

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Senior Circuit Court Judge

RECEIVED

OCT 13 2017

SC Court of Appeals

Case No. 2016-CP-40-06177
Appellate Case No. 2017-001394

ALEXANDER N. GEE, JR., aka
Sandy Gee and KAREN B. GEE,
a/k/a KAREN GEE,.....Respondents,

vs.

ERNEST E. YARBOROUGH,
a/k/a Ernest Yarborough.....Appellant.

APPELLANT'S MOTION TO FILE
RETURN TO RESPONDENT'S MOTION TO DISMISS
OUT OF TIME
and
APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

NOW COMES APPELLANT, ERNEST E. YARBOROUGH (hereinafter sometimes referred to as "Yarborough", "Petitioner", or "Appellant"), in a self-represented capacity, moving the Court to issue an order allowing him to file a Return to the Respondent's Motion to Dismiss out of time.

In support of this Motion and Return, Yarborough shows the Court the following:

1. On or September 26, 2017, Respondents served the Appellant a Notice of Motion and Motion to Dismiss Appeal, alleging that the above-referenced appeal should be dismissed because the Appellant has failed to comply with Rule 207, SCAR concerning the ordering of the transcript.
2. Appellant's first observation concerning Respondent's "Notice of Motion" reveals irony: they urge this Court to issue a drastic order of dismissing my appeal for failure to comply with Rule 207, but the very Motion they seek to dismiss my case with does not comply with the appellate court rules either. For example, Rule 240(c), SCACR, requires all motions before this Court to contain a Memorandum with citations of authorities cited therein. Respondents' Motion before this Court does not contain such memorandum, and it is out of compliance with Rule 240(c), SCACR. This along is sufficient grounds for the Court to dismiss the Respondent's Motion to Dismiss. However, despite Respondent's hypocrisy, Appellant requests the Court to consider the reasons stated herein and issue an order dismissing the Respondent's Motion to Dismiss for the good cause shown.
3. This case involves a dispute over a piece of real estate located at 117 Ashley Hall Road, Columbia, South Carolina (the "Disputed Property"). This Disputed Property has served as my personal residence since February 2008. On September 12, 2017, my home suffered severe water damage because of a broken water pipe on the second-floor bathroom of the residence. The house was severely "flooded" on both floors. Since September 12, 2017, family life in this home has not been same. Things are in disarray. Things are not place in places where they are normally placed. Flooring are buckling; sheet rock is falling. My home is not home as I knew it.¹ Other than send inspectors and insurance adjusters,

¹There is a proverbial expression that "a man's home is his castle". A substantial portion of my home is no longer my "castle". Because of the "flooding" and dysfunctionality of my home since the "flood", things simply have not

Respondents, who claim to be the owners and the landlord, have done absolutely nothing to repair this damage and get my home back to normal. Since September 12, 2017, I have hired and paid a specialty contractor to take appropriate actions to protect my family from the water damages—including taking actions to deter mold and mildew. Even to this day, my home is not functioning to its normal capacity. This is relevant to the matter before the Court for the reasons shown below.

4. On or about September 26, Respondent's counsel served me the Notice of Motion and Motion to Dismiss [hereinafter referred to as "Motion"] which is the subject matter of this Return. I probably received it around the September 28, 2017. Routinely, all mail is retrieved by the house-keeper and placed in my office upstairs in the residence. My office was severely damaged by the "flood" and is completely non-functional. The contractor that I hired remove the carpeting and I locked the room to keep my toddlers from entering it.
5. Unbeknown to me, my housekeeper continued to place mail in my office and placed mail in the new location as well, i.e., on the wet bar down stairs.
6. On or about October 8, 2017, I discovered the "Motion" inside a commercial flyer on my desk. The time to file a return had already passed on October 06, 2017.
7. Unfortunately, I had absolutely no way of knowing that my housekeeper was still putting mail in my office, because I was retrieving mail from the "wet bar". Nothing cued me to look for mail in my dysfunctional office, and I found it only when I went inside the office looking for my tennis shoes.

worked in an orderly fashion. This dysfunctionality is the factual underpinning for the good cause stated in this Motion.

