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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Circuit Court

Doyet A. Early, III Circuit Judge
Case No. 2010-CP-15-0247

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APR 07 2016

SC Court of Appeals

Ted A. Nettles and Jamell B. Nettles,..... Appellants,

v.

Sylvester Guess Drew, Jr., Debra Drew, and Colleton County, Respondents.

MOTION TO DISMISS APPEAL

Respondents moves to dismiss this appeal on the grounds that the Notice of Appeal was not served within the time required by Rule 203(b)(1), SCACR. The grounds for this motion are as follows:

1. Appellants have appealed from the Orders of the Honorable Doyet A. Early, III, one titled Final Order, filed September 23, 2015, and a Form 4 Order denying Appellant's Motion for Reconsideration, filed November 23, 2015.
2. The Affidavit of Service on the Form 4 Order was executed by the Colleton County Clerk of Court's office and indicates a mailing date of November 24, 2015 to the parties of record in the case. Patricia C. Grant, Colleton County Clerk of Court, signed the affidavit of service

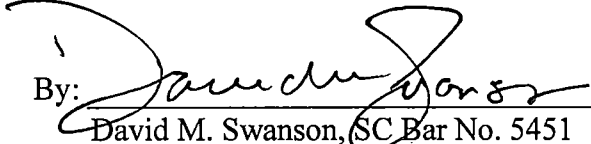
3. Rule 203(b)(1), SCACR, states that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCRCP), motion to alter or amend the judgment (Rules 52, 59, SCRCRCP), or a motion for a new trial (Rule 59, SCRCRCP) 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.”
4. The time for Appellants to serve the Notice of Appeal from Judge Early’s Final Order was stayed pending Appellants’ Motion for Reconsideration.
5. Appellants’ Notice of Appeal was filed on March 7, 2016 and served on Respondents on March 8, 2016.
6. Respondents were served with the Notice of Appeal one hundred and five (105) days after the Colleton County Clerk’s office mailed the Form 4 Order denying the Motion for Reconsideration.
7. The time for serving a notice of appeal cannot be extended. Rule 263(b), SCACR.
8. Appellants’ Notice of Appeal states that “[n]either Appellants nor their counsel were ever served a copy of the Form 4 Order, and Appellants only discovered that the Order had been issued by chance when they reviewed the Colleton County online records of the case on or about February 4, 2016, and Appellant’s counsel then requested a copy of the Form 4 Order, and Colleton County Clerk of Court faxed the same to Appellant’s Counsel on February 23, 2016.
9. Appellants did not even serve the notice of appeal within thirty (30) days of supposedly finding the Form 4 Order online for the first time.

10. An Affidavit of Lori L. Weiss from the Colleton County Clerk of Court's Office is attached hereto as **Exhibit A**. Ms. Weiss testifies in her affidavit that "Form 4 Orders are sent to active parties via the E-Mail addresses provided to the Court through the AIS system for attorneys or provided to the Clerk in pleadings for Pro Se parties. If no E-Mail address is available, they are mailed via 1st class mail. We do not receive a read receipt for E-Mails, nor do we send the Form Orders by certified mail."
11. Because Appellant's Notice of Appeal was not timely, the Notice of Appeal should be dismissed with prejudice.

(Signature Page Follows)

HAYNSWORTH SINKLER BOYD, P.A.

By:


David M. Swanson, SC Bar No. 5451

134 Meeting Street, 3rd Floor

Charleston, SC 29401

Telephone: 843.722.3366

Facsimile: 843.722.2266

dwanson@hsblawfirm.com

Pierce T. MacLennan, SC Bar No. 101797

134 Meeting Street, 3rd Floor

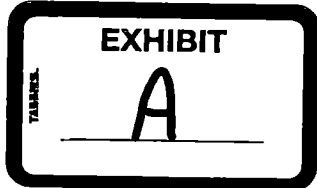
Charleston, SC 29401

Telephone: 843.722.3366

Facsimile: 843.722.2266

pmaclennan@hsblawfirm.com

Dated: April 5, 2016
Charleston, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

TED A. NETTLES ET AL
PLAINTIFF(S)

CASE #: 10 -CP-15- 247

VS.

