

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**APPEAL FROM RICHLAND COUNTY**  
**Court of Common Pleas**  
**Honorable Thomas A. Russo**

MAR 09 2017

**SC Court of Appeals**

Appellate Case No: 2016-000505

Tracy Fulmore ..... Appellant,

v.

Julie Smith ..... Respondent.

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**REPLY TO  
RESPONDENT'S RETURN TO APPELLANT'S MOTION  
TO FILE AND SERVE THE FINAL BRIEF OF APPELLANT OUT OF TIME**

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This matter is before the Court by way of Respondent's Return to Appellant's Motion to File and Serve the Final Brief of Appellant Out of Time. Appellant requests this honorable court to deny the Respondent's Motion and proceed with appellate review of this matter based on the merits.

Rule 60(b) of the South Carolina Rules of Civil Procedure provide that a party or legal representative may be relieved from an order of the court based on (1) mistake, inadvertence, surprise, or excusable neglect. Counsel for Appellant missed the filing of the Final Brief in this case based on a mistake regarding calendaring of the deadline. When the court notified Counsel for Appellant that the Final Brief had not been received, Counsel filed a Motion and submitted the Final Brief within ten days of the notice of the court.

In addition, Respondent has failed to show prejudice in the granting of Appellant's Motion

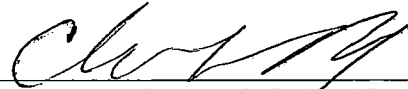
to File Out of Time. Respondent was already put on notice of the legal arguments in this case by the filing of the Initial Brief. The Final Brief is identical to the Initial Brief. Respondent has not shown what they would have done differently in this stage of the case, therefore no prejudice exists.

Court deadlines should be adhered to for the timely administration of justice. However, courts do have the discretion to grant motions relating to enlarging the time to file documents in a case if the administration of justice is served in doing so. Also, courts seek to have cases decided on the merits, as what should be done here. Counsel for Appellant made a mistake in the time for filing the Final Brief. However, Respondent has not been prejudiced by the delay. In addition, Appellant has a meritorious defense as to the merits of this case.

Respondent also argues in this Motion that the Final Brief does not comply with the rules. Appellant asserts the Final Brief is identical to the Initial Brief and that the proper references to the Record have been included in the Final Brief as allowed by the rules. No other changes have been made to the Final Brief. Therefore, Respondent's Motion regarding this matter should be denied.

Based on the arguments set out above, Appellant respectfully requests this honorable court to deny Respondent's Return to Appellant's Motion to File and Serve the Final Brief of Appellant Out of Time and proceed with the appellate review of the merits of this case.

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March 6, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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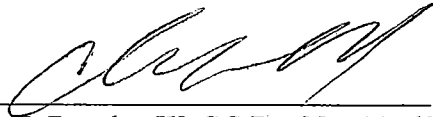
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PROOF OF SERVICE

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I do hereby certify that I have this 6th day of March 2017, served a copy of the **REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO FILE AND SERVE THE FINAL BRIEF OF APPELLANT OUT OF TIME** and a **PROOF OF SERVICE**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

Mariel D. Norton  
Attorney at Law  
BAKER, RAVENEL & BENDER, L.L.P.  
Post Office Box 8057  
Columbia, South Carolina 29202



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March 6, 2017

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March 6, 2017

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MAR 09 2017

SC Court of Appeals

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

RE: Fulmore vs. Smith  
Case No.: 2016-000505

Dear Ms. Kitchings:

Enclosed, please find for filing the **REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION TO FILE AND SERVE THE FINAL BRIEF OF APPELLANT OUT OF TIME** and a **PROOF OF SERVICE**, along with the appropriate copies.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



Charles T. Brooks, III  
Attorney for Appellant  
THE BROOKS LAW OFFICE, LLC

Enclosures as stated above

cc: Mariel D. Norton  
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