

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Circuit Court

Doyet A. Early, III Circuit Court Judge

Case No. 2010-CP-15-0247

RECEIVED

APR 14 2016

SC Court of Appeals

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

v.

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

RETURN TO MOTION TO DISMISS APPEAL

Appellants respectfully oppose Respondents Sylvester Guess Drew, Jr.'s and Debra Drew's Motion to Dismiss Appeal and submit this Return to Motion to Dismiss Appeal pursuant to Rule 240, SCACR.

BACKGROUND

The parties tried this case before the Honorable Doyet A. Early, III on June 29-30, 2015. On September 23, 2015, Lori Weiss, an employee of the Colleton County Clerk of Court emailed the Final Order (signed September 18, 2015 and filed September 21, 2015) to all counsel of record. A copy of this email is attached hereto as Exhibit A. October 3, 2015 fell on a Saturday, causing the deadline for a motion to reconsider to be October 5, 2015. Appellants timely filed a Notice of Motion to Reconsider and to Alter or Amend the Judgment on October 5, 2015. Judge Early heard this motion on October 27, 2015.

Having not yet received any notice of any ruling, Appellant Janell Nettles checked the Colleton County Public Index on February 4, 2016 and discovered that a Form 4 order denying the motion to reconsider (hereinafter referred to as the "Form 4") was filed on November 23, 2015, and she notified her counsel of the same. Appellant's counsel then requested a copy of the order from the Clerk of Court's office and received a copy via facsimile on February 23, 2016. Appellant's counsel served the Notice of Appeal on March 3, 2016, and this Notice of Appeal was filed in both the Colleton County Clerk of Court's office and this Court's office on March 7, 2016.

ARGUMENT/ANALYSIS

I. Appellants' Notice of Appeal was timely served.

Appellants did not receive a written notice of entry of the order denying their Motion to Alter or Amend until it was requested and received via facsimile from the Clerk of Court on or about February 23, 2016. Appellants only discovered it even existed on February 4, 2016, and there is no earlier time that can be construed as "receipt of written notice of entry of the judgment." *See* Rule 203(b), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after the receipt of written notice of entry of the order or judgment."). Therefore, the earliest arguable deadline for service was thirty (30) days after February 4, 2016, or March 5, 2016, which fell on a Saturday, causing the deadline to be March 7, 2016. "Service by mail is complete upon mailing." Rule 262, SCACR. Therefore, by mailing the Notice of Appeal on March 3, 2016, Appellants timely effectuated service.

Respondents' statement in paragraph 5 of their motion that the notice of appeal was "served on Respondents on March 8, 2016" is patently false. Attached is a copy of the Proof of Service and relevant cover letters.

II. Appellants' Notice of Appeal was timely filed.

“[T]he notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.” Rule 203(d), SCACR. Therefore, the notice of appeal in this case should have been filed within ten (10) days of March 3, 2016, or by March 13, 2016. Appellant’s Notice of Appeal was filed with the clerk of the lower court on March 7, 2016 and with the clerk of the appellate court on March 7, 2016, which satisfies the timing requirements for filing.

III. This Court should disregard the Affidavit of Lori L. Weiss.

Ms. Weiss states in her affidavit that she is employed in the Clerk of Court’s office for Colleton County, and she provides a general procedure for serving documents. However, her affidavit expressly states that she is only attesting “to the normal procedures and not to the exact actions in this matter.” Ms. Weiss’ affidavit provides no evidence as to when she received the signed order from Judge Early, when she may or may not have emailed or mailed the Form 4, how the Form 4 may have been sent, or whether Appellants’ counsel may have received the Form 4.

Regardless, even if Ms. Weiss had conclusive proof that she mailed or emailed the Form 4 to Appellants’ counsel, such does not prove that Appellants’ counsel ever received the Form 4. It is elementary that the time to serve and file a Notice of Appeal begins after an appellant *receives* written notice of the entry of an order.