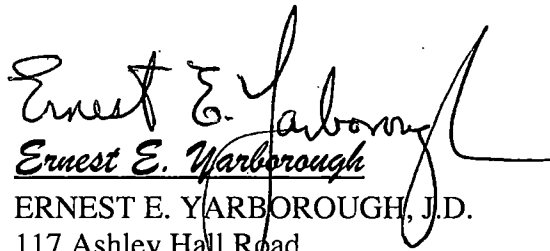
8. For the reasons shown above, I am requesting the Court to accept the following return to the Respondents' Motion":
 - a. On August 24, 2017, the Court granted my Petition to order the transcript out of time. I had already ordered the transcript and had already informed Ms. Stacy Johnson, the courter reporter, that I would pay in advance for the transcript.
 - b. On September 25, 2017, Ms. Johnson emailed me the following: "In reviewing my to do list, I realize I have not received your money order in the amount of \$136.65 for the transcript of the hearing in the above-referenced case. If you are still in need of the transcript, please let me know." I immediately emailed Ms. Johnson back indicating that I thought my wife had already sent the money order.
 - c. On September 27, 2017, when I realized that the money order had not been sent, I mailed Ms. Johnson a money order on September 28, 2017 via certified mail, and I have received confirmation that Ms. Johnson has in fact received the money order.
9. Ms. Johnson is not required to deliver the transcript until 60 days from the date the Court granted my request, which means, the transcript is not due until on or about October 24, 2017.
10. The mix up concerning payment did not take the preparation of my transcript off of Ms. Johnson's "to do list"—see indicated that she discovered the non-payment when she was reviewing the "to do list". Therefore, this prosecution and flow of this appeal has not been prejudiced by the mix up with the payment.
11. Every month, I have been paying the Respondents in according with the bond and undertaking that I posted with the court.

12. It is somewhat disingenuous for Respondent's to abandon² me with all the water damage, receive my timely monthly payments, and now seeks the drastic remedy of dismissal when they have suffered no damage.

WHEREFORE, for the reasons stated above, the Court should grant the Appellant's Motion to file a Return out of time and deny the Respondents' disingenuous attempt to have this matter dismissed.

At Columbia, SC

Dated: October 11, 2017



Ernest E. Yarborough

Ernest E. Yarborough
ERNEST E. YARBOROUGH, J.D.
117 Ashley Hall Road
Columbia, SC 29229
(803) 633-5983
eyarborough001@gmail.com

Appellant, Self-Represented

²It appears that the Respondents are going to use the insurance money to repair the home. They had offered to send help but they wanted me to leave the home, which I refused because I felt that it was a rouse for them to claim that I voluntarily abandoned the home. For now, I think we have an agreement to go forward with the repairs.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL RICHLAND COUNTY
Court of Common Pleas

OCT 13 2017

Jean H. Toal, Senior Circuit Court Judge

SC Court of Appeals

Case No. 2016-CP-40-06177

ALEXANDER N. GEE, JR., aka
Sandy Gee and KAREN B. GEE,
a/k/a KAREN GEE,.....Respondents,

vs.

ERNEST E. YARBOROUGH,
a/k/a Ernest Yarborough.....Appellant.

PROOF OF SERVICE

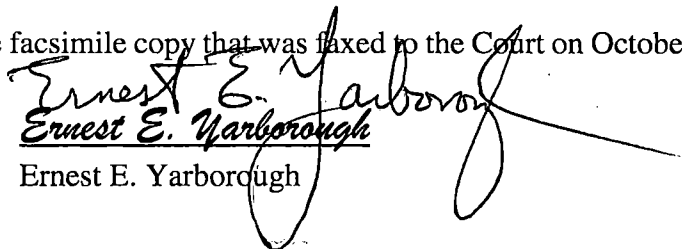
I, Ernest E. Yarborough, the above-named Appellant, certify that I have served a copy of the foregoing Appellant's Motion and Return to Defendants' Motion to Dismiss on the individuals listed below on October 11, 2017, by the depositing the same in the United States mail, postage prepaid, addressed as follows:

Leonard R. Jordan, Jr., Esquire
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, SC 29209

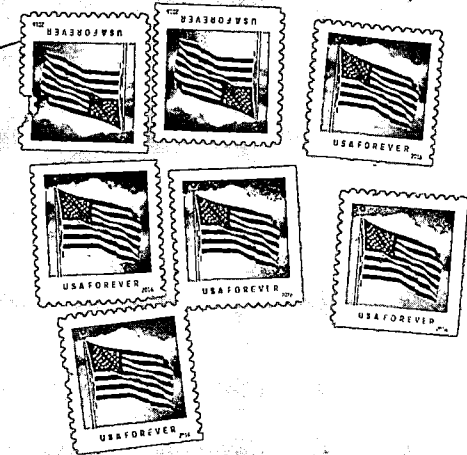
I also email Mr. Jordan a copy of the facsimile copy that was faxed to the Court on October 11, 2017.

At Columbia, SC

October 11, 2017


Ernest E. Yarborough
Ernest E. Yarborough

117 Ashley Hall E. Garbony
Road
Columbia, SC 29229



RECEIVED
OCT 18 2017
SC Court of Appeals

Clerk, SC Court of Appeals
Filing Section
1220 Senate Street
Columbia, SC 29201