant timely filed her criminal appeal on July 7, 2014. Moreover, the Appellant asserts and evidence supports that she sent a certified letter to Judge Ford on July 18, 2014, requesting the transcript of the hearing held on June 25, 2014. Appellant asserts that on July 24, 2014, she received an undated letter from Judge Ford asserting that, "no recordings were available for that session of court." The audio tool used malfunctioned."

However, the Appellant noted that the Magistrate Return was filed on July 23, 2014. Coincidentally, the envelope containing the undated response from Judge Ford was postmarked July 23, 2014. The Appellant made a complaint against Judge Dean Ford with the Office of Disciplinary Counsel on July 28, 2014. The Appellant asserts that she received a letter dated August 4, 2014, from the office of Disciplinary Counsel asserting that a complaint against George K. Lyall had been received although she had not made a written complaint against him at that time.

The Appellant asserts that she was concerned and suspicious because on June 25, 2014, she was forced by Judge Ford to go to trial and represent herself and was not told until she asked that the videotape surveillance she hoped to use to support her innocence was destroyed sometime in 2012. The record shows that the videotape was placed into Property and Evidence on November 7, 2012. However, the record fails to show what happened to the tape or how it was allegedly destroyed after that date.

Moreover, the Appellant asserts that she also received discovery for the first time on June 25, 2014 and was also informed by Prosecutor George K. Lyall that he had chosen an “all white jury” on June 24, 2014.

The Appellant asserts that she was also concerned about how quickly her case was placed on the docket. She appealed the decision on July 7, 2014, and on July 10, 2014, she received a letter dated July 9, 2014, from the Court of Common Pleas, stating that the matter was scheduled for trial on August 12, 2014. The Appellant asserts that at the time her case was dismissed for failure to prosecute; her case had been before the court of common pleas for only one month. The plaintiff has the burden of prosecuting her action, and the trial court may properly dismiss an action for plaintiff’s unreasonable neglect in proceeding with her cause. Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 60 301 S.E.2d 757, 758 (1983).

In cases where the Supreme Court upheld dismissal of actions based on failure to prosecute, the dismissals were imposed to maintain the orderly disposition of cases in the face of repeated warning to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect. See Small v. Mungo, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970). In the instant case, there is absolutely no evidence to support any unreasonable neglect by the Appellant. To the contrary, the evidence shows that the Appellant made an earnest effort to prosecute her case. The evidence shows that the Appellant timely filed her appeal and attempted to get the transcript of the trial held on June 25, 2014. After discovering that there was no transcript available for the hearing, the Appellant made a complaint against the magistrate trial judge because she knew that the actions taken against her since the inception of her case were improper.

Also, the Magistrate Return filed by Judge Dean Ford on July 23, 2014, confirmed her suspicions because Judge Ford stated in an undated response received on July 24, 2014, that there was no record of the case because the audio tool used malfunctioned. However, Judge Ford did submit a detailed albeit false summary of the case on July 23, 2014. Case in point, Judge Ford asserted in the Magistrate Return that he denied the Appellant’s motion to dismiss the case against her based on the fact that a video had been destroyed by the State. Judge Ford asserts that her motion was denied because the State planned to call ‘witnesses’ of the incident. However, the Appellant asserts that this is a total fabrication because the so called witnesses to the incident are the same “three officers” who claimed to have seen the videotape that was allegedly destroyed in 2012. Also, the Appellant asserts that these same “three officers” gave inconsistent testimony and failed to provide sworn affidavits as to what they allegedly saw on October 30, 2012.

As evidenced in the August 12, 2014, Transcript of Record, there is no mention of any warnings to the Appellant that her appeal would be subject to dismissal if she continued to show an unreasonable neglect of her case. As a matter of fact, the record only suggests that the Appellant's case was dismissed because she failed to appear on August 12, 2014. However, the record fails to mention that the Appellant sent an email on August 11, 2014, to the Chief Administrative Judge requesting that the charge against her be dismissed without a hearing due to the lack of probable cause to arrest her on November 16, 2012. Moreover, the record fails to assert any evidence that the Appellant demonstrated a wanton disregard for her case or the efficient administration of court resources. Further, the record fails to show that Judge Garrison Hill considered any evidence before he made the unwarranted decision to dismiss her case. As evidenced in the record, the trial judge asserted that the issues had been tried or heard and a decision rendered. However, the Appellant noted that there were absolutely no issues asserted in the August 12, 2014, transcript. In *McCargo v. Hedrick*, the court held that dismissal is a harsh sanction, which "should be resorted to only in extreme cases."

