

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Judge

Appellate Court Case No. 2015-002618

RECEIVED
MAY 26 2016
SC Court of Appeals

Patricia Doller.....Respondent,

v.

Lohr Plumbing, Inc.....Appellant.

MOTION FOR REINSTATEMENT OF APPEAL

Appellant, Lohr Plumbing, Inc., respectfully moves this Court for an Order pursuant to Rule 260 SCACR reinstating the subject appeal. This Motion is made as a result of the receipt of an Order of Dismissal of Appeal, filed May 23, 2016 and received by Appellant's counsel on May 25, 2016.

By way of background, this appeal was filed on December 23, 2015. The transcript was requested on December 30, 2015. On January 14, 2016, this Court requested the parties hereto address the appealability of the order on appeal, and further advised that all deadlines would be held in abeyance pending the resolution of the issue of appealability. Appellant's counsel was under the impression that the deadline for serving the transcript was also held in abeyance (as

expending funds on a transcript from a week-long trial for an appeal that may not ultimately be allowed to proceed would be an extreme waste of resources). On March 10, 2016, the Court issued a letter advising all parties that the appeal would be allowed to proceed, but also advising that the transcript was to have been received on February 29, 2016. Upon receipt of this letter, Appellant's counsel immediately contacted the Court to inquire why the transcript would have been due prior to the issue of appealability being resolved. Ultimately, Appellant filed a Motion for Extension of Time to file Transcript, and further advised the Court Reporter to proceed with the transcript order, now that the appeal would be permitted to proceed. In response to the Motion for Extension of Time to file Transcript, the Court granted the extension through March 30, 2016. Appellant's counsel, on March 11, 2016, notified the Court Reporter of the extension request and new due date.

On or about March 28, 2016, Appellant's counsel contacted the Court Reporter to inquire as to status of the transcript, and was advised that, due to her court schedule, the transcript was not ready. Appellant's counsel, at the direction of Court of Appeals personnel, prepared a letter dated March 29, 2016 to the Court of Appeal outlining the status of the transcript and essentially requesting an additional extension of time. On April 6, 2016, Appellant's counsel received correspondence from the Court of Appeals advising that the Court Reporter was responsible for requesting extensions, and that if the transcript is not received, the Appellant should contact Court Administration. On April 27, 2016, Appellant's counsel received correspondence dated April 25, 2016, enquiring as to the status of the transcript, and advising the appeal would be dismissed should no explanation be provided.

According to the Order of Dismissal, "Appellant failed to provide an update regarding delivery of the transcript, in accordance with Rule 207 SCACR and this Court's letter dated

April 25, 2016.” However, as set forth below, the grounds for the Order are at least partially erroneous. As stated, the April 25, 2016 letter referenced in the Order was received in Appellant’s counsel’s office on April 27, 2016. On this date, Appellant’s counsel’s paralegal contacted the Court of Appeals, as Appellant’s counsel was engaged in a week-long trial in Beaufort County (from April 25, 2016-April 29, 2016). During the conversation between Court of Appeals personnel and Appellant’s counsel’s paralegal, the deadline for the receipt of transcript was established as May 11, 2016. However, it was related to the Court of Appeals personnel that the Court Reporter had the transcript calendared as due on May 18, 2016. Nevertheless, Appellant’s counsel’s office—at the direction of the Court of Appeals’ personnel—advised the Court Reporter via email on May 2, 2016 that the transcript due date had been established as May 11, 2016. To date, the transcript has not been received by Appellant.

On May 25, 2016, Appellant’s counsel received the Order of Dismissal of Appeal, filed May 23, 2016. On May 26, 2016, Appellant’s counsel prepared a letter to Court Administration, pursuant to Rule 207 SCACR, advising the transcript had not been received. In response thereto, an Order was issued granting the Court Reporter an extension to June 18, 2016 (copy attached as Exhibit 1).

Thus, although the Order indicates Appellant “failed to provide and update regarding the delivery of the transcript, in accordance with Rule 207 SCACR and this Court’s letter dated April 25, 2016,” this is an incorrect statement, as Appellant’s counsel’s office immediately contacted the Court of Appeals upon receipt of the April 25, 2016 letter. At the time of contact, the transcript due date was established as May 11, 2016, and the same was related to the Court Reporter, even though the Court Reporter had an internal deadline of May 18, 2016 (which reflects sixty days from the date original payment was received). According to Rule 207(a)(5),

"If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the Office of Court Administration, the clerk of the appellate court, and the court reporter in writing." Based upon a due date of May 11, 2016, ten days thereafter would have been May 21, 2016 (a Saturday). Appellant acknowledges that, based upon the May 11, 2016 due date, contact should have been made by May 23, 2016 (since the tenth day fell upon a weekend day, Rule 263(a) SCACR) to Court Administration. However, contact was made with Court Administration on May 26, 2016, a mere three days later, which resulted in an Order for Extension of time to June 18, 2016. It is Appellant's position that a dismissal of the appeal at this juncture and for this minor infraction is an unduly harsh result, as no party has suffered any prejudice.

