

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from RICHLAND COUNTY

Deandrea G. Benjamin, Circuit Court Judge

Court of Common Pleas

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SC Court of Appeals

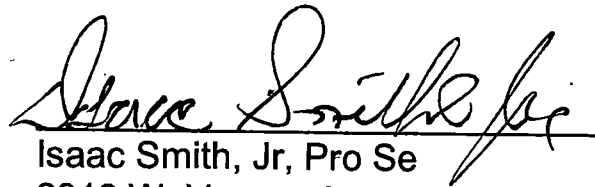
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**Case No. 2018-0002167**

\_\_\_\_\_  
Estate of Johnnie Mae Muller Newton, ..... Respondent

v.

Isaac Smith, Jr., ..... Appellant

\_\_\_\_\_  
**RECORD ON APPEAL**  
\_\_\_\_\_



Isaac Smith, Jr, Pro Se  
2918 W. Vernon Avenue  
Los Angeles, CA 90008  
Telephone 323-295-9500

May 24, 2019

Heather Cairns,  
Cairns Law Firm, LLC,  
2537 Gervais Street,  
Columbia, SC 29204

Attorney for Respondents

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials

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Isaac Smith, Jr, Pro Se  
2918 W. Vernon Avenue  
Los Angeles, CA 90008  
Telephone 323-295-9500

May 24, 2019

State of South Carolina )  
County of Richland ) Court of Common Pleas  
2018-CP-40-00403

Isaac Smith, Jr. )  
vs. ) Transcript of Record  
Johnnie Mae Muller Newton )  
Defendant )

May 11, 2018  
Columbia, South Carolina

B E F O R E:

Honorable DeAndrea G. Benjamin, Judge

A P P E A R A N C E S:

Thomas E. Mosley, Esq.  
Attorney for the Plaintiff

Heather M. Cairns, Esq.  
Attorney for the Defendant

Joy E. Holston  
Official Court Reporter

1 THE COURT: This is case number 2018-CP-40-403, Isaac  
2 Smith versus Johnnie Mae Muller Newton. This is an appeal  
3 from Probate Court, is my understanding?

4 MR. MOSLEY: That is correct.

5 THE COURT: All right. And this, this appeal is by  
6 Isaac Smith. Is that correct?

7 MR. MOSLEY: Yes, ma'am. Good morning.

8 THE COURT: Good morning.

9 MR. MOSLEY: How are you doing, Judge.

10 THE COURT: I am great. All right, I will be glad to  
11 hear from you.

12 MR. MOSLEY: Okay. Judge, may it please the Court.

13 THE COURT: Yes, sir.

14 MR. MOSLEY: I am Thomas Mosley, as you know.

15 THE COURT: Yes, sir.

16 MR. MOSLEY: And I recently got involved in this  
17 matter at the eleventh hour. And I have spoken to Ms.  
18 Cairns, who represents the Estate and Ms., Lawyer Dean who  
19 apparently represents a direct descendant of the deceased  
20 person.

21 THE COURT: Who is that now?

22 MR. MOSLEY: Elnora Dean. She represents the sister  
23 of the decedent. My client at this point, Mr. Smith, is a  
24 nephew and these parties have been in a very dysfunctional  
25 situation, arguing over an Estate, you know, the money and

1 a burnt house. My client, Mr. Smith, is in California and  
2 I have been communicating with him just recently. So we  
3 are asking for a, first of all, a continuance, and I did  
4 my notice of appearance and to initially ask the Court for  
5 a continuance. I note that the notices gave the parties a  
6 deadline to submit briefs to this particular appeal. I  
7 didn't have time, I guess I could have, but the late  
8 notice and so much material I didn't have time to prepare  
9 any briefs. So I am going to first ask for maybe fifteen  
10 to thirty days to present a brief subject to you looking  
11 at it and making your decision. I will say, Your Honor,  
12 that I think that the opposing counsel has done a great  
13 job to edify the Court about the background in this case  
14 by making a reply to everything to deny the, to deny the  
15 appeal sua sponte for a deficiency with regard to the ten  
16 day letter to appeal. At the time Mr. Smith, he accepted  
17 service of some orders of the Probate Judge while he was  
18 incarcerated in Richland County Detention Center back in  
19 February. Just as aside, Judge, he made a vital mistake,  
20 he come to South Carolina because it was an allegation  
21 that he had spent some Estate money paying some lawyer in  
22 California and traveling back and forth. And the parties  
23 have entered into an agreement, he was suppose to pay the  
24 money back to the Court but he has failed to meet the  
25 deadline. So as a condition of getting out of jail he,

