

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

Case No. 2015-CP-18-1308

RECEIVED

APR 07 2017

SC Court of Appeals

Adrian Smalls,

Respondent,

v.

Brenda Lee Barnett,

Appellant.

**RESPONDENT'S RETURN TO APPELLANT'S
MOTION TO FILE
THE REINSTATEMENT OF APPEAL
OUT OF TIME**

NOW COMES the Respondent, by and through his undersigned counsel, and responds to the Motion to File the Reinstatement of Appeal Out of Time that was filed by Appellant's Counsel on March 31, 2017. Respondent opposes and objects to Appellant's Motion for the following reasons:

1. Appellant's Counsel has missed nearly every deadline in this case from the very beginning.

This entire appeal arises out of the Dorchester Magistrate Court's refusal to consider Appellant's answer to Respondent's complaint for trespass because the answer was not filed in a timely manner. The procedural history of this case since that point has been a series of missed deadlines, requests for extensions of time, and motions to withdraw as counsel, all of

which have caused unnecessary delay and great prejudice to Respondent.

2. A timeline of the pertinent events is as follows:

- (a) 06/30/2015: Notice of Appeal to Circuit Court filed with the Summerville Magistrate's Court.
- (b) 09/25/2015: Mr. Moore filed a motion to be relived as counsel.
- (c) 12/10/2015: Mr. Moore sent an email to Judge Hughston's office requesting an extension of time for the appeal to be heard and requesting his motion to be relieved be heard first.
- (d) 12/15/2015: Mr. Moore appeared before Judge Hughston and again requested that his motion to be relived be heard and that the appeal be continued. Mr. Moore then withdrew his motion to be relieved and proceeded to argue the appeal before Judge Hughston. That appeal was dismissed.
- (e) 01/19/2016: Mr. Moore filed a Motion to File Notice of Appeal Out of Time with this Court.
- (f) 02/03/2016: Mr. Moore filed a Motion to File Letter Ordering Transcript Out of Time.
- (g) 04/29/2016: The Court of Appeals issued a letter informing Mr. Moore that the transcript and initial brief had not been received, and that the appeal would be dismissed in 10 days unless he informed the court of the status of the transcript during that time.
- (h) 05/13/2016: Mr. Moore filed another motion to be relived as counsel.
- (i) 05/17/2016: The Court of Appeals dismissed the appeal, and then later reinstated the

appeal.

- (j) 07/18/2016: Mr. Moore sent a letter to the Court of Appeals asking to withdraw his motion to withdraw as counsel, and requesting additional time to file his initial brief.
- (k) 08/16/2016: The Court of Appeals granted Mr. Moore's motion to withdraw motion to withdraw as counsel, and granted an additional 20 days to file the initial brief and designation of matters.
- (l) 09/07/2016: Mr. Moore requested an extension of time due to the death of 2 family members.
- (m) 10/17/2016: Mr. Moore requested an extension of time due to health issues and a hurricane.
- (n) 10/19/2016: The Court of Appeals granted Mr. Moore an extension of time until 11/16/2016 to file the initial brief and designation of matters, and stated in its letter: "No further extensions will be granted absent extraordinary circumstances".
- (o) 11/18/2016: Appellant filed the initial brief and designation of matters.
- (p) 12/19/2016: Respondent filed his initial brief and designation of matters.
- (q) 01/30/2017: The Court of Appeals sent a letter informing Mr. Moore that the record on appeal was late, and that he must file a motion requesting to file out of time within 10 days or the appeal would be dismissed. Mr. Moore did not respond to that letter.
- (r) 02/17/2017: The Court of Appeals dismissed this appeal.
- (s) 03/10/2017: The Amended Remittitur was send to the lower court.
- (t) 03/31/2017: Mr. Moore filed the instant Motion.

3. In the instant motion Mr. Moore states that he suffered an ongoing health crisis that left him bed-ridden and receiving inpatient treatment at various hospitals during the months of January, February, and March, and specifically during the time that the record on appeal was due (January 16, 2017).
4. Mr. Moore further states in his motion that he was not in his office much of the time, did not receive much of his mail, and admits that he did not have anyone to assist him in checking his mail during those months.
5. Mr. Moore went on to state that, even if he had received his mail, he would not have been in a position to act upon any notice because he was under the influence of medication that rendered him “lethargic, sluggish, and dysfunctional in being responsive in any form.”
6. Respondent’s counsel received the attached email from Mr. Moore on January 24, 2017, confirming changes to an order being submitted to Judge Goodstein relating to a motion hearing in the lower court concerning the same matter as this appeal. Mr. Moore stated in the email that he had been out with illness, but approved the proposed changes to the order.
7. Mr. Moore’s motion does not set forth good cause to reinstate this appeal because:
 - (a) Respondent is informed and believes that Mr. Moore at all times relevant hereto had a duty under the Rules of Professional Conduct to provide competent and diligent representation to his client, and in light of the admission(s) contained in his Motion indicating that he could not do so because he was hospitalized, medicated, and without assistance, Respondent is informed and believes that Mr. Moore had a duty to seek co-counsel or otherwise protect his client’s interests during that period.
 - (b) Further, Respondent is skeptical of the reasons set forth in Mr. Moore’s motion

