

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 01 2015
SC Court of Appeals

Appeal from Chester County
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

2015-CP-12-0179

Appellate Case No. 2015-001036

Robert H. Breakfield, as attorney in fact for John D. Hinson,
John C. Hinson, Jerry Hinson, Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina Jones, George Stanford
as Personal Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr. Respondent,

v.

Mell Woods Appellant.

Respondent's Reply to Appellant's Return

Respondent's Motion to Dismiss Appeal is incorporated herein by reference. In his Return, Appellant represents that Respondent obtained an ex parte order by "going behind appellant's back."

Attached hereto and incorporated herein are documents supplementing those attached to the Motion to Dismiss Appeal. They are:

- transmittal letter to the Chester County Clerk of Court dated April 28, 2015 transmitting the Notice to Circuit Court and showing Appellant as being copied with the letter;
- Notice to Circuit Court bearing the Clerk of Court's file stamp dated May 1, 2015;
- Certificate of Service confirming service of the Notice to Circuit Court on the Appellant on April 28, 2015, also bearing the Clerk of Court's file stamp dated May 1, 2015;
- the Order signed by Judge Gibbons dated and filed May 1, 2015.

Judge Gibbons decided to execute the Order without requiring a hearing, apparently based on the content of the Notice to Circuit Court.

Appellant has not argued that the Notice to Circuit Court is inaccurate with respect to its content.

Appellant did not file a Rule 59(e) motion with respect to the May 1, 2015 Order.

Conclusion

The appeal should be dismissed.



B. Michael Brackett, Bar No. 838
Adam T. Silvernail, Bar No. 80219
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

June 1, 2015

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260(29201)
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Columbia, South Carolina 29202-3261

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B. Michael Brackett, of Counsel
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Email: mbrackett@mkb-law.com

April 28, 2015

The Honorable Sue Carpenter
Chester County Clerk of Court
P.O. Drawer 580
Chester, SC 29706

RE: Breakfield, as Attorney-in-Fact v. Woods
2015-CP-12-0179 (Appeal from Magistrate's Court)
Our File No.: 12085.3

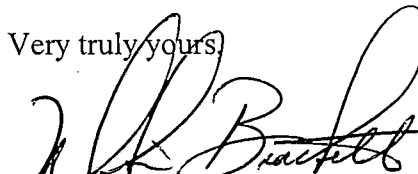
Dear Ms. Carpenter:

Enclosed for filing please find the original Notice to Circuit Court sitting as an Appellate Court, together with a copy of a proposed order dismissing this appeal without prejudice.

By copy of this letter, a copy of the enclosed Notice, and the original proposed Order are being provided to Judge Gibbons for his consideration. Copies are also being provided to the Magistrate's Court.

Please return a clocked copy of the Notice using the envelope provided.

Very truly yours,



B. Michael Brackett

BMB/Ita
Enclosures

cc. The Honorable Brian M. Gibbons
The Honorable Yale Zamore
Robert H. Breakfield, Esquire
Mell Woods

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Notice to Circuit Court Sitting as
an Appellate Court

FILED
2015 MAY -1 A 9:16
CLERK OF COURT
CIRCUIT COURT
SOUTH CAROLINA

Respondents,

v.

Mell Woods,

Appellant.

Respondents (Applicants in the Magistrate's Court proceeding) by their attorney-in-fact, commenced an action in Magistrate's Court, pursuant to S.C. Code Ann. § 15-67-610, to have the Appellant (Respondent below), declared to be a trespasser and to be ejected from the Applicants-owners' property. The § 15-67-620 hearing was held on January 30, 2015. Respondent appeared pro se, as he has in all other legal proceedings involving these parties, and offered his evidence and arguments. By Final Order and Judgment dated March 27, 2015 the Magistrate's Court found Respondent to be a trespasser and announced the intention of the court to issue a warrant of ejectment to the county sheriff to eject the Respondent from the subject premises.

On April 15, 2015, Appellant, pro se, filed and served a Notice of Appeal. (attached as Exhibit A). The circuit court case number for the appeal is shown in the above caption. The Notice

of Appeal does not indicate the date when Appellant claims to have received written notice of the March 27, 2015 Order.

On April 24, 2015,¹ Appellant, pro se, served a Rule 59(e), SCRCPP, motion for reconsideration with respect to the March 27, 2015 Final Order and Judgment. (Attached as Exhibit B).²

When a timely Rule 59(e) post-trial motion is filed after a notice of appeal has been filed and served, the procedure, as explained by the South Carolina Supreme Court, is:

... this Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. See, e.g., Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986). For example, in Hudson, the order appealed was filed on March 18, 1986, and a notice of appeal was filed on March 24, 1986. *Id.* On March 27, 1986, timely post-trial motions were made pursuant to Rule 59(e), SCRCPP. *Id.* at 215–16, 349 S.E.2d at 341. Holding “that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions,” *id.* at 216, 349 S.E.2d at 341, the Court ordered the notice of appeal to be dismissed without prejudice as prematurely filed, *id.* at 216, 349 S.E.2d at 341–42 (“[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, **the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions.** A second filing fee will not be collected from a party who previously appealed.” (footnote omitted)). This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, as Appellant suggests, in a piecemeal fashion.

