

THE STATE OF SOUTH CAROLINA

In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Honorable Kristi Lea Harrington
Trial Court Case No. 2014-000077

SCAC Case No.: 2014-00077

Jerome Myers and Gloria Myers

Appellants,

v.

Walter R. Kaufmann; Kaufmann and Associates, LLC,
Joseph A. Broom, Active Day, Inc., Craig Mehnert CCO.
Bettye Dorn as Center Director of Active Day, Inc.
@ Charleston, SC,

Respondents.

MOTION TO REINSTATE APEAL (HARMLESS ERROR)

The Appellants captioned above move for the Clerk to reinstate the appeal from the ORDER dated February 11, 2015. The case was dismissed because . . . *"The Appellants have failed to provide the information as to the date they mailed the initial brief and designation of matter. Service by mail is complete upon mailing, pursuant of Rule 282(b), SCACR. Accordingly the matter is dismissed."* Exhibit "A"

FACTS

The Clerk of Court and the Appellants have crossed in the mail and the service by mail was completed. The dismissal of the appeal was due to a harmless error by a pro se but was corrected.

The Appellants personally appeared before the Clerk of the Appeal Court and filed their original and copies of their INTIAL BRIEF and PROOF OF SERVICE. The Clerk stamped them on January 15th kept the court copies and returned the others back to the Appellant Mr. Myers. This was a Thursday afternoon.

The dates on the filed Proof of Service left with the Clerk was left blank as this duty was not yet perfected upon each of the Respondents. The Appellants wanted to and did complete the Service by USPS Certified & Return Receipt(s) Mail upon each of the Respondents. Copies of the USPS Form 3811 are attached hereto as **Exhibit "B"**.

RECEIVED

FEB 20 2015

SC Court of Appeals

75126

Upon returning to Charleston, the Appellants completed the Service by mailing process that next Tuesday January 22, 2015. The Appellants decided that they could not afford a 'personal service of process'. The INITIAL BRIEF and PROOF OF SERVICE was completed and signed as received by the Respondent Attorney John Dodds iii on January 23, 2015; AND completed and signed as received by the Respondent Attorney David Cobb on January 26, 2015. **See Exhibit "B"**

In the interim period the Clerk wrote a letter that the Proof of Service was without the date and for us to correct it within 10 days of January 21, 2015. It appears that this 'service by mailing' date was expected to be on the 15th of January 2015 by the Clerk, who sent the Appellants a letter to that effect giving 10 days to show proof or the case would be dismissed.

At the same time or the day before the Appellants had mailed the Respondents the documents. The Clerk and the Appellants have crossed in the mail.

The Respondents have filed their INTIAL BRIEFS, which states by Attorney John Dodds iii on his page 2 at second paragraph, "Appellants filed their Initial Brief on January 15, 2015 and served these Respondents by mail." Exhibit "E" Actually Mr. Dodds got the documents on January 23, 2015. But this means he admits he has been served by mail without harm. All the Court needs now for the Record is the **AMENDED PROOF OF SERVICE** from these Appellants. T

he Exhibit "C & D" should show that now the Service is Complete by mailing and that the Respondents were not prejudiced.

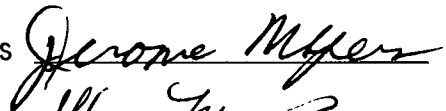
The Appellants pro se, have shown that they have completed the Service by Mail and that the Clerk's letter that caused the Clerk's dismissal of the matter was but a harmless error because what appeared by the Clerk to have not been done was IN FACT had been done by Certified & Return Receipt USPS Mail process.

The Respondents have both filed their Initial Briefs without incident or harm.

The Appellants ask the Clerk to accept the USPS 3811 form of each Respondent as completion of the Service by Mail and to file the new Proof of Service attached hereto as **Exhibit "B" & AMENDED PROOFS OF SERVICE Exhibit "C & D"**

Respectfully submitted this 15 day of February 2015

Jerome Myers



Gloria Myers



North Charleston, SC 29406-6232

(843) 747-6741

For Appellants

The South Carolina Court of Appeals

Jerome Myers and Gloria Myers, Appellants,

Exhibit A

v.

