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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellant Case No. 2015-000942

RECEIVED

AUG 12 2015

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Master in Equity Judge

Case No. 2010-CP-23-8330

Joel Clay Bracken, Appellant.

v.

Green Tree Servicing, LLC., Respondent.

APPELLANT'S RULE 260(a) MOTION FOR REINSTATEMENT OF CASE

“Appellant” Joel Clay Bracken hereby petitions this court for reinstatement of this appeal which has abruptly been dismissed by the clerk of court in error. Appellant received a notice July 31, 2015 of an Order of dismissal of this appeal signed by clerk of court Jenny Abbott Kitchings on July 29, 2015. The clerk’s Order claims:

“Appellant has failed to provide the filing fee for the notice of appeal, as required by Rule 203 of the South Carolina Appellate Court Rules (SCACR), and this Court’s order dated June 25, 2015. Accordingly, this matter is dismissed.”

The grounds for this motion for reinstatement are as follows:

I. APPELLANT DID COMPLY AND SATISFY THE FILING FEE ORDER IN TIME.

Appellant initially filed his appeal with this Court along with a motion to proceed *in forma pauperis* due to his limited financial capacity. The Court denied that motion by Order dated June 25, 2015 pursuant to the South Carolina Supreme Court's prior holdings on such filing fees. Appellant declined to argue the issue of the filing fee and elected to pay it. The Order expressly mandated "The filing fee must be paid within fifteen days of the date of this order." Pursuant to Rule 263(a), the day of the event or Order in not to be included in the computation of time. Thus, the last day of the deadline for payment was July 10, 2015.

Appellant did on that said last day, travel to the 1220 Senate Street Columbia, South Carolina location and personally pay the \$100.00 filling fee around 1:00pm with the clerk at the front window desk. (See Exhibit A SC Appeals receipt #76577 for Case No. 2015-000942 on 7/10/2015) Therefore, by evidence of the court's and Appellant's financial records and the paid filling fees receipt attached herein, Appellant adequately satisfied the court's previous Order requesting payment within the (15) day time frame and this case must be reinstated for judgment on its merits.

II. THIS COURT NEVER DIMINISHED THE TIME TO PAY THE FILLING FEES.

The clerk of court is not empowered under Rule 263(b) to suddenly shorten or diminish filing deadlines of the previous Order. Pursuant to the above rule, only the appellate court, or any judge or justice thereof, may have such privileges. The clerk is an official or officer of the Court, not an judge or justice thereof. As there was no order or ruling by this high Court to shorten or diminish the filing deadlines of the previous Order, this case must be reinstated for judgment on its merits.

III. THIS MOTION FOR REINSTATEMENT COMPLIES WITH AND EVIDENCES
"GOOD CAUSE" PURSUANT SCACR RULE 260(a).

According to SCACR RULE 260(a):

“Whenever it *appears* that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon *good cause shown*, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).”

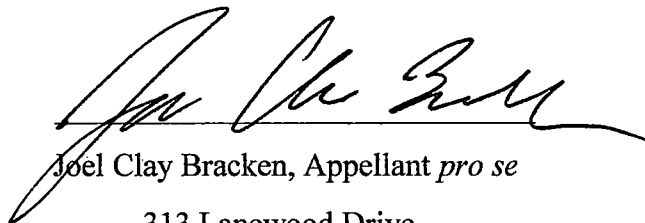
As founded above and by all the evidence, Appellant has shown overwhelming *good cause* for this Appeals Court to reinstate this case pursuant to the said rule. This motion for reinstatement has been received by this Court within the (15) day deadline and all parties have been given notice as required. (See Certificate of Service attached)

A rushed remittitur by the clerk before such said time elapsed would be a mistake, inadvertence and abuse of discretion. However, this Court would have jurisdiction and power to correct such unconscionable actions. See *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893) “In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer” Quoted and upheld in *State v. Barnes*, No. 2014-001966 SC: Supreme Court 2015 and *Wise v. SC Dept. of Corrections*, 642 SE 2d 551 - SC: Supreme Court 2007.

CONCLUSION

For the reasons stated herein, this Court must reverse and reinstate the previous clerk of court's Order and this appeals case should be reviewed and judged on it's factual merits.

Today's Date: August 3, 2015.

A handwritten signature in black ink, appearing to read "Joel Clay Bracken". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Joel Clay Bracken, Appellant *pro se*

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I HEREBY CERTIFY, a true and correct copy of the aforementioned pleading has been delivered to Respondent's counsel by US postal mail with verifiable delivery confirmation to:

The Finkel Law Firm LLC

Attn: Associate Chris S. Truluck

Office: 803-765-2935

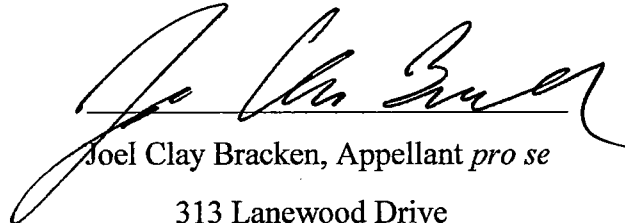
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Respectfully submitted,

Today's Date: August 3, 2015.



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