

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Probate Court

The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2016-001960
Case No. 2016-ES-0215

Georganna Paradeses, as Personal Representative of the Estate of William D.
Paradeses,.....Petitioner,

v.

Georganna Paradeses, Eleanor Glisson (Faye) (a.k.a. Faye Greeson), Pam Paradeses, Stephanie
Starr, Robin Pace, Mary Paradeses and Jim Paradeses,..... Respondents.

OF WHOM

Georganna Paradeses, individually, Pam Paradeses, Stephanie Star, Robin Pace, Mary Paradeses
and Jim Paradeses are.....Appellants,

AND

Eleanor Glisson (Faye) (a.k.a. Faye Greeson) isRespondent.

MOTION AND MEMORANDUM TO DISMISS APPEAL

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NOV 22 2016

SC Court of Appeals

James S. Murray (Bar No. 73307)
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706-722-7543
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Counsel for Respondent

Motion and Memorandum to Dismiss

On August 23, 2016, the Honorable Amy W. McCulloch of the Richland County Probate Court entered an order based on the pleadings filed in the case as well as oral arguments made at a hearing before the court on July 27, 2016. Subsequently on September 6, 2016, Appellants filed a Motion to Alter, Amend and/or Vacate the Order, and on September 12, 2016 Judge McCulloch denied Appellants' motion. On September 21, 2016, Appellants filed a notice of Appeal with the Probate Court and the Supreme Court of South Carolina. The Notice of Appeal was served on Respondent on the same day. Appellants filed their brief on November 7, 2016.

The Appellant appealed directly to the Supreme Court of South Carolina pursuant to S.C. Code § 62-1-308(l) after obtaining the consent of each party not in default. The Supreme Court subsequently transferred the case to the Court of Appeals. Pursuant to S.C. Code § 62-1-308(l) the procedure for the appeal is governed by the South Carolina Appellate Court Rules. Rule 208(a)(1), SCAR, requires that "within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service". Here, Appellants did not order a transcript, so the thirty (30) days would begin to run after service of the notice of appeal.¹ The notice of appeal was served on September 21, 2016, and Appellant's brief was filed on November 7, 2016, well after the thirty (30) days had expired.

¹ Respondent cannot be sure that Appellants did not order a transcript. However, if they did order a transcript, they failed to comply with the requirements of Rule 207 in that they did not provide all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. The Clerk has additionally not received any transcript and has requested the status of the transcript. See attached Exhibit "A." Furthermore, Appellants have not designated in their Designation of Matter that they intend to include the transcript in the record on appeal. Respondent has no information or knowledge that Appellants ordered a transcript and all evidence indicates they did not order a transcript, therefore Respondent assumes they did not.

Appellants claim to have written a correspondence to the Clerk of the Court of Appeals requesting an extension of time to file their brief on October 21, 2016, the day their brief was due. See Attached Exhibit "B." However, there is no record of this correspondence at the Clerk's office. Furthermore, even if the correspondence was received by the Clerk's office, any extension would have had to be granted under Rule 263(b), SCAR, prior to the deadline, which was the day Appellants allegedly requested the extension. There is no indication or evidence whatsoever that the time was "extended or shortened by the appellate court, or by any judge or justice thereof." There would have been hardly any time for the Court or any judge or justice to even have received the request, since Appellants made their request the day that their Brief was due. Appellants never made any contact with Respondent's counsel about any request for an extension of time other than sending a copy of the letter allegedly sent to the clerk.

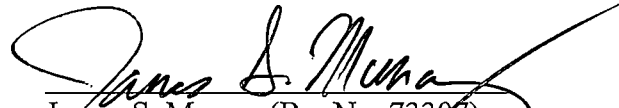
The law of South Carolina contained in Rule 260, SCAR, and case law requires Appellants' Appeal be dismissed. Pursuant to Rule 260, "[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Here, Appellants have failed to comply with Rule 208(a)(1), SCAR, and their Appeal should be dismissed. Rule 208(a)(4) clearly states that upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260, SCAR. Furthermore it is established precedent that when an appeal is not perfected within the time required by law the appeal must be dismissed. Wade v. Gore, 154 S.C. 262 (1930). The Supreme Court has held that dismissal is appropriate, and in fact the duty of the court, when a timely notice of appeal was filed, followed by a tardy paper not filed within the time provided by the rules. Southland Mobile Homes

of South Carolina v. Associates Financial Services, 270 S.C. 525 (1978). Additionally the Supreme Court has upheld dismissal where the deadline for docketing the appeal in the Supreme Court was not met. Sellars v. Nicholson, 243 S.C. 340 (1963).

