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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

(In The Supreme Court)

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MAY 14 2015

APPEAL FROM DARLINGTON COUNTY

SC Court of Appeals

Marvin L. Lawson, Probate Judge

Appellate Case No. 2014-000689

Harold Wilson,

Appellant

v.

Cynthia Barnett, Louise Sweet, and Hubert Wilson,

Respondent

Motion to Oppose and Dismiss  
the Motion to Dismiss Appeal

I Harold Wilson am writing to the Court of Appeals in response to Respondent Cynthia Barnett's Motion to Dismiss Appeal, that was filed on April 3, 2015 in the Court of Appeals. On May 1, 2015 I recieved a copy of the grounds to Dismiss Appeal and also a copy of Motion for Extension of time to file Respondents Initial Brief from Respondent's attorney Gena Ervin. I was sent a copy of both motions after I filed a motion to oppose and dismiss the Respondants Motion to dismiss on April 25, 2015 for failure to send me a copy of the grounds of the Motion to Dismiss when it was filed on April 3, 2015 in the Court of Appeals as

I am still asking the Court of Appeals to Dismiss the Respondent's Motion to Dismiss Appeal because it was a deliberate act of Respondent and Attorney to not send me a copy of the grounds of Motion to Dismiss Appeal on April 1, 2015 so I would not be able to file a timely response and may have been deemed a consent.

In response to the grounds of Motion to Dismiss appeal that I received on May 1, 2015, I disagree. The Appeal I made to the Court of Appeals was a direct Appeal from the Probate Court to the Court of Appeals.

The law says that a party can appeal directly to the Court of Appeals or the Supreme Court and will be governed by the Appellate rules of the Court of Appeals and Supreme Court. Please see parts circled on pages 3 to 6 which I believe applies to my case.

**2013 South Carolina Code of Laws  
Title 62 - South Carolina Probate Code  
ARTICLE 1 - GENERAL PROVISIONS, DEFINITIONS, AND PROBATE  
JURISDICTION OF COURT  
SECTION 62-1-308. Appeals.**

**Universal Citation:** SC Code § 62-1-308 (2013)

Except as provided in subsection (1), appeals from the probate court must be to the circuit court and are governed by the following rules:

- (a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.
- (b) Within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.
- (c) Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript. If the appellant has not received the transcript within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant may make a motion to the circuit court for an extension to serve and file the parties' briefs and Designations of Matter to be Included in the Record on Appeal, as provided in subsections (d) and (e).
- (d) Within thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.
- (e) At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The appellant's brief shall be in a format described in Rule 208(b)(1), SCACR. Within thirty days after service of the appellant's brief, the respondent shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The respondent's brief shall be in a format described in Rule 208(b)(2), SCACR. Appellant may file and serve a brief in reply to the brief of the respondent. If a reply brief is prepared, the appellant shall, within ten days after service of the respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of circuit court one copy of the reply brief with proof of service. The appellant's reply brief shall be in a format described in Rule 208(b)(3), SCACR.

(f) Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and file with the clerk of the circuit court one copy of the Record on Appeal with proof of service.

(g) Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules. Upon final disposition of the appeal, all exhibits filed separately (as described in Rule 210(f), SCACR), but not included in the Record on Appeal, must be forwarded to the probate court.

(h) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(i) The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(j) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court. Within forty-five days after receipt of written notice of the final decision and judgment in cases appealed, the prevailing party shall provide a copy of such decision and judgment to the probate court.

(k) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(l) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 9; 1997 Act No. 152, Section 4; 1999 Act No. 55, Section 56; 2013 Act No. 100, Section 1, eff January 1, 2014.

**Conclusion**

I am requesting that the Court of Appeals deny the Motion to Dismiss Appeal, being that this was a direct Appeal to the Court of Appeals authorized by S.C. Code Ann §62-1-308(g), and was timely filed.

May 12, 2015

**Respectfully submitted**

s/ Harold Wilson

**Harold Wilson**

**1549 Country Manor Road**

**Darlington, SC 29532**

**(843) 339-0576**

**RULE 203  
NOTICE OF APPEAL**

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

**(b) Time for Service.**

**(1) Appeals 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 order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

**(2) Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

**(3) Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

**(4) Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

**(5) Appeals From Probate Court.** When a direct appeal is authorized by S.C. Code Ann. § 62-1-308(g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

**(6) Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

**(c) Cross-Appeals.** A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties, or in the case of an appeal from the administrative tribunal, by serving a

notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.

**(d) Filing.**

**(1) Appeals from the Circuit Court, Family Court and Probate Court.**

**(A) Where to File.** The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

- (i) Any final judgment from the circuit court which includes a sentence of death.
- (ii) Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.
- (iii) Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.
- (iv) Any final judgment from the circuit court pertaining to elections and election procedure.
- (v) Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.
- (vi) Any order of the family court relating to an abortion by a minor under S.C. Code Ann. § 44-41-33.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

- (i) Proof of service showing that the notice has been served on all respondents;
- (ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing;

(iii) A filing fee as set by order of the Supreme Court; [1] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies;

(iv) If the appeal is from a guilty plea, an Alford [2] plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

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**PROOF OF SERVICE**

I certify that I served an Motion to oppose and Dismiss the Motion  
to Dismiss on respondents and Attorney Gena Ervin by depositing a copy of them in  
the United States mail postage prepaid on May 12, 2015

May 12, 2015

s/ Judith Lee  
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(843) 339-0576

cc:

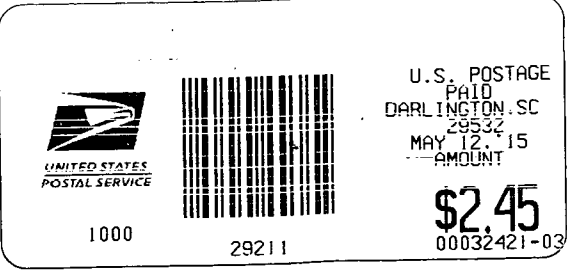
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