Walter R. Kaufmann, Kaufmann and Associates, LLC,
Joseph A. Broom, Active Day, Inc., Craig Mehnert CCO,
Bettye Dorn as Center Director of Active Day, Inc. @
Charleston, SC, Respondents.

Appellate Case No. 2014-000077

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No. 2012CP1008423

ORDER

Appellants have failed to correct the deficiencies in appellants' initial brief and designation of matter, as requested in the Court's letters of January 21, 2015. The Appellants have failed to provide information as to the date they mailed the initial brief and designation of matter. Service by mail is complete upon mailing, pursuant to Rule 262(b), SCACR. 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

Columbia, South Carolina

cc:

Jerome Myers

Gloria Myers

FILED

February 11, 2015

Exhibit B

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature x <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Harvey Dick</i></p> <p>C. Date of Delivery <i>1/23/15</i></p>
1. Article Addressed to: <i>Mr. John J. Dodds, III 858 Low Country Blv. Suite 101 Mount Pleasant, S.C. 29464 Atty. for Kaufmann, Kaufmann & Assocs.</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number <i>Joseph A. Broom</i> (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery
PS Form 3811, July 2013	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes 7014 0510 0000 2294 7073 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature x <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>P.M. Moore</i></p> <p>C. Date of Delivery <i>1-26-15</i></p>
1. Article Addressed to: <i>Turner Padgett Law Firm c/o Mr. David Cobb, Esq 40 Calhoun Street Charleston, SC 29401 Atty. for Active Day Inc.</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery
PS Form 3811, July 2013	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes 7014 0510 0000 2294 6953 Domestic Return Receipt

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In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Honorable Kristi Lea Harrington
Trial Court Case No. 2014-000077

Exhibit C

SCAC Case No.: 2014-00077

Jerome Myers and Gloria Myers

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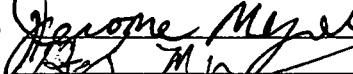

AMMENDED -- PROOF OF SERVICE

Jerome Myers & Gloria Myers affirm that on this day I have placed a copy of the in the **DESIGNATION OF MATTER** USPS mail with first class postage affixed to the South Carolina Appeals Court Clerk and the following Defendants/Respondents:

TURNER PADGET LAW FIRM
Mr. David Cobb, Esq.
40 Calhoun Street
Charleston, SC 29401
(843) 576-2800
Attorney for Active Day Care Inc; Craig Mehnert; Bettye Dorn

John J. Dodds, iii
858 Lowcountry Blvd., Suite 101
Mount Pleasant, SC 29464
(843) 881-6530
Attorney for Kauffmann; Kaufmann & Assoc.; Joseph Broom

Respectfully submitted this 21 day of January 2015

Jerome Myers 
Gloria Myers 
2321 Taylor Street,
North Charleston, SC 29406-6232
(843) 747-6741

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Honorable Kristi Lea Harrington
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Exhibit D

Jerome Myers and Gloria Myers

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Respondents.

AMMENDED -PROOF OF SERVICE

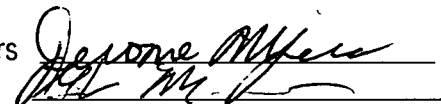
Jerome Myers & Gloria Myers affirm that on this day I have placed a copy of the in the **INITIAL BRIEF OF APPELLANTS** USPS mail with first class postage affixed to the South Carolina Appeals Court Clerk and the following Defendants/Respondents:

TURNER PADGET LAW FIRM
Mr. David Cobb, Esq.
40 Calhoun Street
Charleston, SC 29401
(843) 576-2800
Attorney for Active Day Care Inc; Craig Mehnert; Bettye Dorn

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Respectfully submitted this 21 day of January 2015

