

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM COUNTY OF WILLIAMSBURG
W. Haigh Porter, Special Referee

THE ESTATE OF JOSEPH S. SMITH,
a/k/a J.S. Smith, Jr. By Its Personal
Representatives, Geneva S. Hall,
And Joseph Keith Ray,

Respondent,

v.

Case No. 2010-CP-45-393
Appellate Case No. 2016-002443

PATRICK S. SMITH, SANDRA B. SMITH,
THOMAS LEWIS SMITH, ELIZABETH S.
KAPPELER, GLORIA DARLENE HALL SMITH,
COURTNEY ELIZABETH SMITH, TIFFANY
ELAINE SMITH, JOSEPH SAMPSON SMITH, IV,
CHARLES RICHARD RAY, JR., JOHN DOE,
JAN DOE, ET AL,

Appellant.

RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S
MOTION FOR EXTENSION TO FILE RECORD ON APPEAL

William M. O'Bryan, Jr.
O'Bryan & O'Bryan, P.C.
1 Courthouse Square
P.O. Box 1105
Kingstree, S.C. 26566
(843) 355-7471
Counsel for Respondent

RECEIVED
AUG 28 2017
SC Court of Appeals

Gregory B. Askins
Askins, Chandler & Askins
P.O. Box 10
Hemingway, S.C. 29554
Counsel for Respondent

Steven S. McKenzie
Coffey & McKenzie, PA
2 N. Brooks Street
Manning, S.C. 29102
(803) 435-8847
Counsel for Appellant

Comes now Respondent, Joseph Keith Ray, by counsel, and in response to Appellant's Motion for Extension, respectfully states:

1. That on December 1, 2016 Appellant's counsel timely filed a Notice of Appeal, mistakenly representing to this Court the parties he represented on this Appeal.

2. That Rule 208(a)(1) of the South Carolina Rules of Appellate procedure required Appellant to file an Initial Brief within 30 days of receiving the transcript.

3. That after the Respondent contacted the court several times about the status of the Initial Brief, in March Respondent filed a Motion to Dismiss with an affidavit from the Court reporter stating that she had faxed a copy of the transcript to counsel for Appellant between December 2 and 5, 2016, and billed counsel on December 5.

4. That on March 27, 2017, counsel for Appellant sent the Court a letter stating that he had not received a copy of the transcript. Counsel attached an affidavit from his office manager to that effect.

5. That on May 3, 2017, counsel for Appellant sent the Court a Petition for Extension, requesting permission to file the Initial Brief by June 5, 2017.

6. ***That by Order dated May 11, 2017***, this Court granted Appellant thirty days to file its Initial Brief. The Order stated "***[n]o further extensions will be granted absent a showing of extraordinary circumstances.***"

7. That on June 1, 2017, Appellant filed its Initial Brief, citing only one case in one of its three sections. The Certificate of Service was dated December 1, 2016.

8. That on June 7, 2017, after speaking with Respondent's counsel, the Clerk sent Appellant's Counsel a letter noting that the Initial Brief was not in compliance with Court rules. The Clerk returned attachments to Appellant's Initial Brief and noted that the certificate reflected the wrong date. The letter concluded "**An amended proof of service will have to be provided.**"

9. That Respondent filed its Initial Brief on or before June 30, 2017.

10. That Rule 210(a) of the South Carolina Rule of Appellate Procedure require the Record on Appeal to be filed within 30 days of the service of Respondent's Initial Brief.

11. That in August, Respondent contacted the Court because it had not received a copy of the Record on Appeal.

12. That by letter dated August 9, 2017, the Clerk advised Appellant "**[w]ithin ten days of the date of this letter, you must serve the record on appeal and file the proof of service for the record on appeal, along with a motion requesting permission to serve the record on appeal outside of the filing deadlines set by Rule 310 of the SCACR. Your record on appeal will not be considered and your appeal dismissed if you fail to serve the record on appeal, file the proof of service and fail to serve and file a motion within ten days of the date of this letter.**"

13. That Appellant did not comply with the order of the Clerk. Instead, on August 19, 2017, Appellant filed a "Petition for Extension to File Record on Appeal."

14. That Appellant has not attempted to seek or discuss an extension with Respondent.

15. That Appellant bases his Petition for Extension on the assertion that he was on vacation 2 weeks of the thirty day period to file the Record on Appeal, that he was under an “order of protection” from an unidentified court, and that his server was down after he returned from vacation.

16. That under Rule 240(c) of the South Carolina Rules of Appellate Procedure, Appellant was required to file a supporting brief as well as supporting affidavits and documents with the Petition.