On November 7, 2016, the same day that Appellants filed their tardy brief, they filed a designation of matter to be included in the record of appeal. However, this filing was deficient and did not comply with Rule 209, SCAR. Rule 209(c) states that the "Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter that is irrelevant to the appeal." There was no such certificate included with Appellants' brief or Designation.

Respondent respectfully urges that the Clerk, pursuant to Rule 260(a) and Rule 208(a)(4), enter an Order of Dismissal, or in the alternative the Court of Appeals dismiss Appellants' appeal.

This 17th day of November, 2016.


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Counsel for Respondents

A



The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 09, 2016

Mr. Adam Tremaine Silvernail, Esquire
PO Box 7995
Columbia SC 29202

Re: In the Matter of the Estate of William D. Paradeses
Appellate Case No. 2016-001960

Dear Counsel:

The Court has received your appellants' initial brief and designation of matter. Please advise the Court of the status of the transcript in this matter. If there is no transcript, or if you are already in receipt of the transcript, please notify the Court in writing within ten days of the date of this letter so that we may update our records.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Sarah Taylor Cassidy, Esquire
James Samuel Murray, Esquire

B

Law Office of
ADAM T. SILVERNAIL
LLC

October 21, 2016

By Hand-delivery:
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Paradeses v. Paradeses, et al*
Appellate Case No. 2016-001960

Dear Ms. Kitchings:

I represent the Appellants in the above-referenced proceeding, which was transferred from the Supreme Court to the Court of Appeals on October 4, 2016.

Because of final hearings in other matters during this week and next week, I find that I must request an extension of time for the Appellants' initial brief in this matter.

Pursuant to Rule 234(b), I ask that you kindly grant me a fifteen (15) day extension, making the Appellants' brief due on or before November 7, 2016.

Your consideration of this request is much appreciated.

Sincerely,



Adam T. Silvernail

Cc: Sarah T. Cassidy, Esquire
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, South Carolina 29171

James S. Murray, Esquire
Warlick, Stebbins, Murray & Chew, LLP
P.O. Box 1495
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CERTIFICATE OF SERVICE

The undersigned counsel for Respondent hereby certifies that he has served a copy of the Motion to Dismiss herein on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on November 17, 2016, addressed as follows:

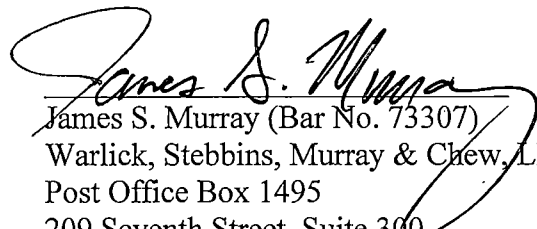
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November 17, 2016

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: *In the Matter of the Estate of William D. Paradeses*
SC Court of Appeals
Appellate Case No.: 2016-001960


Dear Sir/Madam:

Enclosed for filing please find an original and six (6) copies of the Motion and Memorandum to Dismiss Appeal (with exhibits) concerning the matter referenced as well as this firm's check in the amount of \$25.00 to cover the filing fee. Also enclosed is an extra copy to be stamped with the date of filing and returned to our office in the self-addressed, stamped envelope provided.

By way of this letter, we are serving the attorneys of record in this matter.

Thank you for your kind assistance.

Sincerely,



Jennifer M. Anderson
Legal Assistant to James S. Murray

/jma
Enclosures

cc: Sarah T. Cassidy, Esq. (w/Enclosures)
Adam T. Silvernail, Esq. (w/Enclosures)

P

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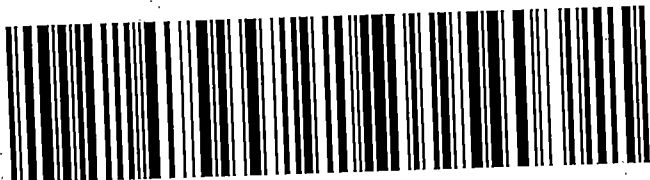
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