

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Honorable Roger E. Henderson, Circuit Court Judge

Docket No. 2013-CP-17-335

RECEIVED

JUL 21 2017

SC Court of Appeals

Tammy Taylor,

Appellant,

v.

April Springs, Angela Berry, A B Country Kitchen a/k/a A&B Country Kitchen,

Respondents.

RETURN TO APPELLANT'S MOTION TO FILE AND SERVE
INITIAL BRIEF AND DESIGNATION OUT OF TIME

Respondent, A B Country Kitchen, by and through its undersigned counsel responds and opposes the Appellant's Motion to File and Serve Initial Brief and Designation Out of Time as follows:

A. Appellant Did Not File Initial Brief nor Motion Within the Extended Time Required by Letter of the Clerk of the Court of Appeals

By letter dated June 27, 2017, the Clerk of the Court of Appeals informed the Appellant that she had missed her deadline to file her initial brief. The letter further stated the following: "Within ten (10) days of the date of this letter you must serve and file your appellant's brief and designation of matter, along with a motion requesting permission to serve and file the initial brief

and designation of matter outside of the filing deadlines set by Rule 208 and 209 of the South Carolina Appellate Court Rules. Failure to comply with the Court's request within ten days will result in the dismissal of your appeal." Ten (10) days from the date of the letter set a deadline of July 7, 2017, for filing the initial brief and motion.

The Appellant's letter to the Court filing the Initial Brief and Motion was dated July 7, 2017, and was delivered by Fed Ex. The label filed by the Clerk of Court indicates that the Shipping date was July 8, 2017 (See Exhibit A), but the shipping record from Fed Ex indicates that the Brief and Motion were not shipped until July 10, 2017, and delivered on July 11, 2017 (see Exhibit B). This is outside of the date required by the Clerk for filing.

In addition, the Appellant's Proof of Service of the Motion indicates that she served her initial brief and motion on the Respondent on July 7, 2017, by depositing a copy of it in the United States Mail, postage prepaid, on July 7, 2017..." This is incorrect and misleading. The Respondent did not receive any correspondence from the Appellant by US Mail. The Appellant sent the initial brief and Motion to the attorney for the Respondent, A B Country Kitchen, by Fed Ex which was received by the attorney for the Respondent, A B Country Kitchen, on July 11, 2017 (See Exhibit C). Tracking information indicates that the package was picked up by Fed EX on July 10, 2017, not on July 7, 2017, and shipping information was received by Fed Ex on July 8, 2017 (See Exhibit D). The Respondent, A B Country Kitchen was not served on July 7, 2017, by US Mail as required, despite the contention the Appellant made in her Motion.

B. Appellant Did Not State Sufficient Grounds for Filing and Serving the Initial Brief and Designation Out of Time

By letter dated June 27, 2017, the Clerk of Court for the Court of Appeals indicated to the Appellant that she had failed to file her initial brief in the time required by the Appellate Court Rules 208 and 209. In addition to the fact that in this Motion the Respondent, A B Country Kitchen, contends that the initial brief and motion were filed after the time allowed, the Appellant did not state sufficient grounds to allow her to file past the time allowed under the rules. The Appellant's motion states the following grounds:

1. The Appellant received the transcript on or about May 23, 2017,
2. The Initial Brief and Designation were due on or about June 23, 2017,
3. The Initial Brief and Designation were served on the Respondent on July 7, 2017,
4. The Initial Brief and Designation were submitted to the Court of Appeals on or about July 7, 2017.

These are the only grounds stated. This is a mere recitation of dates and missed deadlines of the Appellant and not sufficient grounds nor an explanation of why the initial brief was not filed on time pursuant to the rules.

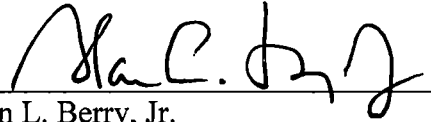
WHEREFORE, for the foregoing reasons, the Respondent, A B Country Kitchen, respectfully requests that the Court deny the Appellant's Motion and dismiss the Appeal.

[Signature on next page]

July 19, 2017


Other Counsel of Record:

Marcus Woodson
P. O. Box 1657
Marion, South Carolina 29571
(843) 423-19773865
Attorney for Appellant, Tammy Taylor



Alan L. Berry, Jr.
Attorney for Respondent, A B Country Kitchen
P.O. Box 325
Latta, SC 29565
(843) 418-1155

(EXHIBIT B)

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FedEx® Tracking

787124700695

Ship date:

Mon 7/10/2017

Actual delivery:

Tue 7/11/2017 9:33 am

FLORENCE, SC US

Delivered

Columbia, SC US

Signed for by: M.SINGILTON

Travel History

Date/Time	Activity	Location
- 7/11/2017 - Tuesday		
9:33 am	Delivered	Columbia, SC
8:28 am	On FedEx vehicle for delivery	WEST COLUMBIA, SC
8:06 am	At local FedEx facility	WEST COLUMBIA, SC
- 7/10/2017 - Monday		
9:35 pm	At destination sort facility	WEST COLUMBIA, SC
7:34 pm	Left FedEx origin facility	FLORENCE, SC
5:31 pm	Picked up	FLORENCE, SC
- 7/08/2017 - Saturday		
4:15 pm	Shipment information sent to FedEx	

Shipment Facts

Tracking number	787124700695	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Dimensions	12x9x8 in.
Delivered To	Receptionist/Front Desk	Total pieces	1
Total shipment weight	0.5 lbs / 0.23 kgs	Terms	Shipper
Packaging	FedEx Envelope	Special handling section	Deliver Weekday, Weekend Pick-Up
Standard transit	7/11/2017 by 10:30 am		



