

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County
The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2014-40-00993

Appellate Case No. 2016-001058

Justin T., a minor, by and through his parent
Caren D. Taylor

APPELLANT

vs.

Richland County School District One,
and Percy Mack

RESPONDENTS

BRIEF OF APPELLANT

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Appellant *Pro Se*

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QUESTIONS FOR REVIEW

- 1. Did the Circuit Court err in finding that it had subject matter jurisdiction and granting the Respondents' Motion to Dismiss without a certified Record on Appeal having been filed by Respondents?**
- 2. Did the Circuit Court err by using only a form order to dismiss the appeal for lack of subject matter jurisdiction?**
- 3. Was Appellant's right to due process of law under the 14th Amendment to the United States Constitution violated?**

STATEMENT OF THE CASE

This case evolved from an Appeal hearing on January 14, 2014 to the Richland County School District One Board of Trustees (“The Board”) which upheld the Hearing Officer’s expulsion of Appellant (“The Student”) from A. C. High School and assigning him to the “Evening School.”

“The Student’s” mother received written notice of “The Board’s” decision on January 18, 2014. On February 19, 2014 a timely Notice of Appeal and Certificate of Service was filed by Alex Thomas Postic, Esquire in Richland County Court of Common Pleas. On March 4, 2014, Mr. Postic filed an Amended Notice of Appeal.

On March 11, 2014 Dwayne T. Mazyck, Esquire, Attorney for Respondents, filed the Defendant’s Motion to Dismiss on the ground that the Circuit Court lacked subject matter jurisdiction of the appeal under S.C. R. Civ. P. 12(b)(1) and (6). (R. pp. 9-11)

A hearing on the Defendant’s Motion to Dismiss was scheduled on April 5, 2016 to be heard on April 15, 2016 at 11:00 am before Judge Letitia H. Verdin. The Form Order dismissing the appeal for lack of subject matter jurisdiction was signed by the Judge on April 15, 2016 and entered on April 18, 2016. Mr. Postic was the attorney of record for Appellant from February 2014 through the April 15, 2016 hearing on the Respondents’ Motion to Dismiss for lack of subject matter jurisdiction.

This appeal is taken from Judge Verdin’s April 18, 2016. A timely Notice of Appeal was filed with this Court on May 19, 2016 and a redacted Notice of Appeal was filed on May 31, 2016. On the same dates the Notices of Appeal were served on the Respondents through the Attorney of record.

ARGUMENTS

I. THE CIRCUIT COURT ERRED BY GRANTING RESPONDENT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION WITHOUT A RECORD ON APPEAL HAVING BEEN FILED.

SC Rules of Procedure RULE 75 - RECORD ON APPEAL TO THE CIRCUIT COURT:

TRANSMITTAL provides:

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken. If the lower court, agency or tribunal has no clerk, then the original record shall be certified and transmitted by the judge or chief official of the lower court, agency or tribunal. Upon motion for good cause shown, the court may extend the time for the lower court, agency or tribunal to prepare and certify the record. Upon receipt of the certified record, the clerk of the circuit court shall give notice in writing to the parties that the record has been filed. (Emphasis added)

As set forth in Rule 75 above, it is not discretionary whether the Defendants may file a certified record on appeal. The language in this rule uses the words "shall be" which are mandatory. (Van Sant v. Smith, 301 S.C. 556, 393 S.E.174, 175 n.1 (1990)) Therefore Defendants had a mandatory duty to certify and file the original record from "The Board" within thirty (30) days with the Richland County clerk of court after the Notice of Appeal and/or the Amended Notice of Appeal were filed and served on February 19, 2014 and March 4, 2014 respectively. (Record, pages 3-8) Additionally, Defendant's Motion to Dismiss filed on March 11, 2014 (R. pp. 9 -11) did not stay the time for filing the original record.

A hearing on the Defendant's Motion to Dismiss was held on April 15, 2016 before the Honorable Letitia Verdin. (R. pp. 19-20) In addition to a Record of Appeal having not been filed¹ (R. pp. 21-24), there were no exhibits entered by the Court or either of the Attorneys at the hearing. (R. pp. 12-18)

¹ The Richland County Common Pleas Case History For Case 2014CP400993 (Print Date: 04/15/2016 & 5/10/2016 clearly show that a certified Record of Appeal has never been filed. (R. pp. 21-24)

The Judge ruled at the hearing after the both Attorneys presented their argument and said:

“Based on the, uh, -- information I’ve read and the defense memorandum in this case, I do find that this court does not have subject matter subject matter jurisdiction. Therefore, I grant the motion to dismiss.” (R. p. 17, lines 15-20)

As discussed herein, there was insufficient information and evidence for the Circuit Court to issue a Judgment granting the Defendant’s Motion to Dismiss for lack of subject matter jurisdiction. In fact the judgement is not supported by any documents filed with the Clerk of Court in a certified Record on Appeal.

Subsequently, this Court must reverse lower Court.

II. THE CIRCUIT COURT ERRED BY USING ONLY A FORM ORDER TO SET FORTH THE JUDGEMENT.

The Court’s decision was set forth on a Form Order signed April 15, 2015 and entered on April 18, 2016. (R. p. 2) The Form does set forth any facts on which conclusions of law can be drawn.

The Court erred by not issuing a written Order. The irony of this is that a written Order was impossible because there was no certified Record on Appeal that had been filed.

III. THE APPELLANT’S RIGHT TO DUE PROCESS OF LAW UNDER THE 14th AMENDMENT TO THE UNITED STATES CONSTITUTION WAS VIOLATED.

The 14th Amendment to the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

As a matter of law, the Appellant’s constitutional right to due process of law under the 14th Amendment to the United States Constitution was violated when the Defendant failed to

certify the Record on Appeal and file it in the Circuit Court. (SCRCP Rule75) "... Rule 75 states that appeals to the circuit court shall be made upon the original record in the inferior court or administrative agency or tribunal." (Van Sant v. Smith, 301 S.C. 556, 393 S.E.174, 175 n.1 (1990)) Appellant's constitutional right to due process of law was also violated when the Circuit Court erroneously ruled on Defendant's Motion to Dismiss as set forth in Argument 1 above. Argument 1 is incorporated herein by reference.

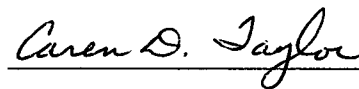
When constitutional rights have been violated, this Court has a duty to reverse the Circuit Court.

CONCLUSION

There is no Record on Appeal that contains sufficient evidence for the Court to have concluded that "The Student" was assigned to the only Alternative School in Richland One School District and not expelled from A.C. Flora High School. Therefore, the Circuit Court erred by ruling that it did not have subject matter jurisdiction and dismissed the appeal.

Accordingly, this Honorable Court must reverse the decision of the Circuit Court. Additionally, Respondents should be compelled to immediately file the Record on Appeal within five to ten (5 to 10) business days.

Respectively Submitted,



January 23, 2017

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RESPONDENTS

CERTIFICATE OF APPELLANT

The undersigned Appellant hereby certifies that this Final Brief complies with Rule 211 (b),
SCACR.

January 23, 2017

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