



THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

R. Lawton McIntosh Circuit (10th) Court Judge

COPY

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

RECEIVED

DEC 18 2014

SC Court of Appeals

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QUESTIONS PRESENTED

1. Did the Appellate Court err in remitting the matter to the trial court while the motion filed by Appellant’s was pending?
2. Did the Appellate Court err in failing to dispose of Appellant’s motion?

STATEMENT OF THE CASE

This matter is an appeal from an order of the Appellate Court dated December 5, 2014. (a copy of that Order is attached hereto as Exhibit "A") The case results from and appeal of a matter that was held in the trial court in November of 2012. The verdict was in favor of the Plaintiff and the Defendant appealed. The initial action was brought by Plaintiff claiming that he was owed money for work performed and Defendant's premises and the he had not been fully paid for said work. The Defendant Waldrep answered and counterclaimed claiming that he had made all payments pursuant to the contract and that the work was performed improperly and that he was owed for repair and replacement work. The trial resulted in a verdict for the Plaintiff.

Waldrep filed the Appeal with the Appellate court based on several grounds. Initially, Waldrep was represented by counsel at the trial, the failure of counsel to properly conduct the trial was a reason for the appeal. Second, the trial court erred by allowing certain evidence and testimony and drawing certain inferences and conclusions during the trial that went beyond the four corners of the contract and favored improperly the Plaintiff. As a result, Waldrep should have been granted a new trial.

In April, 2014 Waldrep filed a Motion for Reconsideration of Order dated April 2, 2014. Procedurally, on February 2, 2014 Appellant filed a Motion to Reinstate the 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. Accordingly, Waldrep filed a Motion for Reconsideration from the April 2nd Order. Upon filing, the motion was properly filed with the

Court and served on opposing counsel. It was not returned to Waldrep or was he otherwise notified that it was improperly filed, nor was it ever granted or denied. The first thing received was a letter from the Court of Appeals with another copy of the April 2, 2014 Order indicating that the case had been remitted to the trial court. A copy of the letter and Order of the Court are attached hereto as "Exhibit "E".

ARGUMENT

I. The Appellate Court erred in remitting the case to the trial court.

Petitioner submits this Writ of Certiorari pursuant to Rule 242 (b) 1 based on a questions of law. Specifically, the Petitioner's appeal was remitted to the trial court by the Appellate court while a motion that had been filed by the Appellant was pending. The facts surrounding this procedural issue are as follows. The appellant's matter had been dismissed by the Appellant court for failing to make a filing within the proscribed period of time. As a result of this rather diminimus error, the Appellant filed a Motion to Reconsideration (a copy of which is attached hereto as Exhibit "C"). This motion was filed with the court according to court rules and served upon opposing counsel. (A copy of the transmittal documents are attached hereto as Exhibit "D") Waldrep did not receive the motion back from the Appellate court or any other indication that it had been filed in error. Further, no order was received indicating the motion had been denied or granted. The next item that was received was a letter and copy of the April 2nd Order indicating the matter had been remitted.

Waldrep contends that this remitter was improper due to the fact that procedurally there was a motion pending that required disposition in some manner. The remitter effectively sent the matter back to the trial court without ever addressing the status of that motion. Additionally, Waldrep has been severely prejudiced as a result of this inaction due to the fact that the time for appeal from the April 2nd Order had run by the time he received the letter announcing the remitter. This would not have happened but for the fact that he believed that he was waiting for a disposition on a motion that he had properly filed with the court.

The Order relies on *State v. Keels* 39 S.C. 553, 17S.E. 802 (1893) indicating that a remittitur cannot be recalled except upon “a very strong showing.....that remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer”. The Appellate Court concluded that Waldrep failed to make such a showing.

The Courts have held that once the Appellate has remitted the case that it no longer has jurisdiction. “When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. *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). The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court. *Keels, supra*” *Gary L. Wise v. South Carolina Department of Corrections*, South Carolina State Supreme Court, #285074, 2007.

However, in these cases actions taken by the moving party took place after the remittitur had been sent. In the case here, Waldrep had filed a motion prior to the remittitur being sent and that motion had never been returned, thrown out or adjudicated. Waldrep submits

that this failure on the part of the Appellate court to in some manner dispose of the motion prior to the remittitur was an error and resulted in prejudicial error to the Appellant.

- II. The Appellate Court erred in failing to dispose of Appellant's Motion prior to Remitting the Matter back to the Trial Court.

Waldrep as the Petitioner submits that the motion filed prior to the submission of the remittitur of the Appellate court required some manner of disposition and as such was still pending when the remittitur was sent back to the trial court. The motion was filed in the appropriate number of copies with the requisite fee attached. It was served on opposing counsel. As a result the Appellant waited for disposition of the motion in the normal course of Court business. This reliance is further bolstered by the fact that in a prior filing the Appellate court had notified the Appellant that the filing was not in compliance. Not receiving any notification that this motion was not in compliance or had been filed in contravention of court rules, Waldrep waited for disposition. The next items received was the remittitur with a prior Order of the Court. This essential deprived Waldrep of the opportunity to take any necessary action within the proscribed time period for appeal. When trying to file an Appeal with this court a letter was received advising that the appeal was untimely.

Accordingly, it is submitted that the failure of the Appellate court to dispose of the motion in some manner or otherwise notify the Appellant that the motion would not be heard

within a time period that enable him to still exercise the option of appeal resulted in prejudicial error by the court.

