

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

RECEIVED

SEP 29 2017

SC Court of Appeals

Case No. 2016-CP-40-05336
Appellate Case No. 2017-001130

Tom Efland,Appellant,

v.

Randy L. Mills and Richland County, Respondents.

SECOND MOTION TO DISMISS APPEAL

Respondent Randy L. Mills (hereafter "Mills") moves a second time to dismiss the appeal by Appellant Tom Efland (hereafter "Appellant"). In support of his motion, Mills will show:

1. This is an appeal from an order which granted Mills' Motion for Judgment on the Pleadings as to Appellant's claims in the underlying action.
2. The detailed history of inaction and delays by Appellant in this proceeding was detailed in Mills' first motion to dismiss dated June 29, 2017. Appellant did not even bother to respond to that first motion to dismiss, although this Court denied the same by order dated August 2, 2017.
3. Mills has confirmed with Court of Appeals staff that as of 3:00 PM today, Friday, September 29, 2017, Appellant's initial brief and designations have still not been filed by Appellant,

despite having been due¹ on September 25, 2017. Court of Appeals staff further advise that the last mail delivery of the day occurs on or before this time, confirming no such filing by mail will be made today by Appellant before close of business for the weekend.

4. Likewise, neither this Court nor the undersigned have received any request or motion for an extension of time.
5. Accordingly, Mills again seeks dismissal of this appeal for the latest failure by Appellant to comply with deadlines imposed the applicable rules.
6. In so doing, Mills incorporates his detailed exhibits and chronology submitted in his original motion to dismiss dated June 29, 2017.
7. In addition, Mills would note that when the Notice of Appeal was filed and served on the 31st day after the trial court's order was issued, Appellant did not file a copy of the Notice on the Richland County Clerk of Court as required. The Court reminded Appellant on May 17, 2017 that he had not provided proof of service on the Clerk of Court, and granted Appellant an additional ten days to remedy the defect in the notice of appeal.
8. As referenced above, Appellant filed no response to the initial Motion to Dismiss filed by Mills. While not required to be filed, a "response" is the only method provided by the rules to indicate opposition to a motion filed with the Court. Rule 240(e), SCACR. Thus when this Court denied Mills' motion to dismiss on August 2, 2017, it did so despite Appellant not putting forth any opposition to the motion.

¹ The due date is calculated pursuant to Rule 208(a)(1), SCACR which requires the filing of an initial brief within thirty days after receiving the transcript. C-track reflects a letter from Appellant's counsel indicating receipt of the transcript on August 24, 2017.

9. Appellant is five (5) days late with the filing of his Initial Brief and Designations (Rule 208(a)(1), SCACR), or requesting an extension of time to do so. Rule 263(b), SCACR.
10. It is anticipated that as soon as this motion is served via fax to Appellant's counsel today, this Court will either receive (1) an initial brief and designations with a COS indicating it was mailed on September 25, 2017, yet inexplicably delayed in the usual one-day mail service from West Columbia, or (2) a motion acknowledging the deadline was missed, yet requesting to file Appellant's initial brief and designations out of time.
11. Had this case, which has its origins in litigation that was filed initially in 2005, not been delayed so many times at the trial court level and now at the appellate level, Mills would have been more accommodating and patient for what appears to the sort of likely inattention to detail that is often excused by this Court. However, after twelve (12) years of missed deadlines, failure to appear/respond and repeated extensions of time, Mills respectfully requests that this appeal be dismissed.²

Respectfully submitted,



Desa Ballard
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² Mills' counterclaims against Appellant have been delayed by Appellant's claim that this appeal must stay the trial court proceedings in whole. Mills' motion to compel discovery as to counterclaims against Appellant, to which no response has been received, was heard on September 18, 2017 by the trial court and is currently under advisement. Exhibit A.

ATTORNEYS FOR RESPONDENT MILLS

September 29, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005336

Tom Efland

Randy Mills

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
FILED
SEP 19 PM 12:09
CLERK OF COURT
S. JAHUE MOORE

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Under Adversement

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---------------------------------------|--------------------------------|
| | | \$ |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature]

Judge Code 2145

Date 18-SEP-17

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of SEP, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of SEP, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

S. Jahue Moore

Mitchell Willoughby
Desa Ballard

Harvey M. Watson III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]



STATE OF SOUTH CAROLINA
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Tom Efland,Appellant,

v.

Randy L. Mills and Richland County, Respondents.

CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on September 29, 2017, I served a copy of the **Second Motion to Dismiss Appeal**, in the above-captioned case on the following individuals by U.S. Mail, with sufficient first-class postage affixed, and addressed as follows:

**S. Jahue Moore, Sr., Esquire
John Bradley, Jr., Esquire
Moore Taylor
Post Office Box 5709
West Columbia, South Carolina 29171**

**Mitchell Willoughby, Esquire
Willoughby & Hofer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202**

September 29, 2017


Beth Cogan, Paralegal



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph. 803.796.9299 | fx 803.796.1066 | desaballard.com

September 29, 2017

Via U.S. Mail and Facsimile (803-734-1839)
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

SEP 29 2017

SC Court of Appeals

Re: *Tom Efland v. Randy L. Mills and Richland County*
Appellate Case No.: 2017-001130

Dear Ms. Kitchings:

Enclosed for filing with your office is an original and one copy of the **Second Motion to Dismiss Appeal** for the above-referenced matter. Also enclosed is a check for \$25.00 for the filing fee. Please have your office file the original and return the filed copy via our self-addressed stamped envelope that is provided. If you have any questions please do not hesitate to call.

With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal
beth@desaballard.com

cc: Via U.S. Mail
S. Jahue Moore, Sr., Esquire
John Bradley, Jr., Esquire
Mitchell Willoughby, Esquire
Randy L. Mills (via email)



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING

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FAX TRANSMISSION COVER SHEET

Date: *Friday, September 29, 2017*
To: *South Carolina Court of Appeals*
Fax: *(803) 734-1839*
Re: *Tom Efland v. Randy Mills (2017-00130) Appeal File*
Sender: *Beth Cogan*

The original x will will not be mailed to you.

YOU SHOULD RECEIVE 8 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (803) 796-9299.

RECEIVED

SEP 29 2017

SC Court of Appeals

The information contained in the facsimile is attorney privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited and will be considered as a tortious interference in our confidential relationship. If you received this transmission in error, or if you encounter difficulty with your receipt of this transmission, please call (803) 796-9299.