

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 27 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

J.C. Nicholson, Jr., Circuit Court Judge
Case No. 2014CP1001829

Appellate Case No. 2014-002751

James R. Abbott,

Appellant,

v.

Michele Blank,

Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent, by and through her undersigned counsel, moves this Court for an Order dismissing this Appeal on the grounds that the Appeal was not perfected in accordance with the South Carolina Appellate Court Rules (SCACR). Pursuant to Rule 240(c), a Memorandum in support of this Motion is attached.

February 25, 2015
North Charleston, SC



Frampton Durban, Jr.
Attorney for the Respondent
SC Bar No. 1809
3660 West Montague Avenue
North Charleston, SC 29418
(843) 760-2450
FAX (843) 767-3282
Frampd7@gmail.com

STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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James R. Abbott,

Appellant,

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Respondent.

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION
TO DISMISS APPEAL

FACTUAL BACKGROUND

The underlying action was heard before the Charleston County Small Claims Court, resulting in a Judgment in favor of the Respondent, dated February 21, 2014, in the amount of \$5,100, including costs.

Neither Respondent nor her Attorney received any post-judgment process until counsel received, from the Clerk of Court in Charleston, a Notice of a Motion Hearing to be heard before the Honorable J.C. Nicholson in the Charleston County Court of Common Pleas.

Respondent timely filed a Motion to Dismiss for Failure to Properly Perfect Appeal, filed on August 28, 2014 (Exhibit A).

Counsel referred to the on-line records of the Charleston County Clerk of Court and discovered that Appellant, pro se, had filed an Appeal from the Small Claims Judgment on March 18, 2014 (Exhibit B), but had failed to serve either the Respondent or the Small Claims Court. Service of the Notice of Appeal is required by S.C. Code Section 18-7-20.

Appellant's Motion for Appeal and Respondent's Motion to Dismiss were both heard by the Honorable J.C. Nicholson on November 19, 2014. Appellant's Motion was denied and his Appeal was dismissed. Appellant filed a Notice of Appeal to this Court.

According to the Appellant's Notice of Appeal to the this Court, he received written notice of the entry of the Circuit Court's Judgment on November 24, 2014 (see attached Exhibit C).

Further, according to the Proof of Service filed for the Notice of Appeal (Exhibit D), the Appellant did not serve the Notice of Appeal until January 14, 2015.

APPELLANT'S FAILURE TO PROPERLY PERFECT THIS APPEAL

In perfecting an appeal from the Court of Common Pleas, "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the judgment." Rule 203(b)(1), SCACR. The Notice of Appeal must be accompanied by Proof of Service, a copy of the order which is the subject of the appeal, and the proper filing fee. Rule 203(d)(1)(B). Although the Appellant herein dated his Notice of Appeal on December 19, 2014, and the Court, apparently, received that Notice shortly after, that Notice was not accompanied by the required Proof of Service, copy of the order being appealed, or the filing fee. That

Notice of Appeal was not served on Respondent or on Respondent's undersigned counsel until counsel received a certified letter from Appellant on January 16, 2015.

Appellant states, in his Notice of Appeal, that he received written notice of the entry of Judge Nicholson's Order on November 24, 2014. The Proof of Service recites that the Notice of Appeal was mailed to Respondent and counsel on January 14, 2015, well beyond the thirty-day time for service under Rule 203(b)(1), SCACR. In addition, no copy of the Order being appealed was attached to the Notice of Appeal as served.

"If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260 [SCACR]." As Appellant, in his own filed documents, has established that the Notice of Appeal was not served on the Respondent or counsel until 50 days after Appellant received written notice of the entry of Judge Nicholson's Order, this appeal should be dismissed.

Further, Rule 207(a)(1), SCACR, requires that all correspondence between an Appellant and a Court Reporter, for purposes of obtaining the transcript of the proceeding below, must be contemporaneously furnished to "... all counsel of record, the Office of Court Administration, and the clerk of the appellate court." The transcript must be ordered "within ten (10) days after the date of service of the notice of appeal." *Id.* Counsel for the Respondent did not receive copies of any correspondence between the Appellant and the Court Reporter until after the Clerk of this Court sent Appellant a deficiency letter on February 18, 2015, noting that Appellant had failed to copy his correspondence to Counsel for the Respondent and to the Office of Court Administration, including the original request for the transcript. Counsel for the Respondent has never received Appellant's original request for the transcript.