IV. Appellants’ counsel is not the only attorney of record in this case who did not receive the Form 4 Order.

To the extent Respondents are implying that Appellants’ counsel is misrepresenting to this Court when he actually received the Form 4, Appellants’ counsel submits that he is informed

and believes that another lawyer in this case, Mitchell Griffith, Esquire, attorney for Colleton County, also did not receive any order from the clerk of court. Notably, Respondents do not set forth any manner or timing of any receipt of the Form 4 by them or their counsel despite importing significant detail regarding this matter in their motion.

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1385

Mt. Pleasant, South Carolina 29465

Telephone (843) 284-5500 ext. 226

Facsimile (843) 284-5501

email to: tnelson@charlestonlaw.net

Dated: 4/12/16

Attorney for Appellants

Other Counsel of Record:

David M. Swanson, Esquire
Pierce T. MacLennan, Esquire
134 Meeting Street, 3rd Floor
Charleston, South Carolina 29401

A. Parker Barnes, Esquire
Post Office Drawer 1729
Beaufort, South Carolina 29901-1729

Ernest Mitchell Griffith, Esquire
Griffith Sadler & Sharp, PA
Post Office Drawer 570
Beaufort, South Carolina 29901

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APPEAL FROM COLLETON COUNTY
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SC Court of Appeals

Doyet A. Early, III Circuit Court Judge

Case No. 2016-000477

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

v.

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

PROOF OF SERVICE

I certify that I have served the the following documents to the following recipients at the addresses shown below by depositing a copy of them in the United States Mail, postage prepaid, on April 12th, 2016:

Documents: Return to Motion to Dismiss Appeal

Recipients: Mr. Ernest Mitchell Griffith
Griffith Sadler & Sharp, PA
Post Office Drawer 570
Beaufort, South Carolina 29901

A. Parker Barnes, Esquire
Post Office Drawer 1729
Beaufort, South Carolina 29901-1729

David M. Swanson, Esquire
Pierce T. MacLennan, Esquire
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, 3rd Floor
Charleston, South Carolina 29401

(ATTORNEY SIGNATURE ON FOLLOWING PAGE)

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1385

Mt. Pleasant, South Carolina 29465

Telephone (843) 284-5500 ext. 226

Facsimile (843) 284-5501

email to: tnelson@charlestonlaw.net

Mount Pleasant, South Carolina

Dated: April 12, 2016

Attorney for Appellants



Futeral & Nelson LLC

1004 Anna Knapp Boulevard
Mount Pleasant, South Carolina 29464

Mailing Address:

P.O. Box 1385

Mount Pleasant, South Carolina 29465

Tel: 843-284-5500 | Fax: 843-284-5501

charlestonlaw.net

April 12, 16

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APR 14 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ted A. Nettles and Janell B. Nettles, Appellants v. Sylvester Guess Drew, Jr., and Debra Drew and Colleton County, Respondents.

Appellate Case No.: 2016-000477

F & N File No.:9123881

Dear Ms. Kitchings:

Please find enclosed an original and six (7) copies of *Appellant's Return to Motion to Dismiss Appeal with Proof of Service* in the above-referenced matter. Please file the originals and return a clocked copy to this office in the envelope provided. Should you have any questions, please feel free to contact our office.

By copy of this letter, I am serving David Swanson, Esquire, Pierce T. MacLennan, Esquire, A. Parker Barnes, Esquire and Ernest Mitchell Griffith, Esquire. Thank you for your attention to this matter.

With kind regards, I am,

Sincerely,

Shaunda M. Smith
Paralegal

/sms

Enclosure(s): As stated

cc: David Swanson, Esquire
Pierce T. MacLennan, Esquire
Ernest Mitchell Griffith, Esquire
A Parker Barnes, Esquire

Futeral & Nelson, LLC
Post Office Box 1385
Mount Pleasant, SC 29465



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