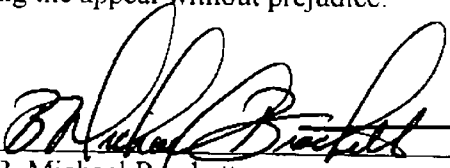
Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014). (emphasis added).

¹ Appellant represents in the motion(s) that the Appellant received written notice of the Final Order and Judgment on April 14, 2015 and blamed the delay on an incorrect address used by the Magistrate’s Court. He conveniently makes no mention of the fact that the Final Order and Judgment was served by the undersigned on March 30, 2015 by U.S. mail at Appellant’s post office box and by Fed-Ex to his street address. (Exhibit C).

² Appellant’s filing is actually four separately stated Rule 59(e) motions.

Here, the Respondents are giving the circuit court, as an appellate court, the notice required by Holmes, together with a proposed Order dismissing the appeal without prejudice.

April 28, 2015



B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondents

FILED
2015 MAY -1 A 9:16
CLERK OF COURT
CO. S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE CIRCUIT COURT
2015-CP-12-0179

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Respondents,

v.

Mell Woods,

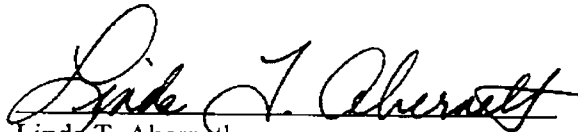
Appellant.

CERTIFICATE OF SERVICE

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2015 MAY -1 9 2:16
CLERK OF COURT
CHESTER CO S.C.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Applicant in the above-captioned matter, do hereby certify that I have served Respondent-Trespasser, pro se with a copy of Notice to Circuit Court sitting as an Appellate Court by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 28th day of April, 2015 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721
Appellant


Linda T. Abernethy

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
On Appeal from Magistrate's Court
2015-CP-12-0179
2014CV1210400037

Robert H. Breakfield, Esquire as
attorney-in-fact for John D. Hinson,
John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson, Tina
Jones, George Stanford as Personal
Representative of the Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley, and
William C. Hinson, Jr.,

Respondents,

v.

Mell Woods,

Appellant.

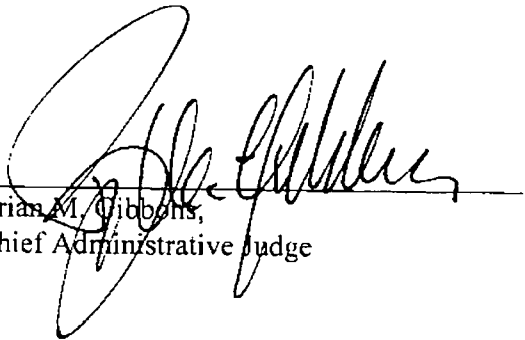
Order Dismissing Appeal
Without Prejudice

FILED
2015 MAY -1 9 2:16
CLERK OF COURT
CHESTER CO S.C.

Pursuant to Holmes v. E. Cooper Cmty. Hosp., Inc., 758 S.E.2d 483 (S.C. 2014) this court has been given notice that Appellant timely served a Rule 59(e) motion for reconsideration in the Magistrate's Court after having filed and served a Notice of Appeal. Accordingly, the appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.

5/11, 2015



Brian M. Gibbons,
Chief Administrative Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

RECEIVED
JUN 01 2015
SC Court of Appeals

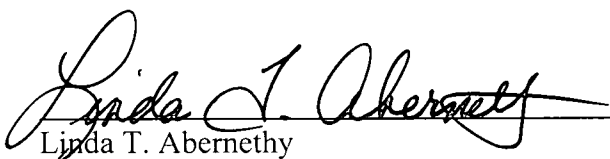
2015-CP-12-0179

Appellate Case No. 2015-001036

Certificate of Service

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondent in the above-captioned matter, do hereby certify that I have served the pro se Appellant, Mell Woods, with a copy of Respondent's Reply to Appellant's Return postage prepaid and return address clearly indicated on said envelope, on this 1st day of June, 2015 at the following address:

Mell Woods
P. O. Box 2603
Lancaster, SC 29721


Linda T. Abernethy

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett, of Counsel
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

June 1, 2015

Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate St.
Columbia, SC 29201

RECEIVED

JUN 01 2015

SC Court of Appeals

Re: Breakfield, as Attorney-in-Fact v Woods
Trial Court Case No. 2015-CP-12-0179
Appellate Case No. 2015-001036
Our File No. 12085.3

Dear Ms. Kitchings:

Enclosed for filing please find the original (unbound) and six copies of Respondent's Reply to Appellant's Return. Also enclosed is the customary Certificate of Service.

By copy of this letter, I am serving the Appellant who is pro se.

Please allow my courier to return with a clocked copy of page one of the Motion.

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire
Mell Woods