For the continuing failure of the Appellant to follow the SCACR in his attempts to perfect this appeal, this action should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frampton Durban, Jr.', written over a horizontal line.

Frampton Durban, Jr.
Attorney for the Respondent
SC Bar No. 1809
3660 West Montague Avenue
North Charleston, SC 29418
(843) 760-2450
FAX (843) 767-3282
Frampd7@gmail.com

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JAMES R. ABBOTT,)
Appellant,)
)
-v-)
)
MICHELE BLANK,)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
Docket No. 2014-CP-10-1829

MOTION TO DISMISS FOR FAILURE TO
PROPERLY PERFECT APPEAL

FILED
2014 SEP -5 PM 12:13
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

COMES NOW THE RESPONDENT, Michele Blank, and moves this Court for an Order dismissing this appeal, with costs to the Respondent pursuant to SC Code Section 18-7-220, for the failure of the Appellant to perfect his appeal consistent with South Carolina Law.

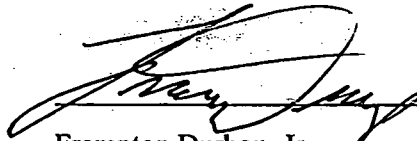
In support of this Motion, the Respondent would respectfully show the Court:

1. She is the Plaintiff in an action pursued before the Small Claims Court in Charleston, bearing Docket Number 2013CV10600794. This action resulted in a Judgment in favor of the Plaintiff/Respondent in the amount of \$5,100.00, entered in Small Claims Court on February 21, 2014. The Transcript of that Judgment was served on the Appellant by certified mail, return receipt requested, and the Appellant personally signed the return receipt on March 11, 2014 (see attached Exhibit "A").
2. Since the entry of the Judgment, the Respondent has been attempted to execute the judgment, although the Sheriff of Charleston returned the execution Nulla Bona on July 16, 2014.
3. Respondent was not served with any appellate process at any time following the Judgment, and is informed and believes that no Notice of Appeal was ever served or filed with the Small Claims Court at any time up to the present, either within or beyond the time for appeal set forth in SC Code Section 18-7-20 (See attached Exhibit "B," the official Clerk of Court Web-based listing of filings in the case below, indicating no such filing). The Appellant is now well beyond the time to serve a Notice of Appeal of the judgment below.
4. Respondent was unaware that any Appeal had been filed with the Circuit Court until she received a Notice of a Motion Hearing to be held before the Honorable J. C. Nicholson, Jr. on the Appellant's Motion for Appeal.
5. Because of the failure of the Appellant to provide timely Notice of Appeal to the Charleston County Small Claims Court, that Court has been unable to file its Return to the Notice within the time frame established by SC Code Section 18-7-60, so that this Court does not have the record below in

order to effectively and fully review the proceedings below. (See attached Exhibit "C," the official Clerk of Court Web-based listing of the filings in Circuit Court connected to this Appeal).

6. Further because of the failure of the Appellant to properly perfect this Appeal, the Respondent has incurred costs and Attorney Fees for responding to this matter, and is informed and believes that she is entitled to the costs associated with her response.

WHEREFORE the Respondent moves this Court for an Order dismissing this Appeal as untimely and improperly perfected, for the costs and fees associated with her response, and for such other and further relief as may be reasonable, just, and proper.



Frampton Durban, Jr.
Attorney for the Plaintiff
3660 W. Montague Avenue
North Charleston, SC 29418
(843)760-2450
(843)767-3282 fax

8/26, 2014

Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2014 -CP-10-1829

JAMES R. ABBOTT

-SC-

PLAINTIFF

- VERSUS -

APPEAL

MICHELE BLANK

DEFENDANT

FILED
2014 MAR 18 AM 10:34
JULIE J. ARMSTRONG
CLERK OF COURT

1. JAMES R. ABBOTT, PLAINTIFF/DEFENDANT IN THIS CIVIL ACTION MAKE THE FOLLOWING CLAIM.

1. I BELIEVE THAT THE PLAINTIFF/DEFENDANT RESIDES IN CHARLESTON COUNTY AND IS WITHIN THE JURISDICTION OF THIS COURT.

2. I MAKE THIS APPEAL BASED ON THE FOLLOWING ERRORS COMMITTED BY THE LOWER COURT: THE COMPLAINT BY MICHELE BLANK WAS THAT I OWED HER \$5,000 FOR BACK PAY. I SHOWED AT THE HEARING I OWED HER \$5,000 FOR HER INTEREST IN A SAILBOAT, NOT BACK PAY.