17. That Appellant has failed to file a supporting brief in accordance with Rule 240(c). Appellant has failed to provide any documentary evidence of his server being down or the order of protection from the unknown court as required by Rule 240(c). Appellant has failed to provide any authority for the proposition that a server being down, a vacation, or an order of protection from an unknown court is grounds for any extension by this Court, let alone the “extraordinary circumstances” required by the Court’s Order of May 11, 2017.

18. That Appellant could have easily filed a petition for extension within the two weeks he was working between his vacations.

19. That any petition for extension should have been filed within the original thirty (30) days allotted for filing the Record on Appeal. Failure to file for extension before the lapsing of court imposed deadlines has been held a grounds for dismissal. *Cf.*

Southland Mobile Homes of South Carolina v, Assoc. Fin. Serv. Co., 270 S.C. 525, 244

S.E.2d 211 (S.C. 1978); Associated Petroleum Carriers v. Mut. Prop., 235 S.C. 195, 110 S.E.2d 861 (S.C. 1959) (no effort to obtain extension within time before time to perfect appeal lapsed).

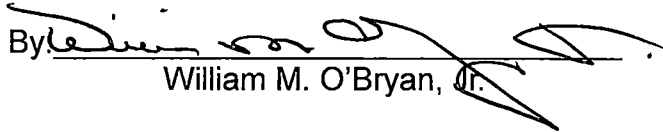
20. Respondent has incurred significant expense and invested significant time in calling the Court, drafting Motions and Supporting Briefs in an attempt to ensure that Appellant complies with deadlines of this Court.

Wherefore Respondent respectfully requests this Court to enforce the Rules of Court, deny the late Petition for Extension, and dismiss the Appeal, in accordance with the Court's directive of August 9, 2017.

Respectfully submitted

Joseph Keith Ray,

August 25, 2017

By 
William M. O'Bryan, Jr.

William M. O'Bryan, Jr.
O'Bryan & O'Bryan, P.C.
1 Courthouse Square
P.O. Box 1105
Kingstree, S.C. 26566
(843) 355-7471
Counsel for Respondent

Gregory B. Askins
Askins, Chandler & Askins
P.O. Box 10
Hemingway, S.C. 29554
(843) 558-2588
Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM COUNTY OF WILLIAMSBURG
W. Haigh Porter, Special Referee

THE ESTATE OF JOSEPH S. SMITH,
a/k/a J.S. Smith, Jr. By Its Personal
Representatives, Geneva S. Hall,
And Joseph Keith Ray,

Respondent,

v.

Case No. 2010-CP-45-393
Appellate Case No. 2016-002443

PATRICK S. SMITH, SANDRA B. SMITH,
THOMAS LEWIS SMITH, ELIZABETH S.
KAPPELER, GLORIA DARLENE HALL SMITH,
COURTNEY ELIZABETH SMITH, TIFFANY
ELAINE SMITH, JOSEPH SAMPSON SMITH, IV,
CHARLES RICHARD RAY, JR., JOHN DOE,
JAN DOE, ET AL,

Appellant.

PROOF OF SERVICE

William M. O'Bryan, Jr.
O'Bryan & O'Bryan, P.C.
1 Courthouse Square
P.O. Box 1105
Kingstree, S.C. 26566
(843) 355-7471
Counsel for Respondent

Gregory B. Askins
Askins, Chandler & Askins
P.O. Box 10
Hemingway, S.C. 29554
Counsel for Respondent

Steven S. McKenzie
Coffey & McKenzie, PA
2 N. Brooks Street
Manning, S.C. 29102
(803) 435-8847
Counsel for Appellant

I hereby certify that:

(1) I have filed an original and six (6) copies of the forgoing Respondent's Return In Opposition To Appellant's Motion For Extension To File Record On Appeal with the Clerk of the South Carolina Court of Appeals by depositing them in the United States Mail, postage prepaid, on August 25, 2017; and

(2) I have served the forgoing Respondent's Return In Opposition To Appellant's Motion For Extension To File Record On Appeal on all parties by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2017, addressed each of to the following:

Steven S. McKenzie
Coffey & McKenzie, PA
2 North Brooks Street
Manning, S.C. 29102

Mr. Thomas Smith
Individually and as Personal Representative
Estate of J.S. Smith, Jr.
1612 Wilson Street
Camden, S.C. 29020

Elbert K. Turbeville, Esq
Nettles, Turbeville & Reddeck
P.O. Box 699
Lake City, S.C. 29032