Jerome Myers
Gloria Myers



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North Charleston, SC 29406-6232
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Exhibit E

On May 7, 2013, Respondents Active SC One, Inc. (incorrectly named in the Amended Complaint), Craig Mehnert, and Bettye Dorn moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. On October 16, 2013, Respondents Walter Kaufmann, Kaufmann and Associates, LLC, and Joseph Broom moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

Judge Kristi Lea Harrington heard the motions on November 20, 2013 and granted the motions. The Charleston County Clerk of Court filed an Order ~~dismissing the lawsuit pursuant to Rule 12, SCRCP, on December 23, 2013.~~ Appellants filed the Notice of Appeal on January 2, 2014. Appellants filed their Initial Brief on January 15, 2015 and served these Respondents by mail. These Respondents' attorney received a copy of the initial brief on January 20, 2015.

Argument

Appellants claims center largely on their dispute with attorney Kaufmann as Guardian for their father, who passed on May 5, 2013. As for claims against Active SC One, Inc. and its agents (Mehnert and Dorn), the First Amended Complaint alleged that Active SC One, Inc. and its agents damaged Appellants by allowing Kaufmann's agent (Joseph Broom) to pick up Appellants' father on June 17, 2010 from the adult day care facility operated by Active SC One in Charleston, South Carolina and take him home. The First Amended Complaint made no other factual ~~allegation against these Respondents.~~ In addition, Appellants produced no credible evidence that Kauffman acted outside the appointment as Guardian by the Charleston County Probate Court or the mandates of S.C. Code Ann. § 62-5-312.

Judge Harrington correctly ruled that Appellants did not present a sufficient claim under South Carolina law against Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert. As stated in Sloan Constr. Co., Inc. v. Southco Grassing, Inc., 368 S.C. 523, 525, 629 S.E.2d 372, 373 (Ct. App.

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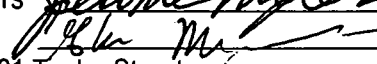
PROOF OF SERVICE

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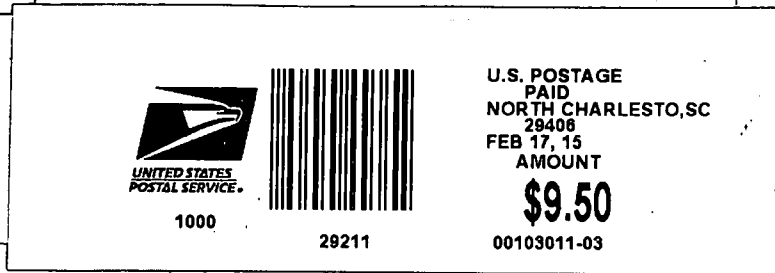
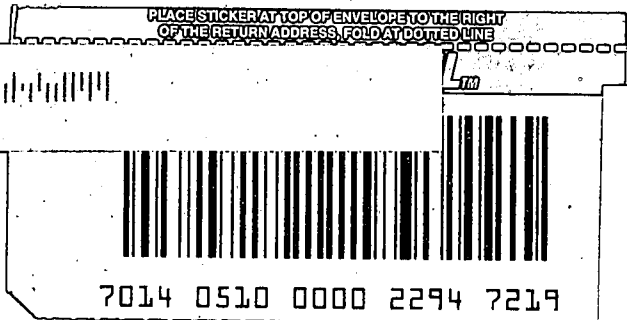
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Attorney for Kauffmann; Kaufmann & Assoc.; Joseph Broom

Respectfully submitted this 15 day of February 2015

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Gloria Myers 
2321 Taylor Street,
North Charleston, SC 29406-6232
(843) 747-6741

Mr. Jerome My
Ms. Gloria Myers
2321 Taylor Street
N. Charleston, S.C 29406



RETURN RECEIPT
REQUESTED

Ms. V. Claire Allen, Deputy Clerk
Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201-1629

RECEIVED
FEB 20 2015
SC Court of Appeals