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FED
Express



FedEx carbon-neutral envelope shipping

ORIGIN ID:FLOA (843) 423-1977

THE WOODSON LAW FIRM
1011 E LIBERTY STREET
PO BOX 1657
MARION, SC 29571
UNITED STATES US

SHIP DATE: 08JUL17
ACTWT: 0.20 LB
CAD: 109860521/MSX12600
DIMS: 12x3x6 IN

BILL SENDER

TO **LAW OFFICES OF LEGETTE AND BERRY.**
ALAN L BERRY JR
110 E MAIN STREET

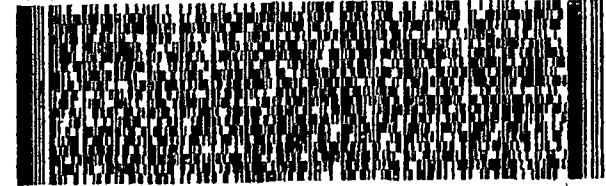
LATTA SC 29565

(843) 762-7821
INVT
POY

REF:

DEPT:

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES



FedEx
Express



RT **456**
FZ

1
12:00

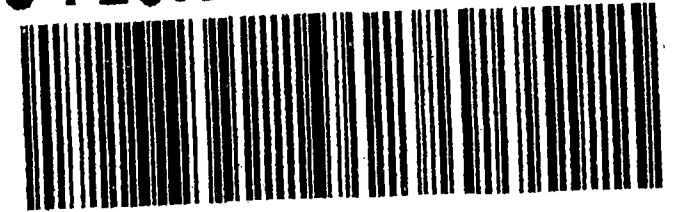
B
4922
07.11

FedEx
0201 **7871 2470 4922**

TUE - 11 JUL 12:00P
PRIORITY OVERNIGHT

29565
SC-US
CAE


28 FLOA



FID 796113 10JUL17 FLOA 546C1/CSC2/OCBA

(EXHIBIT C)

(EXHIBIT D)

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787124704922

Ship date:

Mon 7/10/2017

Actual delivery:

Tue 7/11/2017 11:17 am

FLORENCE, SC US

Delivered

Signed for by: J.WATSON

Latta, SC US

Travel History

Date/Time	Activity	Location
- 7/11/2017 - Tuesday		
11:17 am	Delivered	Latta, SC
9:29 am	On FedEx vehicle for delivery	FLORENCE, SC
9:04 am	At local FedEx facility	FLORENCE, SC
- 7/10/2017 - Monday		
9:35 pm	At destination sort facility	WEST COLUMBIA, SC
7:34 pm	Left FedEx origin facility	FLORENCE, SC
5:31 pm	Picked up	FLORENCE, SC
- 7/08/2017 - Saturday		
4:15 pm	Shipment information sent to FedEx	

Shipment Facts

Tracking number	787124704922	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Dimensions	12x9x6 in.
Delivered To	Receptionist/Front Desk	Total pieces	1
Total shipment weight	0.5 lbs / 0.23 kgs	Terms	Shipper
Packaging	FedEx Envelope	Special handling section	Deliver Weekday, Weekend Pick-Up
Standard transit	7/11/2017 by 12:00 pm		



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**PROOF OF SERVICE OF RETURN TO APPELLANT'S MOTION TO FILE
AND SERVE INITIAL BRIEF AND DESIGNATION OUT OF TIME**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
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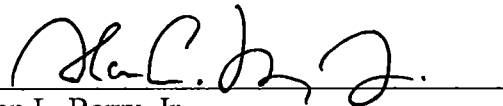
April Springs, Angela Berry, A B Country Kitchen a/k/a A&B Country Kitchen,

Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Appellant's Motion to File and Serve Initial Brief and Designation Out of Time on Tammy Taylor by depositing a copy of it in the United States Mail, postage prepaid, on July 20, 2017, addressed to her attorney of record, Marcus Woodson (P O Box 1657, Marion, South Carolina 29571).

July 19, 2017



Alan L. Berry, Jr.
Attorney for Respondent, A B Country Kitchen
P.O. Box 325
Latta, SC 29565
(843) 418-1155

Law Office of
Alan L. Berry, Jr. LLC
Post Office Box 325
Latta, South Carolina 29565
Office: 843-418-1155
Email: berralle@live.com

RECEIVED

JUL 21 2017

SC Court of Appeals

July 20, 2017

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

RE: Tammy Taylor v. April Springs
Appellate Case No. 2017-000679

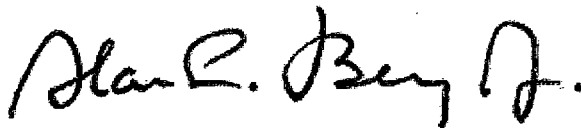
Dear Ms. Kitchings:

In regard to the above referenced case, please find enclosed the original and six (6) copies of the Return to Appellant's Motion to File and Serve Initial Brief and Designation Out of Time and the Proof of Service.

By copy of this letter, I am forwarding a copy of the enclosed documents to the Attorney for the Appellant, Marcus Woodson.

If you have any questions, please do not hesitate to contact my office.

Sincerely,



Alan L. Berry, Jr.

djm

Enclosures

cc: Marcus Woodson
Woodson Law Firm, LLC
P. O. Box 1657
Marion, SC 29571

Law Office of
Alan L. Berry, Jr. LLC
P. O. Box 325
Columbia, S. C. 29565



Jenny Abbott Kitchings
Clerk of S. C. Court of
Appeals
P. o. Box 11629
Columbia, S. C. 29211