

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED

Appellate No. 2015-001457

DEC 18 2015

SC Court of Appeals

THE SPRIGGS GROUP, P.C.,..... Respondent,

v.

GENE R. SLIVKA, Appellant.

**RETURN TO APPELLANT’S MOTION TO FILE THE RECORD ON APPEAL
OUT OF TIME**

The Respondent, The Spriggs Group, P.C., submits this Return to Appellant’s Motion to File the Record on Appeal Out of Time and asks this Honorable Court to dismiss this Appeal based upon Appellant’s failure to timely file the required Record on Appeal pursuant to South Carolina Appellate Court Rules 210 and 260.

In this matter, Respondent’s Initial Brief was served via United States Mail on October 28, 2015 to Appellant’s attorney of record, Robert T. Lyles, Jr., Esquire of Lyles & Lyles, LLC at 342 East Bay Street, Post Office Box 773, Charleston, South Carolina 29402. Appellant filed no reply to Respondent’s Initial Brief; therefore, October 28, 2015 is the date of service of the last brief. Pursuant to SCACR 210, Appellant was required to serve Respondent with the Record

on Appeal and file the required proof of service with the Court by November 30, 2015¹ and failed to do so. In response, Respondent then served its Motion to Dismiss this Appeal on December 4, 2015.

Pursuant to SCACR 240(e), any party opposing a motion shall have ten (10) days from the date of service thereof to file a Return. Failure of a party to timely file a Return may be deemed a consent by that party to the relief sought in the motion or petition. See SCACR 240(e). Appellant, as of the date of this Return, has not filed a Return to Respondent's Motion to Dismiss the Appeal. Instead, on December 10, 2015, Appellant submitted this Motion, ten (10) days after service of the Record on Appeal was due, requesting that this Court extend the time to file the record on appeal after the applicable deadline.

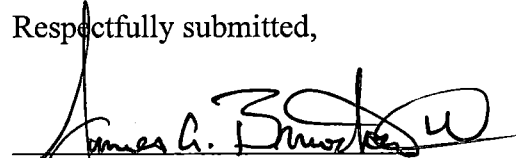
In support of his Motion, Appellant submitted an affidavit stating that he failed to file and serve the record on appeal with this Court and Respondent as a result of miscalculating the applicable deadline. The general rule under South Carolina law is that "the neglect of the attorney is the neglect of the client, and no mistake, inadvertence, or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. Rouvet v. Rouvet, 388 S.C. 301, 309-10, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 342, 644 S.E.2d 793, 798 (Ct. App. 2007). This Court has further observed that it dismisses an appellant's appeal where he fails to present an adequate record on appeal. See Meek v. Meek, 295 S.C. 222, 225, 367 S.E.2d 704, 706 (Ct. App. 1988).

Under SCACR 260(a), whenever it appears that an appellant has failed to comply with the requirements of these Rules, the clerk shall issue an Order of Dismissal, which shall have the

¹ The due date for service of the Record on Appeal would have been November 27, 2015, but the Thanksgiving holiday moved the date forward to Monday, November 30, 2015.

same force and effect as an order of the appellate court. Accordingly, Appellant's Motion to File the Record on Appeal Out of Time, served after the applicable deadline for the record on appeal as required by SCACR 210, should be denied and the Appeal dismissed pursuant to SCACR 260(a).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James A. Bruorton IV", written over a horizontal line.

James A. Bruorton IV
Timothy J.W. Muller
Rosen, Rosen & Hagood, LLC.
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

Attorneys for Respondent

December 16, 2015
Charleston, SC

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v.

GENE R. SLIVKA, Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to File the Record on Appeal Out of Time by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2015, to Appellant's attorney of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina, 29402.
December 16, 2015


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Attorneys for Respondent

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

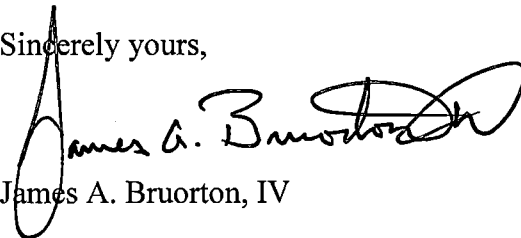
Re: The Spriggs Group, P.C. v. Gene Slivka
Appellate Case No. 2015-001457

Dear Ms. Kitchings:

Enclosed please find an original and one copy of Respondent, The Spriggs Group, P.C.'s Return to Appellant's Motion to File the Record on Appeal Out of Time in the above referenced appeal. Please return the filed stamped copy to me in the enclosed pre-paid envelope.

With kindest regards, I am

Sincerely yours,



James A. Bruorton, IV

CAB/cab

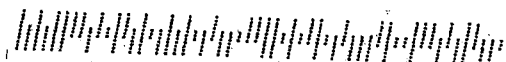
cc: Robert T Lyles, Jr., Esquire

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