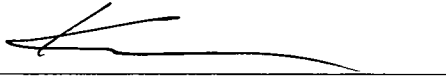
because Respondent's counsel received an email from Mr. Moore on January 24, 2017 – just 8 days after the record on appeal was due – in which Mr. Moore was clearly practicing law by approving language contained in a proposed order. That email does not comport with Mr. Moore's statements indicating that he was hospitalized and too medicated to respond during that period of time.

8. Finally, Mr. Moore's assertion that Respondent would not be prejudiced by reinstatement of this appeal is incorrect. Respondent is the owner of the home that is the subject of the underlying action in this appeal, and Respondent asserts that Appellant continues to live in the property without paying rent, and without having posted a bond or written undertaking to pay rent, all while Respondent holds legal title and remains liable for taxes and the risk of loss on the home. In the event this Honorable Court determines that Appellant's appeal should be reinstated, Respondent respectfully requests that Appellant be required to post a reasonably bond and/or execute a written undertaking to pay rent executed by at least two sureties as provided by S.C. Code § 18-9-170.

WHEREFORE, the undersigned requests that this court deny the relief requested by Respondent's Motion to File the Reinstatement of Appeal Out of Time, uphold dismissal of this Appeal, and for such other and further relief as may be just and proper.

[Signature on Following Page]

Respectfully Submitted,



Kevin D. Hackler
Theron Law Firm, LLC
3 Broad Street, Suite 450
Charleston, SC 29401
Telephone: 843-641-0146
Facsimile: 800-581-1610
Email: khackler@theronlaw.com
Attorney for Respondent

April 6, 2017

Exhibit A

Kevin D. Hackler

From: Lou Moore <lou@themoorelawfirmllc.com>
Sent: Tuesday, January 24, 2017 9:32 AM
To: Kevin D. Hackler
Subject: RE: Smalls v. Barnett Order

Kevin,

I apologize. I was having technical problems with my webmail and was out again with illness. The changes are fine.

Lou
Louis S. Moore
The Moore Law Firm, LLC
171 Church Street
Suite 340
Charleston, SC 29401
Phone: 843.410-9496
Cell: 443.469.4635
Fax: 843.491-4438

On 2017-01-19 10:15, Kevin D. Hackler wrote:

Lou:

I hope all is well. I would like to get this in the mail today as it is long overdue. Please let me know if you have any requested changes. Thanks!

Best,

Kevin

Kevin D. Hackler

Attorney at Law

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April 6, 2017

VIA US PRIORITY MAIL

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

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APR 07 2017

SC Court of Appeals

Re: Adrian Smalls, Respondent v. Brenda Lee Barnett, Appellant
Case No.: 2016-000100
Return to Motion To File Reinstatement Of Appeal Out Of Time
Certificate of Service

Dear Ms. Kitchings:

Enclosed you will find one original and six copies of the Respondent's Return to Appellant's Motion to File Reinstatement of Appeal Out of Time in the above-referenced matter, along with a certificate of service.

Please do not hesitate to contact me if you have any questions or concerns. Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, appearing to read 'Kevin D. Hackler', with a long horizontal flourish extending to the right.

Kevin D. Hackler

Enclosures: As stated

cc: Other Counsel of Record

Louis S. Moore, Esquire
The Moore Law Firm, LLC of Charleston
171 Church Street, Suite 340
Charleston, South Carolina 29401

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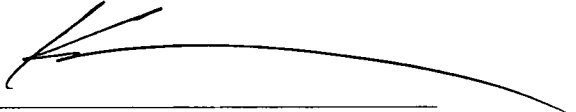
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CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Return to Appellant's Motion to File Reinstatement of Appeal Out of Time upon the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on the 6th day of April, 2017 addressed to her attorney of record, Louis S. Moore, 171 Church Street, Suite 340, Charleston, South Carolina, 29401.



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Attorney for Respondent

April 6, 2017