Further, the court held that dismissal should be permitted only in the face of a clear record of delay or contumacious conduct by the plaintiff." *Id.* Moreover, in *Hillig v. Comm'r of Internal Revenue*, the Fourth Circuit stated that the trial court must consider four factors before dismissing a case for failure to prosecute (1) the plaintiff's degree of responsibility; (2) the amount of prejudice caused the defendant; (3) evidence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less harsh than dismissal. *Hillig v. Comm'r of Internal Revenue*, 916 F 2d 171, 171 (4th Cir. 1990)

The Appellant received an email response dated August 11, 2014, from Weston White, the law clerk for Judge D. Garrison Hill, asserting that the Court was in receipt of her email and that she needed to send the email again and cc opposing counsel Mitchell K. Byrd. The Appellant asserts that she discovered for the first time that Mitchell K. Byrd was the opposing counsel. Moreover, the Appellant asserts that she sent Mitchell K. Byrd the email dated August 11, 2014, but he did not respond. Also, phone records confirm that Appellant did call the circuit court coordinator on August 11, 2014. The Appellant asserts that the email received from the law clerk for Judge D. Garrison Hill was deceptive because it suggested that her request to have the charge against her dismissed without a hearing on August 12, 2014, was granted.

Also, on August 11, 2014, Appellant drove to the Greenville County Courthouse; spoke via phone with Angie the assistant for Chief Administrative Judge Letitia H. Verdin, to inform her that she was placing a copy of the email correspondence in her mailbox. Appellant asserts that she did so because she had deep reservations about Judge D. Garrison Hill objectively considering the matter and rendering a fair judgment. Moreover, the Appellant asserts that she was concerned that the matter would be adjudicated by Judge D. Garrison Hill because he had forced her brother to go to trial and represent himself on December 12, 2011, despite the fact that her brother had been unlawfully detained for twenty-one months without indictment. Also, the Appellant asserts that during this trial she was falsely accused of shaking her head and threatened to be thrown out of the courtroom by Judge Hill.

Also, the Appellant asserts and has evidence to support that Judge D. Garrison Hill did force her brother to act as his own counsel and did allow paid counsel Scott D. Robinson who had been relieved as counsel on December 12, 2011, to act as standby counsel to prevent her brother from retaining other counsel and to give the appearance that her brother had chosen to represent himself. The Appellant asserts that after challenging her brother's unlawful detention and subsequent wrongful conviction she was subjected to inexorable harassment and racial animus.

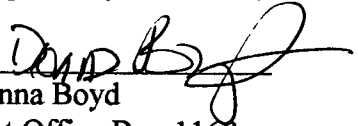
Further, the Appellant asserts that it was the State that failed to prosecute. The Appellant initiated her complaint of assault on October 30, 2012. The State failed to investigate her complaint and on November 7, 2012, the Appellant was told that in order to go forward with her complaint she needed to put her complaint in her own writing. On November 16, 2012, the Appellant was arrested for filing a false police report and the State delayed until June 25, 2014, to prosecute its case against the Appellant.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

November 26, 2014

Respectfully submitted,

/s/ 
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THE STATE OF SOUTH CAROLINA
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D. Garrison Hill, Circuit Court Judge

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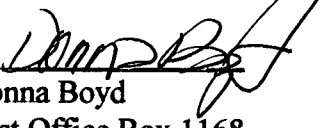
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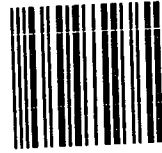
I certify that I have served the Initial Brief on the State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on November 26, 2014, addressed to his attorney of record, Mitchell K. Byrd, 216 Pimlico Road, Greenville, South Carolina 29607.

November 26, 2014

s/ 
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