

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Honorable Paul M. Burch, Circuit Court Judge

Civil Action No. 2012-CP-34-00046

Appellate Case No. 2015-000587

RECEIVED

JUL 09 2015

SC Court of Appeals

Ricky Edmond BLUE, JR. *Appellant,*

v.

CITY OF BENNETTSVILLE, Larry McNEILL,
and Walter COVINGTON *Respondents.*

AFFIDAVIT OF KENNETH R. MOSS

PERSONALLY APPEARED BEFORE ME, Kenneth R. Moss, Esquire, who
being duly sworn, does hereby state and affirm as follows, having actual knowledge
of all matters set forth herein:

1. I was the attorney of record for the Appellant, Ricky Blue, in the
underlying civil action bearing Case No. 2012-CP-34-00046, and I am familiar with
matters surrounding that action.

2. Mr. Blue was the *pro se* Plaintiff in the underlying case before entering into a Legal Representation Agreement (hereinafter the "Agreement") with my firm. The Agreement clearly states: "In the event an appeal is taken in this matter after the conclusion of the Circuit Court action, a new retainer agreement will be negotiated."

3 A hearing in the underlying matter was held December 17, 2014 on the Defendants' Motion for Summary Judgment. On February 5, 2015 the presiding judge, the Honorable Paul M. Burch, signed an Order granting the Defendants' motion. The Order was filed with the Clerk of Court for Marlboro County on March 16, 2015.

4 On February 16, 2015, I wrote to Mr. Blue advising him of the Court's decision. A copy of my letter and an unlocked copy of the Court's Order were transmitted to Mr. Blue via electronic mail on February 17, 2015. I asked Mr. Blue to review the Order thoroughly in order to prepare for a telephone conversation with me to discuss the options available to him in his case. Moreover, my correspondence to Mr. Blue set forth the following: (1) that there was a very limited period of time in which to file a Motion for Reconsideration, or a Notice of Appeal must be filed within thirty (30) days after the Final Order has been filed; (2) that my firm and I had not agreed to undertake an appeal but may be willing to do so if he [Mr. Blue] was prepared to pay the fees and costs associated with an appeal; and (3) my estimate that the cost of the transcript would run between \$1,000 to \$2,000. I asked Mr. Blue to

contact me immediately after he had reviewed the Order to discuss the options available to him.

5. Mr. Blue did not contact me or return my calls. Absent any communication from Mr. Blue, on March 16, 2015 I filed a Notice of Appeal to protect Mr. Blue's interests in the event he decided to proceed with an appeal.

6. I also wrote to Mr. Blue on March 16, 2015 to inform him that although I had not heard from him as to whether or not he intended to go forth with an appeal, I had filed a Notice of Appeal to protect his interests should he decide to do so. I reminded him that the Agreement he had entered into with my firm did not include the handling of any appeal, and reiterated the costs he would be responsible for in addition to fees for attorney and paralegal time. I also made Mr. Blue aware that, pursuant to the appellate court rules, a copy of the transcript of hearing must be ordered within ten (10) days of service of the appeal; therefore, if he failed to order a copy of the transcript and make arrangements to pay the court reporter by March 26, 2015, the appeal would be automatically dismissed. Again, I requested that Mr. Blue contact me by the end of the week to discuss how he would like to proceed. With my letter I enclosed a copy of the Notice of Appeal, the lower Court's final Order, and Proof of Service.

7. I spoke with Mr. Blue twice after he received my letter dated March 16, 2015. During each of these conversations I asked Mr. Blue if I could order a copy of the transcript. Each time I was told that he [Mr. Blue] would get back to me with

his decision. During one of these conversations Mr. Blue requested I forward copies of the Notice of Appeal and Order to Steven Futeral, an attorney with the law firm of Futeral & Nelson, LLC in Mt. Pleasant. I forwarded these documents to Mr. Futeral on March 23, 2015 via electronic mail, and offered to speak with him should he have any questions regarding this matter. I have not heard anything further from either Mr. Futeral or Mr. Blue.

8. I wrote to Mr. Blue again on April 6, 2015, advising that the time for ordering the transcript had passed and I anticipated the Court would automatically dismiss his appeal for failure to comply with the appellate court rules. I indicated that if Mr. Blue was represented by another attorney for the appeal, I would appreciate Mr. Blue asking him or her to contact me regarding communication to be included in the Record on Appeal. I informed Mr. Blue that if I had not heard from him by April 13, 2015, I would scan and close his file.

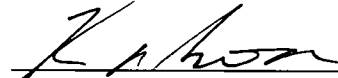
9. As a courtesy, I have continued to forward pertinent documents to Mr. Blue. Mr. Blue has not communicated with me regarding this matter since late March 2015.

10. I offer the within Affidavit in support of my *Motion to Be Relieved as Counsel of Record*.

FURTHER AFFIANT SAYETH NOT!

Respectfully submitted,

**WRIGHT, WORLEY, POPE,
EKSTER & MOSS, PLLC**



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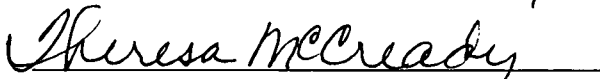
Attorneys of Record for Appellant

North Myrtle Beach, South Carolina

July 7, 2015

SWORN TO AND SUBSCRIBED

Before me this 7th day of July, 2015.



Notary Public for South Carolina

My Commission Expires: 5-19-2025