For the above reasons, Appellant respectfully requests this Court to reinstate the appeal. This motion is not made for the purpose of undue delay.

Respectfully Submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

Stacey P. Canaday (S.C. Bar No. 68805)
Ralph E. Tupper (S.C. Bar No. 5647)
Attorneys for Appellant Lohr Plumbing, Inc.



The Supreme Court of South Carolina

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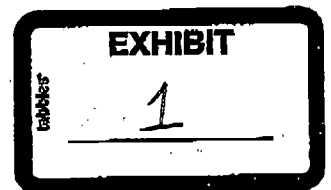
Notice

Upon request and for good cause shown, Mona Manley, Court Reporter, is hereby granted an extension up to and including June 18, 2016 to prepare and deliver the Transcript of Record in the above case.

Destinee Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
05/26/2016

cc: Stacey Canaday
A. Parker Barnes
Mona Manley



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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MAY 26 2016

Michael G. Nettles, Circuit Judge

SC Court of Appeals

Circuit Court Case No. 2012-CP-07-4139

Patricia Doller.....Respondent,

v.

Lohr Plumbing, Inc.....Appellant.

PROOF OF SERVICE

I certify that on May 26, 2016, I served a copy of the within and foregoing Appellant Lohr Plumbing Inc.'s Motion for Reinstatement of Appeal upon all parties via U.S. mail and electronic mail to counsel of record as set forth below:

Attorneys for Respondent Patricia Doller:

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(Signature page to follow)

Respectfully submitted,

TUPPER, GRIMSLEY & DEAN, P.A.
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By: 

Stacey P. Canaday (S.C. Bar No. 68805)
Ralph E. Tupper (S.C. Bar No. 5647)
Attorneys for Appellant Lohr Plumbing,
Inc.

Beaufort, South Carolina
May 26, 2016

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RALPH E. TUPPER *
 JAMES A. GRIMSLEY, III
 ERIN D. DEAN
 STACEY PATTERSON CANADAY
 KATHERINE GRAHAM FERGUSON

* ALSO ADMITTED IN NEW YORK

May 26, 2016

VIA U.S. MAIL AND FACSIMILE

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

RE: Patricia Doller v. Lohr Plumbing, Inc.
Appellate Case No. 2015-002618

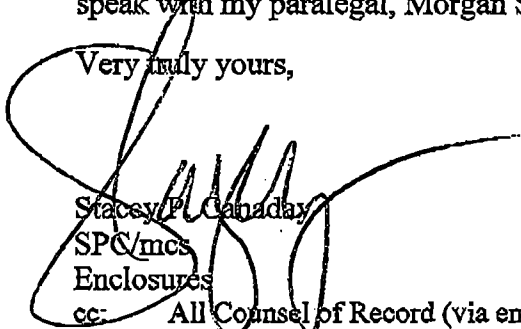
Dear Ms. Kitchings:

Please find enclosed the originals and six (6) copies each of *Motion for Reinstatement of Appeal* and *Proof of Service* on behalf of Appellant Lohr Plumbing, Inc. with regard to the above captioned matter. I would appreciate it if you would file the originals and six (6) copies of each and return one clocked copy of each to my office in the self-addressed, stamped envelope provided for your convenience. Also enclosed is this firm's check in the amount of \$25.00 for payment of filing fee.

By copy of this correspondence, together with its enclosures, I am hereby serving a copy of the aforementioned pleading on opposing counsel.

Should you have any questions, please feel free to contact me. If I am unavailable, please ask to speak with my paralegal, Morgan Shinaberry.

Very truly yours,



Stacey P. Canaday
 SPC/mcs
 Enclosures
 cc:

All Counsel of Record (via email and U.S. Mail)
 Mr. Joe Stubbs, Auto Owners Insurance Company, Claim No. 72-4827-2011 (via email only)

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 SC Court of Appeals

TUPPER, GRIMSLEY & DEAN, P.A.

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* ALSO ADMITTED IN NEW YORK

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SC Court of Appeals

FAX COVER SHEET

May 26, 2016

To: The Honorable Jenny Abbot Kitchings – (803) 734-1839

From: Stacey P. Canaday

RE: Patricia Doller v Lohr Plumbing, Inc.

Appellate Case No.: 2015-002618

Date of Case: 08-31-15

Our File No.: 22013

Number of Pages: 9, including cover sheet

Ms. Kitchings,

Attached please find *Motion for Reinstatement of Appeal and Proof of Service*. Hard copies are being sent via U.S. Mail.

Thank you,

Stacey P. Canaday