

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

**RECEIVED**  
APR 20 2016  
SC Court of Appeals

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

v.

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

**REPLY TO APPELLANTS' RETURN TO MOTION TO DISMISS APPEAL**

Respondents hereby respectfully reply to Appellants' Return to Motion to Dismiss Appeal pursuant to Rule 240, SCACR on the following grounds.

**I. Appellants' Notice of Appeal was not timely served.**

Respondents acknowledge that the Notice of Appeal was served by mail on March 3, 2016.<sup>1</sup> However, this was too late. The Form 4 Order denying Appellant's Motion for Reconsideration was filed November 23, 2015. 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. "An affidavit of service is Prima facie

<sup>1</sup> Respondents' Motion incorrectly stated that the Notice of Appeal was served on Respondents on March 8, 2016. In fact, March 8<sup>th</sup> is the date that Respondents were in receipt of the Notice, however the Notice was apparently served via mail on March 3<sup>rd</sup>, 2016.

evidence of service which may be impeached by extrinsic evidence.” *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 307, 311, 262 S.E.2d 913, 915 (1980). Therefore, Respondents have met their initial burden of proving service on Appellants. It is clear that the Form 4 Order was in fact sent to the Appellants – otherwise, Patricia Grant would not have sign an affidavit indicated that it was mailed.<sup>2</sup> Thus, Appellant presumably received the Order sometime in late November, but did not serve it until March 3, 2016. This is not timely and the appeal should be dismissed. *See* Rule 203(b)(1), SCACR.

Appellants argue that the Affidavit of Lori Weiss should be disregarded because it does not provide specific information as to when this Form 4 was mailed to Appellants. However, Patricia Grant signed the original affidavit of service indicating a mailing date of November 24, 2015. Therefore, the purpose of the affidavit was not to establish the precise mailing date, but to describe the procedures that the Colleton County Clerk’s office utilizes in serving notice of the entry of a decision. The affidavit provides evidence of this procedure and thus should be given due consideration.

Respondents acknowledge that their counsel was not initially sent a copy of the Form 4 Order from the Clerk’s Office. However, this fact is not persuasive for Appellants’ argument because the courts routinely mail the decision to the *moving* party (in this case Appellants) and Appellants are to notify the non-moving parties (which did not happen).

For these reasons, the Notice of Appeal should be dismissed.

*(Signature Page Follows)*

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<sup>2</sup> The additional affidavit form Lori Weiss provided by Respondents shows that this is the general procedure followed in all cases in Colleton County.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

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Dated: April 18, 2016  
Charleston, South Carolina

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**PROOF OF SERVICE**


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I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 18 day of April, 2016, caused the foregoing *Reply to Appellants' Return to 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  
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A Parker Barnes  
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Haynsworth  
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

April 18, 2016

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SC Court of Appeals

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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 Reply to Appellants' Return to Motion to Dismiss Appeal in the above matter, together with our Proof of Service for the same. 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

PTM/lfh

Enc

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

Haynsworth  
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

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