3. I BELIEVE, BECAUSE OF THE ABOVE INFORMATION, THAT I AM ENTITLED TO AND REQUEST: THE \$5,000 OWED IS FOR HER INTEREST IN THE SAILBOAT.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

DATED: March 18, 2014

SIGNED: [Signature]

ADDRESS OF PLAINTIFF

ADDRESS OF DEFENDANT

MICHELE BLANK c/o FRAMPTON DUBROW
3660 W. MONTAGUE AVE
NORTH CHARLESTON, SC 29418

PO Box 7
TRENTON NC 28585

TELEPHONE (BUSINESS)

843-729-7729
TELEPHONE (BUSINESS)

EXHIBIT C

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
(In the Supreme Court)

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014CP1001829

Michele Blank

Respondent,

v.

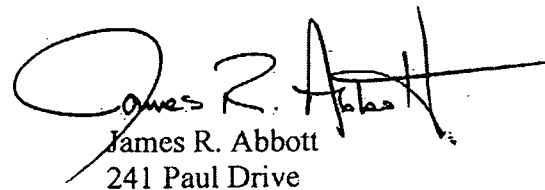
James R. Abbott

Appellant.

NOTICE OF APPEAL

James R. Abbott appeals the order (judgment) of the Honorable J.C. Nicholson rendered November 19. Appellant received written notice of entry of this order (judgment) on November 24.

December 19, 2014



James R. Abbott
241 Paul Drive
Trenton NC 28585

Frampton Durban
3660 W. Montague Avenue
North Charleston, SC
Attorney for Respondent

12/22/14
emailed
client

EXHIBIT D

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

RECEIVED
FEB 27 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014CP1001829

Michele Blank

Respondent,

v.

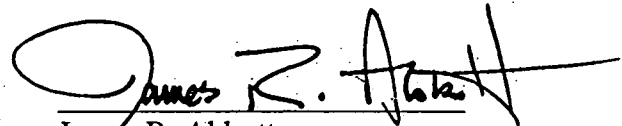
James R. Abbott

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Michele Blank by depositing a copy of it in the United States Mail, postage prepaid, on January 14, 2015, addressed to her attorney of record, Frampton Durban, 3660 W. Montague Avenue, North Charleston, South Carolina 29418.

January 14, 2015



James R. Abbott
241 Paul Drive
Trenton, North Carolina 28585
(843) 729-7729
Appellant

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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J.C. Nicholson, Jr., Circuit Court Judge
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v.

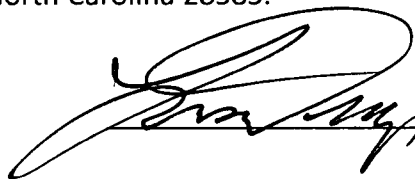
Michele Blank,

Respondent.

PROOF OF SERVICE

I certify that on February 25, 2015, I served the Respondent's Motion to Dismiss Appeal and Memorandum in Support of Respondent's Motion to Dismiss on the Appellant in this action by depositing copies in the United States Mail, postage pre-paid, addressed to the Appellant at 241 Paul Drive, Trenton, North Carolina 28585.

February 25, 2015.



Frampton Durban, Jr.
Attorney for the Respondent
SC Bar No. 1809
3660 West Montague Avenue
North Charleston, SC 29418
(843) 760-2450

FAX (843) 767-3282, E-mail FrampD7@gmail.com

RIESEN LAW FIRM, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

FRED W. RIESEN, JR.
GARY ALAN LING, P.C.,
PHILIP A. BERLINSKY
FRED "TRIP" W. RIESEN, III (SC, CA)
G. RUTLEDGE DURANT
FRAMPTON W. DURBAN, JR.

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N. Charleston, South Carolina 29418

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(843) 767-3282

+ S.C. Certified Mediator
Certified Guardian *ad Litem*

JOHN D. BRADLEY, III (1946-1998)

E. PAUL GIBSON, *of Counsel*
LEANNE M. INNET (SC, FL, USPTO), *of Counsel*

February 25, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RECEIVED
FEB 27 2015
SC Court of Appeals

Re: James R. Abbott v. Michelle Blank
Appellate Case No. 2014-002751

Dear Ms. Kitchings:

I am enclosing for filing the original and six copies of Respondent's Motion to Dismiss Appeal, Memorandum in Support of the Motion, and Proof of Service on the Appellant.

Very truly yours,


Frampton Durban, Jr.
Attorney for the Respondent

cc: Michelle Blank
James Abbott