

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2018-CP—32-01221
Appellate Case No.: 2018-002134

Bryan Walling Respondent

v.

Judi Castro d/b/a A Mother's Prayer Appellant

INITIAL BRIEF OF APPELLANT

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MAR 04 2019
SC Court of Appeals

Lawrence Keitt, Esquire
LAW OFFICE OF LAWRENCE KEITT
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ATTORNEY FOR APPELLANT

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None

STATEMENT OF ISSUE IN APPEAL

- I. Is the alleged failure of the appellant's counsel to timely file the Appellant's request for reconsideration an appealable issue?

II. STATEMENT OF THE CASE

The Appellant was a long term tenant of the property owned by the Respondent's father who is elderly. The respondent filed an eviction action against the Appellant in the Magistrate Court of Lexington County. The trial of the matter was before the Honorable Scott Dean Whittle on March 19, 2018. The Appellant represented herself at the trial.

Following the trial the Magistrate ruled that the Appellant had a significant arrears on the rent for the property due to the owner of the property an issued a Writ of Ejectment requiring the Appellant to vacate the premises.

As a result of that order the Appellant sought counsel to appeal the decision of the Magistrate. The appeal was timely filed and a bond hearing was held on April 19, 2018. At this hearing the Court ruled that the Appellant would be required to pay a bond of seven thousand five hundred and no/100 (\$7,500.00) into the Court pending the Appeal, in addition to continuing to pay the rent of two thousand five hundred and no/100 (\$2,500.00) on the building she was renting. The Appellant did neither.

On May 30, 2018 the Appellant's appeal was heard by the Honorable R. Knox McMahan who ruled in favor of the Respondent by order served electronically on June 25, 2018. The order was sent to Ms. Castro on June 26, 2018

On July 2, 2018 Ms. Castro telephoned counsel to discuss the order she had received. Counsel informed her that it would be in her best interest not to file a Motion for Reconsideration. Ms. Castro telephoned counsel on July 6, 2018 and asked that the Motion to Reconsider be filed by counsel because she had attempted to

file it Pro Se but was told by the Clerk of Court it could not be accepted because she had a lawyer.

The hearing on the Motion for Reconsideration was heard on August 7, 2018 before the Honorable Alison Renee Lee. Judge Lee ruled upon the Motion of the Respondent that the Motion for Reconsideration was not timely filed because the Motion for Reconsideration was filed on July 12, 2018 which is outside of the ten day requirement and dismissed the matter.

The Appellant submitted a second Motion for Reconsideration based on the fact that an attempt was made to file the documents on July 6, 2018 but the Clerk's office computer did not accept the document until July 12, 2018. Judge Lee issued a Form 4 order crediting the Appellant with the filing attempted on July 6, 2018 but still denied the request because the Motion was still not timely filed.

The order was sent to Ms. Castro on August 8, 2018 along with the counsel recommendation that she not file an Appeal of this matter.

This appeal was filed pro se by the Appellant and against counsel's recommendation.

STANDARD OF REVIEW

This matter was tried by a Judge without a jury. Thus, the appeals Court is free to review the facts and law of this matter.

ARGUMENT

- I. **The Appellant's counsel, after a thorough review of the law and facts of this case can find no law which supports the Appellant's position that the failure to timely file a Motion for Reconsideration is an appealable issue.**

CONCLUSION

Counsel for the Appellant would submit the within matter for consideration by
this Court..

Respectfully Submitted,

LAW OFFICE OF LAWRENCE KEITT

A handwritten signature in black ink, appearing to read "Lawrence Keitt", written over a horizontal line.

Lawrence Keitt, Esquire
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ATTORNEY FOR APPELLANT

February 28 2019
Orangeburg, SC

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Bryan Walling Respondent


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Judi Castro d/b/a A Mother's Prayer Appellant

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on **February 28, 2019**, I served the following documents: **Appellant's Initial Brief** by placing same in the United States Mail, postage prepaid and addressed as follows:

Holly-Marie Sarvis Patterson, Esquire
355 N. Main Street
Gaston, SC 29053

By 

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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
Post Office Box 11629
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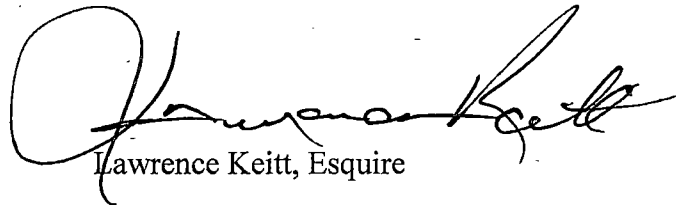
Re: Judi Castro v. Bryan Walling
Appellate Case No.: 2018-002134

Dear Ms. Kitchings:

Enclosed to be filed are the Appellant's Initial Brief and Designation of Matters, A Motion to Expand Time to allow the filing of the brief and a Motion to be Relieved as counsel for the Appellant. I am also enclosing my firm check in the amount of \$100.00 for the filing of the two Motions.

I would ask that one copy of each document be returned to me in the envelope enclosed for your convenience.

Sincerely,


Lawrence Keitt, Esquire

cc: Holly Marie Sarvis-Patterson, Esquire
Judi Castro

LK/lrb

✓

PECIFIED*
LUDED*
D*

Law Office of Lawrence Keitt
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