TABLE OF AUTHORITIES

1. State v. Keels 39 S.C. 553, 17S.E. 802 (1893)
2. Mickle v. Blackmon, 255 S.C. 136, 177 S.E.2d 548 (1970)
3. Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817 (1910)
4. Carpenter v. Lewis, 65 S.C. 400, 43 S.E. 881 (1903)
5. Gary L. Wise v. South Carolina Department of Corrections, South Carolina State Supreme Court, 2007

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 the Order from which this Appeal is taken is attached hereto as Exhibit "A".

Respectfully submitted,

Dennis Waldrep

DENNIS WALDREP, APPELLANT

Dated:

Dec 16, 2014

Exhibits

Exhibit "A" Order of Appellate Court 12/5/14

Exhibit "B" Copy of Letter from Court and Order May 2014

Exhibit "C" Motion to Reconsideration April 2014

Exhibit "D" Transmittal documents for motion filing

Exhibit "E" Denial from Court on Motion for Reconsideration

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

This appeal was dismissed on January 27, 2014. On February 18, 2014, Appellant filed a motion to reinstate the appeal, which this Court construed as a petition for rehearing from the dismissal of the appeal. On April 2, 2014, this Court denied the petition for rehearing, and the remittitur was sent down on May 30, 2014. Appellant has now filed a motion to recall the remittitur and reinstate the appeal. A remittitur cannot be recalled except upon "a very strong showing . . . that remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer." *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). Appellant has failed to make such a showing.¹ Because remittitur was properly sent, this Court no longer has jurisdiction over the case. Accordingly, Appellant's motion to recall the remittitur and reinstate the appeal is denied.


FOR THE COURT

Columbia, South Carolina

FILED
12/5/14

¹ Appellant's April 14, 2014 motion for reconsideration did not prevent this court from sending the remittitur because the South Carolina Appellate Court Rules do not allow a rehearing of an order denying a petition for rehearing.

cc: Dennis Waldrep
William C. Hood, Esquire
Beverly H. Whitfield



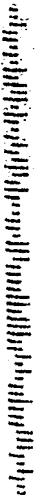
South Carolina Court of Appeals
 JENNY ABBOTT KITCHINGS, CLERK
 POST OFFICE BOX 11629
 COLUMBIA, SOUTH CAROLINA 29211

POST OFFICE
 BOX 11629
 COLUMBIA, SC 29211
 PM 31

DENNIS WALDREP
 209 AMETHYST WAY
 SENECA, SC 29672

Hasler
 12/05/2014
USPOSTAGE
\$00.48
 FIRST CLASS MAIL
 ZIP 29201
 01D12602824

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7
Exhibit "B"



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

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,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Dennis Waldrep
William C. Hood, Esquire

Motion to Reinstate Appeal
Pro se

Exhibit "C"

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

DENNIS WALDREP, APPELLANT

Dated:

April 14, 2014

Dennis D Waldrep
209 Amethyst Way
Seneca SC 29672

Exhibit "D"

April 14, 2014

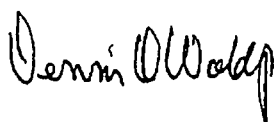
Ms. V. Claire Allen:
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201-3726

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

Dear Ms. Allen:

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

Respectfully Submitted,



Dennis D Waldrep

cc: William Hood

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

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

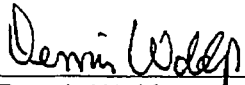
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion for Reconsideration by depositing a copy of it in the USPS, postage prepaid, on April 14, 2014 addressed to the Respondent's Attorney of record William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621.

March 14, 2014



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

cc: William C Hood

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DEC 18 2014

SC Court of Appeals

Exhibit "E"

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.

John Curran Jr. C.J.
John J. Stearns J.
Casper M. Curston A.J.

Columbia, South Carolina

cc: Dennis Waldrep
William C. Hood, Esquire

FILED RECEIVED
4/2/14
DEC 18 2014

SC Court of Appeals

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

DEC 18 2014

SC Court of Appeals

Jerry Holtzclaw, dba
Green Thumb Landscape
& Irrigation

Respondent,

v.

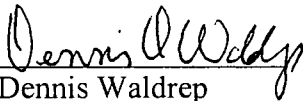
Dennis D. Waldrep,

Appellant.

PROOF OF SERVICE

I certify that I have served the PETITION FOR WRIT OF CERTIORARI by depositing a copy of the documents in the USPS Mail, postage prepaid, on December 16, 2014 addressed to the Respondent's Attorney William C. Hood, 505 N. McDuffie Street, Anderson, South Carolina 29621 and the SC Court of Appeals: Post Office Box 11629, Columbia SC 29211 att: Jenny Abbott Kitchings, Clerk.

Date: December 16, 2014


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

cc: William c hood
cc: SC Court of Appeals

Dennis D Waldrep
209 Amethyst Way
Seneca 29672

December 16, 2014

South Carolina Supreme Court
PO Box 11330
Columbia 29211
SC
Attention: Clerk

Regarding: Case 2012-207852

Please find the PETITION FOR WRIT OF CERTIORARI along with Exhibits A, B, C, D, & E along with a Proof of Service for William C Hood and the SC Court of Appeals as well as the Filing Fee.

If you have questions I can be reached at 864-230-4020.

Regards,

Dennis D Waldrep
Dennis D Waldrep

cc: William C Hood
cc: SC Court of Appeals

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DEC 18 2014
SC Court of Appeals