Elizabeth S. Kappeler
P.O. Box 60406
N. Charleston, S.C. 29419

Joseph S. Smith, IV
1919 Thoroughfare Branch Rd.
Cassatt, S.C. 29032

Courtney Smith
1919 Thoroughfare Branch Rd.
Cassatt, S.C. 29032

Gloria Darlene Hall Smith
1919 Thoroughfare Branch Rd.
Cassatt, S.C. 29032

Charles Richard Ray, Jr.
1614 Wilson Road
Camden, S.C. 29020

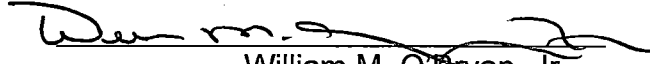
Tiffany Smith
1919 Thoroughfare Branch Rd.
Cassatt, S.C. 29032

Keith Ray
1614 Wilson Road
Camden, S.C. 29020

W. Haigh Porter
P.O. Box 4337
Florence, S.C. 29502

Gregory B. Askins
Askins, Chandler & Askins
P.O. Box 10
Hemingway, S.C. 29554

August 25, 2017



William M. O'Bryan, Jr.
O'Bryan & O'Bryan, P.C.
1 Courthouse Square
P.O. Box 1105
Kingstree, S.C. 26566
(843) 355-7471

WILLIAM M. O'BRYAN, JR.

O'BRYAN & O'BRYAN
ATTORNEYS AT LAW
P. O. BOX 1105
KINGSTREE, SOUTH CAROLINA 29556
(843) 355-7471
FAX: (843) 355-3304

J. D. O'BRYAN (1890-1985)
W. M. O'BRYAN (1925-1985)
J. D. O'BRYAN, JR. (1922-2001)

August 25, 2017

The Hon. Jenny Abbott Kitchings
Clerk, the South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The Estate of Joseph Smith, a/k/a J.S. Smith, Jr., *et al* v. Patrick S. Smith, *et al*
Appellate Case No. 2016-002443

Dear Ms. Kitchings:

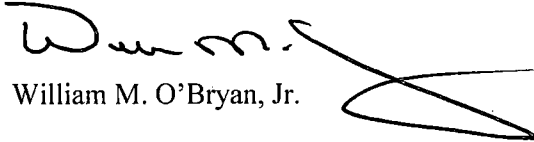
Enclosed please find original and six copies each of Respondent's Return in Opposition to Appellant's Motion for Extension to File Record on Appeal, Memorandum of Law in Support of Respondent's Return in Opposition to Appellant's Petition for Extension, and Proof of Service to be included in the Record on Appeal in the referenced case, together with my firm's check for payment of the motion/petition filing fee of \$25.00.

By copy of this letter, I am serving opposing counsel and all other parties.

Thanking you for your assistance in this matter, I am,

Yours very truly,

O'BRYAN & O'BRYAN


William M. O'Bryan, Jr.

WMO'Bjr/pda
enclosures as stated

cc: Steven S. McKenzie, Esq.
Elbert K. Turbeville, Esq.
Joseph S. Smith, IV
Gloria Darlene Hall Smith
Tiffany Smith
W. Haigh Porter, Esq.
Thomas Smith (Individually and as Personal Representative)
Elizabeth S. Kappeler
Courtney Smith
Charles Richard Ray, Jr.
Keith Ray
Gregory B. Askins, Esq.

RECEIVED

AUG 28 2017

SC Court of Appeals

CALL 1-800-222-1811 FOR PICKUP OF ALL YOUR PACKAGES

PLEASE PRESS FIRMLY

PLEASE PRESS FIRMLY

PLEASE PRESS FIRMLY


DuPont™ Tyvek®
Protect What's Inside.™

 **PRIORITY MAIL**
UNITED STATES POSTAL SERVICE®

UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 007.20⁰⁰
0000278940 AUG 25 2017
MAILED FROM ZIP CODE 29556



U.S. POSTAGE
PAID
KINGSTREE, SC
29556
AUG 25 17
AMOUNT
\$0.00
R2305K142271-02

 **PRIORITY MAIL**
UNITED STATES POSTAL SERVICE
For Domestic and International Use
From O'BRYAN & O'BRYAN
PO Box 1105
Kingtree, SC 29556



TO The Hon. Jenny Abbott Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Label 228, January 2008

RECEIVED

SEP 18 2017
SC Court of Appeals

Expected Delivery Day: 08/26/2017

USPS TRACKING NUMBER



9505 5119 9612 7237 0731 32

HOW TO USE:



1. COMPLETE ADDRESS LABEL AREA
Type or print return address and addressee information in designated area, or on label.



2. PAYMENT METHOD
Affix postage, meter strip or PC postage label to area indicated in upper right hand corner.



3. ATTACH LABEL (optional)
Remove label backing and affix in designated area.

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail®. Misuse may be a violation of federal law.

EP-14 JANUARY 2004
© 1995 USPS