AFFIDAVIT OF LORI L. WEISS

SYLVESTER GUESS DREW ET AL
DEFENDANT(S)

BEFORE ME, the undersigned, personally appeared Lori L. Weiss, who being sworn deposes and says as follows:

1. I am over the age of 18 years old and have been employed in the Clerk of Court's office for Colleton County, Common Pleas Department for 13 years.
2. One of my duties is to serve Attorneys of Record and Pro Se parties with Form 4 Orders issued by the presiding Judge during Non-Jury/Motion terms of Court. Occasionally these Orders are signed by Judges out of town and sent to our office for filing. When the Judge prepares the orders the parties are not listed at the bottom as to who is served. In those cases we go by our records as to who to serve.
3. Form 4 Orders are sent to active parties via the E-Mail addresses provided to the Court through the AIS System for attorneys or provided to the Clerk in pleadings for Pro se parties. If no E-Mail address is available, they are mailed via 1st class mail. We do not receive a read receipt for E-Mails, nor do we send the Form Orders by Certified mail.
4. Due to the lapse in time and the amount of documents that are processed in this office I can only attest to the normal procedure and not to the exact actions in this matter.

Further the Affiant sayeth naught.

Lori L. Weiss
Lori L. Weiss
Court Specialist III

2016 MAR 24 PM 4:13

FAREDA L. BRANT
COLLETON COUNTY
COMMON PLEAS

SWORN to before me this

24th DAY OF March, 20 16

Polly Ann Riley
Notary Public for South Carolina

My commission Expires: My Commission Expires
May 18, 2017

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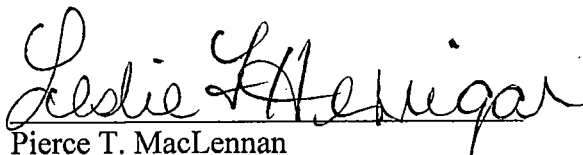
PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 5 day of April, 2016, caused the foregoing *Motion to Dismiss Appeal* to be served via U.S. mail, postage prepaid on counsel of record at the addresses shown below:

Thomas Nelson
Futeral & Nelson
PO Box 1385
Mt. Pleasant, SC 29465

A Parker Barnes
PO Drawer 1729
Beaufort, SC 29901-1729

Ernest M Griffith
Griffith Sadler & Sharp PA
PO Drawer 570
Beaufort, SC 29901



Pierce T. MacLennan
Haynsworth Sinkler Boyd, P.A.
PO Box 340
Charleston, SC 29402-0340

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Haynsworth
Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

APR 07 2016

SC Court of Appeals

134 MEETING STREET, THIRD FLOOR (29401-2240)
POST OFFICE BOX 340 (29402-0340)
CHARLESTON, SOUTH CAROLINA
TELEPHONE 843.722.3366
FACSIMILE 843.722.2266
WEBSITE www.hsblawfirm.com

PIERCE T MACLENNAN
DIRECT DIAL NUMBER 843.720.4429
EMAIL pmaclennan@hsblawfirm.com

April 5, 2016

The Honorable Jenny A Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Ted A. Nettles and Jamell B. Nettles v Sylvester Guess Drew Jr, Debra Drew and
Colleton County
Colleton County Civil Action: 10-CP-15-0247
HSB File: 35742-1

Dear Ms. Kitchings:

Enclosed for filing are an original and seven (7) copies of a Motion to Dismiss Appeal in the above matter, together with our Proof of Service for the same. Also enclosed is our firm's check in the amount of \$25 for filing. Please return the clocked copies to me in the enclosed envelope.

By copy of this letter, I am serving counsel of record with the same.

Please let me know if you have any questions. Thank you for your assistance.

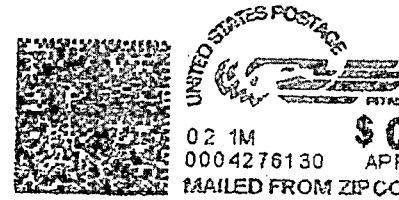
Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Pierce T. MacLennan

Pierce T. MacLennan
PTM(lfh)
Enc

cc: David Swanson
Thomas Nelson
Parker Barnes
Earnest M. Griffith



Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

35742-1 POST OFFICE BOX 340
COLUMBIA, SOUTH CAROLINA 29402-0340

The Honorable Jenny A Kitchings
Clerk of Court
SC Court of Appeals
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