

STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Charleston County

Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Judge

RECEIVED
JAN 11 2018
SC Court of Appeals

Case No. 2015-CP-10-6502

Appellate Case No.: 2017-001775

Mikell M. Henderson.....Appellant,

v.

Mikell R. Scarborough, Individually and as Personal Representative of the Estate of Mary Ross Hanahan, and Joseph Ross Henderson,.....Defendants,

Of whom Mikell R. Scarborough, Individually and as Personal Representative of the Estate of Mary Ross Hanahan.....Respondent.

RETURN OF RESPONDENT TO APPELLANT’S PETITION TO REINSTATE APPEAL

Pursuant to the December 14, 2017, Order of Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals, the Appeal in this matter was dismissed for appellant’s failure to provide the status of the transcript as required by Rule 207, SCACR, and the letter of this Court dated November 21, 2017.

On December 29, 2017, appellant filed his Petition and Memorandum in Support of Reinstating Appeal, and Proof of Service upon counsel for respondent of same date. Respondent has not yet received a copy of the Petition from appellant but out of an abundance of caution submits this return, and respectfully requests leave to supplement the return if deemed necessary

by court or counsel.

Pursuant to Rule 260, SCACR, and the further authority cited herein, Respondent requests that Appellant's Petition for Reinstatement be DENIED.

THE NOTICE OF APPEAL WAS NEVER FILED IN THE LOWER COURT

(RULE 203(d)1(B), SCACR)

Appellant failed to ever file the Notice of Appeal with the clerk of the lower court. Rule 203(d)1(B), SCACR, mandates that, "The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of Appeal is served. In the case at bar the notice of appeal was served on August 23, 2017. As set forth above the notice of appeal was never filed in the lower court which may affect the jurisdiction of the appellate court to hear this appeal.

APPELLANT DID NOT TIMELY REQUEST THE TRANSCRIPT

(RULE 207(a)1, SCACR)

Appellant failed to timely order the transcript from the court reporter. Rule 207(a)1, SCACR provides in appeals from the court of common pleas that, "the transcript must be ordered within ten (10) days after date of service of the notice of appeal." In the case at bar Appellant served his notice of appeal on Respondent on August 23, 2017, and did not order the transcript until September 5, 2017, which is the 12th day after Appellant served his notice of appeal.

APPELLANT DID NOT NOTIFY THE APPELLATE COURT OF HIS FAILURE TO RECEIVE THE TRANSCRIPT WITHIN THE ALLOTTED TIME

(RULE 207(a)5, SCACR)

Rule 207(a)5, SCACR provides that, "If appellant has not received the transcript within the allotted time (60 Days) nor received notice of an extension within ten (10) days after the allotted time, appellant shall notify the Office of Court Administration, the clerk of the appellate court and the court reporter in writing."

In the case at bar, Appellant ordered the transcript from the court reporter on September 5, 2017. The 60 day allotted time for the court reporter to prepare the transcript expired on November 5, 2017. Appellant wrote to the court reporter on December 12, 2017, which is 98 days after he first ordered the transcript and 38 days after the allotted time expired.

APPELLANT'S RESPONSE TO CLERK'S LETTER OF NOVEMBER 21, 2017

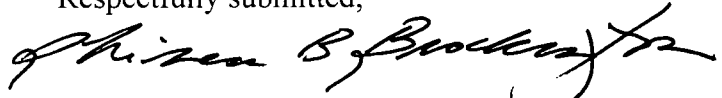
Appellant further failed to promptly respond to the clerk of this court's request for an update by letter of November 21, 2017 (which appellant received on December 8, 2017), until December 12, 2017. Appellant's response was not received by this court until December 29, 2017.

Respondent submits that by reason of all of the above, appellant's request to reinstate the appeal be denied. Appellant never filed the appeal in the lower court as mandated by the appellate court rules. Appellant did not timely order the transcript and did not notify anyone of

his failure to receive the transcript within the allotted time period. Appellant did not promptly respond to the clerk's letter of November 21, 2017, which requested an update on receipt of the transcript.

Appellant's pattern of failing to file proper notice of the appeal with circuit court, the late filings, failure to follow the required rules regarding appeals, and disregard of mandatory appellate court rules has prejudiced Respondent in that Respondent has to prepare for trial of the remaining issues in the case facing the uncertainty of the existence of a valid appeal. Appellant has failed to demonstrate good cause to reinstate the appeal and his petition for reinstatement should be DENIED.

Respectfully submitted,



Shirrese B. Brockington, Esq. (Bar No. 00956)

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January 8, 2018

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF APPEALS

CASE NO. 2017-001775

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SC Court of Appeals

MIKELL M. HENDERSON,)
)
Petitioner,)

v.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)

Respondents.)

CERTIFICATE OF SERVICE


I hereby certify that on January 8, 2018, I emailed or mailed with first class postage affixed, or mailed by certified mail, return receipt requested, with first class postage affixed, the *Response to Petition to Reinstate Appeal* to the below listed:

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Charleston, South Carolina

Dated: January 8, 2018

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January 8, 2018

RECEIVED

JAN 11 2018

SC Court of Appeals

The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **MIKELL M. HENDERSON v. MIKELL R. SCARBOROUGH**
Appellate Case No. 2017-001775

Dear Clerk:

Enclosed is the following:

- ✓ *Original & 6 copies of the Respondent Mikell Scarborough, Response to Petition to Reinstatement Appeal*
- ✓ *Certificate of Service*

Please file the same and return clocked copies to me. Thank you.

Very truly yours,



Shirrese B. Brockington

SBB/loh

Enclosure(s)

cc: Mikell R. Scarborough
Adam T. Silvernail, Esq.
Joseph S. Mendelsohn, Esq.