

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

RECEIVED

JAN 02 2019

SC Court of Appeals

Appeal No. 2018-001279

Case No. 2013-CP-23-01715

Michael Stehney, Jr..... Respondent,

v.

Ronald E. Ferguson, Susan M. Ferguson,
and Ronald J. Ferguson
Of Whom Ronald J. Ferguson is Appellant.

RETURN TO MOTION TO VACATE

Respondent Michael Stehney, Jr., through his undersigned attorney, hereby respectfully moves to dismiss the Motion to Vacate of Ronald E. Ferguson and Susan M. Ferguson, which was served on Respondent by mail on December 20, 2018. The grounds for this return to motion are as follows:

1. Ronald E. Ferguson and Susan M. Ferguson (“The Fergusons”) were properly served with the Respondent’s Motion to Dismiss. Respondent’s attorney notified the Court of the initial lack of service and mailed the second Certificate of Service on July 30, 2018. The Court issued its Order dismissing the Fergusons’ portion of the appeal on August 9, 2018, which was 10 days after service. Hence, pursuant to Rule 262(b) SCACR, the Fergusons were timely served with the Motion to Dismiss.

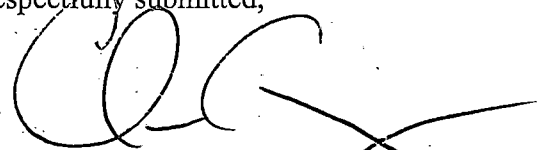
2. As stated in Rule 203(b)(1), Notice of Appeals from the Court of Common Pleas are to be served on all Respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.
3. Appellant, Ronald J. Ferguson, in his Notice of Appeal filed on July 5, 2018, stated that he received written notice of entry of the final order in the related Common Pleas case on June 8, 2018. Appellant and the Fergusons, his parents, who live at the same address, all received notice of the final order on the same day.
4. Pursuant to Rule 203(d)(3), SCACR, if the notice of appeal is not timely filed, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260. Rule 260(a) states that whenever it appears that an appellant or a petitioner has failed to comply with the requirements of the Appellate Court Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).
5. The Fergusons had 15 days to file a Motion to Reinstate with regards to the Court's Order dated August 9, 2018, but failed to do so; as a result, the Motion to Vacate is untimely, therefore the August 9, 2018 Order is now binding and is therefore the law of this case.
6. Further, the Fergusons are barred under the doctrine of laches, because they knew that their portion of the appeal was dismissed and sat on their rights for at least four months.
7. Consequently, any request to appeal by the Fergusons is now out of time and, in fact, was already out of time when the Respondent filed his Motion to Dismiss; hence the Court's Order dismissing the Fergusons as parties to the appeal as a matter of procedure.
8. Additionally, the Fergusons' portion of the case was remanded back to Circuit Court; therefore, the South Carolina Court of Appeals has no jurisdiction in this matter and the Fergusons' Motion to Vacate has been filed in wrong Court.

9. Respondent would point out that this is a contrived request because Ronald J. Ferguson missed his deadline to file the Initial Brief in this matter and had his parents do this to try to save his appeal.
10. Finally, this request is moot because, after filing the Motion to Vacate, the Fergusons paid the judgment and requested that the judgment be marked satisfied in full.

THEREFORE, the Respondent requests that the Court:

1. Deny Ronald E. Ferguson and Susan M. Ferguson's Motion to Vacate;
2. Deny the Appellant, Ronald J. Ferguson's Motion filed on November 29, 2018;
3. Dismiss the Appellant's appeal case due to his late filing of his Initial Brief; and, thereby
4. Grant the Respondent permission to pursue the execution of judgments already granted to him in the Final Order of the Common Pleas matter in order that Respondent may be made whole.

Respectfully submitted,



Chace D. Campbell S.C. Bar 13624
John E. Chambers, Jr. S.C. Bar 9027
Chace Campbell, P.A.
12 East Stone Avenue
Greenville, SC 29609
(864) 268-8244
Attorney for Respondent Michael Stehney,
Jr.

December 28, 2018

THE STATE OF SOUTH CAROLINA
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Of Whom Ronald J. Ferguson is Appellant.

CERTIFICATE OF SERVICE

This is to certify that I have served a true copy of the foregoing **Return to Motion to Vacate** in the foregoing case on the following persons this 31st day of December, 2018, by depositing a copy of the same with the United States Postal Service, postage prepaid to the following:

Ronald E. Ferguson
103 Mill Creek Road
Piedmont, SC 29673

Susan M. Ferguson
103 Mill Creek Road
Piedmont, SC 29673

Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673

CHACE CAMPBELL, P.A.


Chace Campbell

December 31, 2018


Chace Campbell, P.A.

Attorneys At Law

December 31, 2018

VIA FIRST CLASS MAIL

Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Michael Stehney, Jr., Respondent v. Ronald E. Ferguson et al
Appeal No.: 2018-001279

Dear Ms. Kitchings:

Please find enclosed Respondent's Return to Motion to Vacate and Certificate of Service along with 7 copies.

Please file the original and copies accordingly and return a court clocked copy to us in the envelope provided.

If you have any questions, please do not hesitate to call our office.

Sincerely,

CHACE CAMPBELL, P.A.


Chace Campbell

/Encl

Cc: Ronald J. Ferguson
Ronald E. Ferguson
Susan M. Ferguson



Chace Campbell P.A.
12 East Stone Avenue
Greenville, SC 29609

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Clerk of Court
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