

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

RECEIVED

SEP 19 2017

Appellate Case No. 2017-000617 SC Court of Appeals

South Carolina Public Interest Foundation and William B. DePass, Jr., individually, and on behalf of all others similarly situated, Appellants,

v.

The City of Columbia, Richland County, and Fairfield County, Respondents.

**APPELLANTS' REPLY IN SUPPORT OF
MOTION TO REINSTATE THE APPEAL**

Appellants, by their undersigned attorney, submit this Reply in Support of the Appellants' Motion to Reinstate the Appeal.

STATEMENT OF FACTS

The Circuit Court entered its Order ruling for the Defendants on February 17, 2017. Appellants timely filed a Notice of Appeal on March 7, 2017. There was no evidentiary hearing in the Circuit Court, only one oral argument on the Motion for Summary Judgment. Appellants timely filed their Initial Brief and Designation of Matters for Record on Appeal on April 7, 2017, without designating a copy of the transcript of the oral argument from the Circuit Court. Appellants had thought the transcript unnecessary to the appeal.

On April 13, 2017, at Respondents' request, Appellants asked the Circuit Court Judge who the court reporter was and ordered a transcript of the oral argument. On April 24, 2017, Appellants notified the Court of the ordering of the Transcript.

Respondent Counties filed a brief on May 5, 2017, and Respondent City filed a different brief on May 8, 2017, both without any reference to the transcript. On June 30, 2017, the parties exchanged emails, wondering about the transcript.

On July 18, 2017, this Court sent a letter to the undersigned stating the time for serving the Record on Appeal had expired. On July 24, 2017, the undersigned wrote to the Court of Appeals, explaining that he had ordered a Transcript in April, but had not received it, and explaining that he needed the copy the Transcript to file the Record on Appeal. (The Clerk's Office states that it did not receive the July 24, 2017 letter.)

On August 25, 2017, the Deputy Clerk of Court entered an Order dismissing the Appeal for failure to file the Record on Appeal. On September 1, 2017, the undersigned telephoned the Clerk of Court's Office, and learned that the Court had not receive the July 24 letter. That day, the undersigned attorney sent a fax letter to the Court explaining the circumstances, and attached a copy of his July 24 letter. Appellants also filed a Motion to Reinstate the Appeal and a Motion for Enlargement of Time to file the Record on Appeal, to include the transcript of the summary judgment oral argument.

On September 8, 2017, counsel for the Counties responded to the Motion to Reinstate the Appeal, opposing it, and the undersigned counsel learned for the first time that counsel for the Counties had not received July 24 letter. Opposing counsel argued that the appeal should be dismissed.

The undersigned attorney wrote to the court reporter on September 12, 2017, following up on the earlier request for the transcript. On September 12, 2017, the court reporter responded as follows:

Please accept my apologies. I just did a quick email search, and it looks like I never opened your original email. I will pull the notes for your case as soon as I get home this afternoon and get to work on it tonight.

Would you prefer a hard copy through the mail, or would you instead like a PDF?

Again, I'm so sorry to have dropped this.

Elizabeth

Later that day, the court reporter wrote again saying she couldn't find her notes of the hearing on that date, nor could she find audio files. The undersigned attorney checked again with the Circuit Court judge and was reassured of the identity of the court reporter on duty that day. The undersigned and the court reporter exchange more emails.

The court reporter wrote:

I am at a loss. I've rechecked my notes from 1/17/17, listened to the audio files, and had a look at the Public Index. We started court that day at 11:00. The only case we handled was a jury trial that began that morning with jury selection and ended in a mistrial in the afternoon. We did not handle any other cases that Tuesday. Then when I looked at the Public Index, I didn't see 1/17/17 listed under "Actions." (The actual date of a hearing might not be given, though.)

The undersigned attorney and the court reporter exchange more email messages, and she came to a vague recollection of one incident in which she had not received notice of a hearing and arrived an hour after the hearing had been scheduled. In that instance, another court reporter was pressed into service. She agreed to pursue this recollection further and check with other court reporters who may have been in the courthouse that day,

who could have been pressed into service. The court reporter also followed up with the Circuit Judge, and the undersigned followed up with Circuit Judge.

Eventually, the court reporter and the undersigned communicated with Court Administration, who, after extensive choose search, informed us that another court reporter, no longer employed by the court system, had left some notes in a file related to this case, and if the undersigned would make a written request for a transcript, Court Administration would ask another court reporter to transcribe the notes made by the court reporter no longer employed by Court Administration.

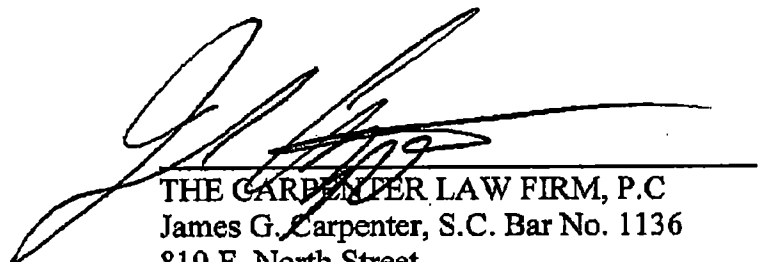
The undersigned ordered a transcript, via email and letter to Court Administration, and is hopeful of receiving a transcript of the oral argument on motion for summary judgment in the near future.

CONCLUSION

Appellants respectfully suggest that, under the circumstances, dismissal of the appeal is too harsh and extreme remedy. Appellants pray the Court to Reinstate the Appeal and grant the Motion for Enlargement of Time to File the Record on Appeal, including the transcript of oral argument of the motion for summary judgment.

Respectfully submitted,

September 19, 2017



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served a copy of the foregoing **APPELLANTS' REPLY IN SUPPORT OF MOTION TO REINSTATE THE APPEAL** on opposing counsel by first class mail, postage prepaid, this September 19, 2017, addressed as follows:

Burnet R. Maybank III
Post Office Drawer 2426
Columbia, SC 29202

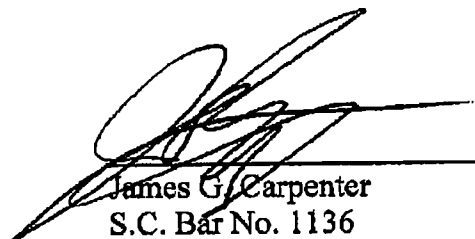
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Respectfully submitted,
THE CARPENTER LAW FIRM, PC



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September 19, 2017



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FACSIMILE TRANSMITTAL SHEET

TO:	Jenny Abbott Kitchings	FROM:	James G. Carpenter, Esq.
COMPANY:	Clerk, Court of Appeals	DATE:	9/19/2017
FAX NUMBER:	(803)734-1839	TOTAL NO. OF PAGES INCLUDING COVER:	7
PHONE NUMBER:	(803) 734-1890	SENDER'S PHONE NUMBER:	(864) 235-1269
RE:	SCPIF v. City of Columbia	YOUR REFERENCE NUMBER:	2017-000617

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

ATTENTION SHELBY

Dear Ms. Kitchings:

I attach a copy of Appellants' Reply in Support of Motion to Reinstate the Appeal, which I am serving today by mail and by email on opposing counsel.

If you need anything else, please telephone me at 864-235-1269.

Thank you very much.

James G. Carpenter

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