

APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department

South Carolina Law Enforcement Division

Response to Request by Clerk

Appellant Lynd does not have a specific date as requested by the court, as to notification of the May, 11 2016 order, appellants trial counsel is no longer employed at the firm that

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represented Lynd at trial. The firm of David Bradley and Brett Greenberg no longer exists, and the phone numbers are no longer answered nor or email's answered. Appellant Lynd's request for the case file has never been even replied too, much less fulfilled. Appellant Lynd can only go by his own email records of correspondence with Greenberg. Those do not show a specific date, only the discussion of appeal and the need of the final order and filing of the appeal as outlined in his reply to respondents motion to dismiss.

The May, 11, 2016 order would fall under the rule 54 as outlined in I.O.P's own response (*see below*) as well as the final order of August 3, 2017 (***fifteen months apart***) as shown in the response everyone appellant was in contact with, from Counsel Greenberg, Court clerk, Appeals Court Clerk, Court Administrators office of Rosalyn W. Frierson. All stating the case was not final and that order of May, 11 was not subject to an early or interlocutory appeal, and that any & all appeals would come after the end of the case. *If it had been; after all the filings in this case, it is assured if it was due Lynd would have filed it.*

This is a clear concise scheme by defendants/respondents to project some air of inpropriaty by the implication of multiple filings trying to claim some error, and to manufacture a technicality to avoid facing the issue itself. None of the parties can survive that so they are in a desperate attempt to get out of it. Appellants Lynd jet skies were stolen by IOP allegedly destroyed, sold, auctioned, who knows, **with NEVER ANY FORM of notice to Lynd**. That is conversion under the law!!!! Caldwell and I.O.P. did it that is not denied!! And S.L.E.D. was duty bound to investigate it, but closed the investigation prematurely (***without regard of the consequences to Lynd***) to go after Caldwell while she felt 'at ease' due to the case being closed. **ALL OF THIS ARE CRIMES AGAINST Lynd**, and they cannot file an answer to the appeal without admission on the facts or perjury. Nor can the court or should the court, help them avoid facing it. I the face of equity the burden on respondents is far less than the loss to Lynd.

The **South Carolina Supreme Court** has addressed this exact scenario as well as the **U.S. Supreme Court**. All in appellant Lynd's favor, these are the ruling precedents on these types of exaggerated and timely drawn out appeals.

The 2nd request by the C.O.A. Clerk for the order to go with the form 4 entry, **is the order was never filed.** This is part of appellants appeal argument with no file from counsel; no order on

file, Appellant Lynd can only go off the original order referred to in the transcripts as grounds, and assume that basis for the 8-3-17 order is the same.

THAT ITSELF IS CAUSE FOR GRANTING THE APPEAL, the courts cannot leave official court orders dismissing a case, especially a case against a city and State police agency, to an assumption. Not in this era of public outcry.

From Appellants original response:

IOP goes on to state that under rule 54 that the appeal filed after the final ruling is the correct time to file the appeal. This is also echoed by the COA clerk's office when asked, and the trial court's court administrators office of Rosalyn W. Frierson, that is to avoid numerous and lengthy appeals, that the appeal is taking after the final ruling dismissing the case:

IOP goes on to even caption the motion 'Judge Kristy Harrington' in its motions caption, as the trial judge which is correct and is who issued the final order and ruling, in its motions caption, when it is trying to claim a prior motion ruling by a different Judge is the basis. The ruling it is trying to use to start the appeal clock was not the final ruling. And as stated rule 54 (b) clearly states it was not a final ruling.

Let's remember this appeal went from attorney of record, Greenberg, to pro-se Lynd without the attorney supplying the file or record to Lynd. Therefore Lynd due to the actions of a South Carolina court officer was impeded from the start.

IOP goes on to state, that all this time Lynd was represented by counsel, and notice was made to counsel, and Lynd's receipt of that has no bearing. **On the contrary even though the appeal is timely on all parties, any error that caused an untimely appeal would be the fault of counsel of record.** Not an error on Lynd, and Lynd's good faith appeal would survive an equity ruling. And clearly and unequivocally would fall under the ineffective assistance of counsel standard.

That ineffective assistance of counsel is one of the grounds being heard on this appeal. So the court would have to rule on that matter to determine if the appeal was untimely due to Lynd or due to Lynd's counsel.

Lynd's contract with counsel clearly shows the appeal was contracted for, as well as emails discussing the filing of the notice of appeal, and counsel advice that it was not time. Lynd then upon his own; contacted all, the court administrator, the COA, and the trial clerk, all of which corroborated Lynd's counsel statement that after all matters were ruled on was the start of the time limit to file a notice of appeal.

Lynd's counsel then refused to file the notice and Lynd to preserve the appeal, filed the notice of appeal himself, as outlined before, **the COA clerks would not accept it while Greenberg was still shown as attorney of record, but do show the filing recieved and as timely by Lynd.** The Court of Appeal clerk has dozens of notices to Lynd counsel discussing Lynd's timely filing and Counsel Responsibility to do it himself.

Lynd made numerous attempts to start the appeal, **and made a clear and concise Good faith effort under the rules** and has perfected a timely appeal on all parties and all matters in the cause of action.

The courts and defendants stretching out of Summary judgement motions and hearings over a year, cannot in any way effect Lynd's right to appeal a final dismissal of a case. As a note, the motion to reconsider was filed after **awaiting a signed order that was never entered.** AS of this date the final order has never been entered, only a form 4 entry with an attached order to come later, **of which never materialized.** That caused Lynd's attorney at the time problems that it could only file a motion to rehear or reconsider on what was heard in court, not on facts or opinions found in a written order to reference. The rule 59/60 motion was correct.

Remember the 2nd and 3rd summary judgements were based on the ruling of the first, and the issuance of that ruling, and followed that ruling to the letter, **so an appeal of one on the facts would apply to all three, since they are all granted and based on the same date and occurrence, and the transcripts show and discuss that.**

RULE 54, (b) Judgment Upon Multiple Claims or Involving Multiple Parties.

*In the absence of such determination and direction, any order or other form of decision, however designated, **which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties***

Hagood v. Sommerville, 607 SE 2d 707 - SC: Supreme Court 2005

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App.2002).

Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.

The South Carolina Supreme Court has held that the motion Lynd filed does apply to start/toll the appeal time limit and the motion in 2015 was not required to be a separate appeal. The Court also outlines the times and cause of order entry's to file the rule 59/60 motions as well as the application of all the previous motions in a particular case. This is the standard precedent the court has set to correlate all the prior precedents.

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.

Fifth, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*.

Cf. Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1989)

US v. Peak, 992 F. 2d 39 - Court of Appeals, 4th Circuit 1993

In its answer, the government conceded that "*failure to file a notice of appeal when so instructed by the client constitutes ineffective assistance of counsel for purposes of §*

However effective or ineffective Peak's counsel was before the judgment of conviction, **his failure to file the requested appeal deprived Peak of the assistance of counsel on direct appeal altogether.**

A handwritten signature in black ink, appearing to read "David Scot Lynd", written over a horizontal line.

David scot Lynd

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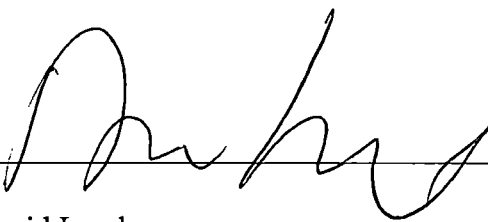
**Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department**

South Carolina Law Enforcement Division

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I hereby certify that the above named parties were served this reply by U.S.P.S. mail on 1-30-2018 to the address on file with the court shown below.

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