1 you know, he had paid X amount of dollars. I think this  
2 family is fussing over about maybe \$200,000.00 dollars  
3 cash and a burnt house. I think there were some trucks  
4 and cars that were distributed to other apparent members.  
5 The unique thing about the law with regard to an Estate,  
6 which Ms. Cairns represents the Estate, there is a  
7 pecuniary interest of everybody involved including me.  
8 But primarily, you know, Courts at this particular point,  
9 especially Probate Court and its appellate power has more,  
10 more than a casual look at the designated time period to  
11 do something because as a matter of equity, equitable  
12 decisions have far reaching impact on the ability of  
13 people to attend each others funeral at the end. You  
14 know, this case is about a win/loss situation with lawyers  
15 and ultimately all of this nonsense will be trebled  
16 towards the advantage of the PR getting five percent, some  
17 money, all the lawyers get paid. And as a matter of fact  
18 of all of this, diminishes the value of the Estate and  
19 everybody gets paid. Ideally, my client, the Court in and  
20 of itself, knowing some of this stuff, when my client  
21 first appeared and was trying to probate the will the  
22 Probate Court simultaneously said, well, since nobody else  
23 is here and I will appoint you the PR. I think my  
24 opposing counsel's response to that is going to be, well,  
25 he had money that he wasn't suppose to take and other

1 family members didn't know about it. Well, on that  
2 particular regard, Your Honor, the Estate is a fictional  
3 of Western Jurisprudence and created and it really doesn't  
4 exist in and of itself. Somebody died and they are dead  
5 and the family is fussing over it. So when you look at  
6 that from a moral standpoint the nephew, how did Mr. Smith  
7 get access to everything, probably because this is a  
8 disfunctional family and, you know, he had access. Okay.  
9 So ultimately, Your Honor, I beg of you this morning to  
10 let us get some transcripts of record. I had talked to my  
11 clients earlier and I suggested to them, let's just  
12 suppose that the will is no good and you go back to the  
13 distribution and there is a hierarchy relationships  
14 without even the client of Ms. Cairns, you know, the PR in  
15 the Estate. They are more distant relatives so you have a  
16 hierarchy, ideally now, you have got to keep in mind that,  
17 it is my understanding, her client, I mean the mother,  
18 excuse me, the sister of the deceased, they are still  
19 fussing over whether or not that lady is incompetent or  
20 not. That is one issue.

21 THE COURT: Ms. Dean wasn't notified to be here?

22 MR. MOSLEY: I was curious about that. I called and  
23 spoke to her, Your Honor. And by no means, I think both  
24 counsel, Ms. Cairns and Ms. Dean have been great lawyers  
25 trying to do the best they can for their respective

1 clients, with the clients going through a lot of nonsense.  
2 I suggested, as a matter of alternative dispute  
3 resolution, which is what we are looking at now, judicial  
4 policy, that they take a look at, not in mediation but  
5 arbitration between some real good lawyers and some  
6 preachers and rather having people waiting for a dollar,  
7 have everybody show up so this family can heal and they  
8 can attend each others funeral when they die. These cases  
9 are very serious and under Western Jurisprudence I think  
10 is an obligation of this Court or any Court to sit people  
11 down like I do, I am not trying to tell Ms. Cairns' what  
12 to do, but sit people down and not let them net effect of  
13 our Jurisprudence, and the Jurist who started this system  
14 up. And I take these matters serious, Your Honor. And I  
15 have precedence with my argument going back to, my good  
16 friend, Benjamin Cardozo who was a great Jurist talking  
17 about civility in these matters. But, Your Honor, I think  
18 we need the transcript of the record. And finally, let me  
19 just say this, that I disgruntled last night and I didn't  
20 know that there was some legal issues over on the criminal  
21 side with regard to post conviction relief and a time  
22 table. And I found a word called hybrid representation of  
23 our Constitution, didn't create a right to legal  
24 representation especially inmates with regard to PCR's and  
25 their ten day notice. And this is a similar situation

1     whereby Mr. Smith was in jail, his son was his jailhouse  
 2     lawyer in the ten days they missed. On the criminal side  
 3     an appeal is a matter of the jurisdictional issue. But I  
 4     would beg the Court's indulgence that in Probate Court an  
 5     appeal to Circuit Court is more than just a notification  
 6     requirement. This Court and its appellate power over  
 7     Probate, my understanding of the law, is that he has a  
 8     right to the facts and issues and make a decision based  
 9     upon how you view things. So it is not just, boom, bam,  
 10    bam, thank you, ma'am. I think it would be too  
 11    conclusively to accept my opponent's argument based upon  
 12    what she wrote up without the transcript of the record and  
 13    without some judicial temperament. And I know--

14           THE COURT: Is there not a transcript in this case?

15           MS. CAIRNS: May I speak, Your Honor?

16           THE COURT: From the Probate -- yes, ma'am.

17           MS. CAIRNS: Thank you, Your Honor. I understand  
 18    much of what Mr. Mosley speaks to. But I think it is  
 19    important to understand that the matter that brings us  
 20    before you today is a very simple discreet matter which  
 21    was simply a motion filed to dismiss the appeal based on  
 22    the untimeliness of the filings. And so the merits of the  
 23    case, the facts of what occurred before, the need for  
 24    transcripts or anything else are not relevant to today's  
 25    hearing at all. It is completely a matter of the

1 timeliness of his ability to properly file and serve his  
2 notice of intent to appeal. The Probate code has been  
3 tuned up a few years ago to make appeals from Probate  
4 Court very clear in terms of the process. And after the  
5 receipt of the written order, which occurred on February  
6 12th, