

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge
Tanya A. Gee, Circuit Court Judge

Civil Action No.: 2013-CP-40-05675
Appellate Case No.: 2015-001627

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SEP 19 2016

SC Court of Appeals

Willie J. RileyAppellant.

vs.

Dennis Wayne
Catoe.....Respondent.

**RESPONDENT'S RETURN TO
APPELLANT'S MOTION TO FILE FINAL BRIEF AFTER DEADLINE**

Respondent Dennis Wayne Catoe hereby responds to Appellant Willie J. Riley's Motion to File Final Brief After Deadline and objects to the grant of such motion upon the following grounds:

Procedural History

Pursuant to this Court's June 10, 2016 Order, Final Briefs were due twenty (20) days from the date of service of Respondent's Supplemental Record on Appeal. The Supplemental Record on Appeal was served on June 30, 2016. The deadline to file and serve Final Briefs was therefore July 20, 2016.

Appellant, however, did not file his Final Brief by this July 20, 2016 deadline.

This Court accordingly sent a letter to Appellant on August 25, 2016 advising Appellant that the time for serving and filing his Final Brief had expired and ordering that within ten (10) days from the date of the Court's letter, Appellant must file his Final Brief along with a motion requesting permission to serve and file his Final Brief outside of the deadlines set by Rule 211, SCACR. The letter further advised that Appellant's appeal would be dismissed if no motion was made within ten (10) days from the date of the Court's letter. Appellant's Final Brief and motion were due September 6, 2016.

Appellant did not serve his Motion to File Final Brief After Deadline and his corresponding Final Brief until September 7, 2016, after the expiration of the deadline set by this Court. When he purportedly served his Motion to File Final Brief After Deadline upon Respondent, he did not include a copy of the Motion and served only the Proof of Service Certificate, although Respondent acknowledges he was able to subsequently obtain a copy of the Motion on the Court's C-Track Public Access Docket.

Appellant's Motion to File Final Brief After Deadline contains no grounds for the relief he seeks but merely states: "I, Willie J. Riley request a Motion to file Final Brief after deadline."

The Final Brief served and filed by Appellant is an entirely different brief from the Initial Brief served and filed by Appellant and contains new arguments. See Appellant's Initial Brief attached hereto as **Exhibit "A"** and Appellant's Final Brief attached hereto as **Exhibit "B."** The Final Brief received by Respondent was not bound with a blue cover in accordance with Rule 267(d) and (e), SCACR and did not contain a certificate of compliance pursuant to Rule 211(a), SCRCP.

On September 9, 2016, this Court sent another letter to Appellant advising that he

had not submitted the required filing fee for his Motion to File Final Brief After Deadline and ordered Appellant to correct this deficiency within ten (10) days of the date of the Court's letter.

Argument

This Court should deny Appellant's Motion to File Final Brief After Deadline because (1) it is untimely; (2) was not properly served upon Respondent; (3) states no grounds or basis for the relief sought; and (4) requests to file a Final Brief which does not comply with the South Carolina Appellate Court Rules.

Respondent objects to Appellant's Motion to File Final Brief After Deadline and requests this Court to deny the Motion.

As an initial matter, Appellant's Motion is untimely. This Court's letter of August 25, 2016 ordered Appellant to file his Motion within ten (10) days from the date of the Court's letter. His deadline to have filed his Motion was therefore September 6, 2016. He did not file it until September 7, 2016.

Second, while his Proof of Service purports to have served his Motion upon Respondent, Appellant did not provide Respondent with a copy of the Motion and only served the Proof of Service Certificate.

Third, Appellant's one sentence Motion provides no grounds or basis for his request to file his Final Brief out of time. He offers no explanation of why he failed to file his Final Brief by the July 20, 2016 deadline.

Finally, his Motion requests to file a Final Brief out of time which itself does not comply with the South Carolina Appellate Court Rules. As set forth in Respondent's Motion to Strike Appellant's Final Brief and Dismiss Appeal, filed simultaneously herewith, Appellant's Final Brief fails to adhere to the requirements of Rules 211 and 267(d) and (e), SCACR because the Final Brief is entirely different than his Initial Brief

previously filed on November 23, 2015, does not contain a Certificate of Compliance, was not bound, and did not contain the required blue cover. See Exhibits "A" and "B."

Conclusion

For the reasons set forth herein, Respondent respectfully requests this Court to issue an order denying Appellant's Motion to File Final Brief After Deadline and to dismiss the appeal for the reasons set forth in Respondent's Motion to Strike Final Brief and Dismiss Appeal filed simultaneously herewith.

Respectfully submitted,



Leslie A. Cotter, Jr.
Carmen V. Ganjehsani
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, South Carolina 29201
803-771-4400
Attorneys for Respondent

September 19, 2016.
Columbia, South Carolina

EXHIBIT "A"

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Case No: 2013-CP-40-05675

Dennis Wayne Catoe, and Does

Respondent,

v.

Willie J. Riley

Appellant

INITIAL BRIEF OF APPELLANT

Willie J. Riley

Willie J. Riley

84 Wild Indigo Ct.

Columbia, SC 29229

(803) 414-5501

Pro Se Appellant

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SC Court of Appeals

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STATEMENT OF ISSUES

III. Did the Judge Err in granting a Summary Judgement, based on the expiring of the Statute of limitations.

- a. Respondent Catoe, Catoe told Appellant Riley,
- b. Appellant Riley had no control,
- c. Appellant Riley believes that the case should have been tolled,
- d. Appellant Riley believes that the case should have been tolled based, on the Judge retiring,

IV. Did the Judge Err in the start date of the running of the statute of limitation.

- a. Mr. William Booth III, never took the case,
- b. Appellant Riley never received a letter from William Booth III,
- c. Appellant Riley first time seeing those letters,

STATEMENT OF THE CASE

This case was brought by Appellant Willie Riley against Respondent Dennis Wayne Catoe, and others, seeking damages for a defective title in a real estate transaction, which Respondent Dennis Wayne Catoe was the closing attorney that handle the real estate transaction. Respondent Dennis Wayne Catoe, was also the one that was responsible for the title search and also provided the title insurance for the property.

Appellant Willie Riley purchased the real estate property after receiving a clear title report from Respondent Dennis Wayne Catoe on July 29, 2008 for the purchased amount of (\$3,800.00) Three thousand and eight hundred dollars, with the intent of tearing down the old house on the property and rebuilding a new one, after expecting the home and the attempt to save the old structure. Appellant Willie Riley started to do rehab on the property. Nine months into the rehab Appellant Willie Riley was approached by a Gentleman who stated Appellant was working on the wrong house. Appellant Willie Riley went straight to Respondent Dennis Wayne Catoe's office and told Respondent Dennis Wayne Catoe what was told to Appellant Willie Riley, since Respondent Dennis Wayne Catoe was the attorney that was responsible for the title search and also the attorney that handles the real estate closing. To Appellant Riley's surprise Respondent Catoe, told Appellant Riley to ignore the gentleman and if Appellant Riley had any more concern to seek another attorney for help.

Appellant Riley did what was told to him by Respondent and search for another attorney to look into the matter. Appellant Riley called several attorneys but most of them wanted upfront fees to look into the case, not sure if there was a real problem, Appellant Riley search for attorney to just look into without upfront cost. Appellant Riley, called Attorney William E. Booth III, Mr. Booth agreed to look over it, but would not take the case until he had all the information. Appellant Riley met with Mr. Booth, Mr. Booth looked over the title but could not give Appellant Riley advice if there was a problem without having more information. Mr. Booth phone the Respondent Catoe, to schedule a meeting and to check over the title search report. Respondent Catoe agreed to a meeting which was attended by Appellant Riley, Mr. Booth, Respondent Catoe and Mr. Vince who performed the title search for Respondent Catoe.

At the meeting Respondent Catoe, apologized for his response, stating he had surgery and was not himself. Respondent Catoe then stated he would continue to look into the matter and resolve any issues with the title stating it should take a few months to go back in front of the Judge and fix the matter. Mr. Booth never was able to retain the files to determine if there was a problem. After the meeting, Respondent Catoe filed the papers with the Courts and a hearing was scheduled August 2, 2010, but had to be continued due to the Judge having to go to the Doctor until October 6, 2010. On November 3, 2010 an order was issued that the property be joint ownership with the gentleman who stated Appellant was working on the wrong piece of property. On April 26, 2011 a hearing was heard for a Motion to reconsider and it was denied, but an amended order was issued. The case was appealed and heard on, which the case reversed and remand. Due to the Judge retiring, a new judge had to hear the case and a new hearing was scheduled on April 24, 2013 and an order granting Appellant the property with a cost of appeals attached to the title. After the last order Appellant Riley file a complaint against Respondent Catoe for negligence in handling Appellant Riley real estate transaction, seeking damages for lost of use of the property, damages that was caused to the property based on the time it took the litigations to produce a title which still was not clear.

Appellant Riley first complaint was dismissed on failing to file an expert affidavit with complaint on February 5, 2014 Appellant Riley filed an amended complaint on March 4, 2014. The Respondent Dennis Wayne Catoe filed a Motion for Summary Judgment, based on the statute of limitation and it was granted, order issued, filed April 23, 2015. This appeal followed.

STATEMENT OF FACTS

Dennis Wayne Catoe was hired by Willie Riley to perform the title search for a real estate purchase.

Dennis Wayne Catoe gave Willie Riley a clear title report to the purchased real estate property.

Willie Riley relied on the clear title report and purchased the property and did rehab work on the property for nine months.

Willie Riley did not have a clear title to the property he bought and still does not.

Dennis Wayne Catoe is responsible for the damages Willie Riley accrued based on the fact that it was determined the title was not clear at the time Willie Riley purchased the property and Dennis Wayne Catoe stated the title was clear.

Willie Riley was not able to use the property based on the title not being cleared or finish the property based on the mitigation law.

ARGUMENT

- I. Did the judge err in granting Respondent a Summary Judgment, based on the expiring of the statute of limitations?
 - a. Respondent Catoe, told Appellant Riley, he did not have to be concerned about the statute of limitations running out because the title insurance was only for \$3800.00 and he would have to file with Respondent Catoe insurance based on the amount of the damages exceeded the title insurance amount.
 - b. Appellant had no control over the courts or the judge decisions to continue the case.
 - c. Appellant Riley, believes that the case should have been tolled for a year on the Reverse of the appeal.
 - d. Appellant Riley, believes that the case should have been tolled based on the judge retiring and a new judge had to be appointed which a new hearing of the case had to be held.

- II. Did the judge err in the start date of the running of the statute of limitations?
 - a. Mr. William Booth III never took the case and never had the files to determine if there was a case against Respondent Catoe.
 - b. Appellant Riley, never received a letter from Mr. William Booth III as stated by Respondent Catoe which was used to determine Appellant Riley start of running of the statute of limitation.
 - c. Appellant Riley first time seeing those letters from William Booth III was when Appellant Riley ask Respondent Catoe for the case files which was in 2013.

Conclusion

The judge decision to grant Respondent Catoe a Summary Judgement is not supported by the evidence and the law. This Court should reverse the judge decision and dismiss the Summary Judgement and return the case to be placed back on the docket for trial.

Respectfully submitted,

Willie J. Riley
84 Wild Indigo Court
Columbia, SC 29229
(803) 414-5501
Pro Se Appellant

THE STATE OF SOUTH CAROLINA

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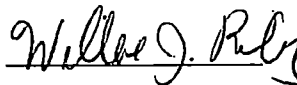
v.

Willie J. Riley

Appellant.

PROOF OF SERVICE

I, Willie J. Riley certify that I have served the foregoing documents on counsel for the Respondent by depositing a copy of them on November 23, 2015, in the United States Mail, postage prepaid to the following address: P. O. Drawer 7788 Columbia, SC 29202 Attn: Leslie A. Cotter., Jr., Shelia M. Bias.



Willie J. Riley

84 Wild Indigo Ct.

Columbia, SC 29229

(803) 414-5501

Pro Se Appellant

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EXHIBIT "B"

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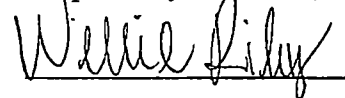
FINAL BRIEF

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How is possible to start the time on the statute of limitations based on a might be you have case. If the law states that in order to file a malpractice suit against an attorney, the suit must be accompanied by an expert affidavit. At the beginning it's just not enough information to obtain one. Mr. Catoe (Respondent) would like you to believe that Mr. Booth should have told Appellant Mr. Riley that there was enough for a case, but Mr. Booth stated he needed the whole case files to determine, one if there was any wrong doing and second who did the wrong doing. I just don't see how the law on one hand states you're not educated or have enough experiences to file a case without an expert affidavit, but you should know when a case have enough information to be filed. Also, it's hard enough and expensive to obtain an expert affidavit, with all the information. I just don't see how it's possible to get an expert to give an affidavit at the start of a case, with minimal information, even Mr. Booth could not make a definite decision based on the information at the time of the June letter which Appellant Mr. Riley had never seen before, until request of the entire files from Respondent Mr. Catoe, after the case was over in 2014.

Appellant Mr. Riley would also like to state that, Appellant Mr. Riley could not afford at that time, the cost of an expert affidavit being that Appellant Mr. Riley just put his savings into rehabbing the house Appellant Mr. Riley just purchased. As a reminder Appellant Mr. Riley was working on the house for around 9 months when Appellant Mr. Riley was approached by Mr. Green the person who stated Appellant Mr. Riley was working on the wrong house.

Respectfully submitted,



Willie J. Riley
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Pro Se Appellant

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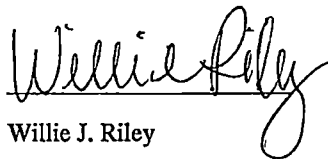
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Willie J. Riley

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Pro Se Appellant

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden & Robinson, P.A., attorneys for Respondents, do hereby certify that I have this date served the foregoing *Respondent's Return to Appellant's Motion to File Final Brief After Deadline* by personally depositing a copy of same in a United States Postal Service mailbox, postage paid, addressed to the following:

Willie J. Riley
84 Wild Indigo Court
Columbia, South Carolina 29229
Pro-se Appellant



Carmen V. Ganjehsani

Dated: September 19, 2016.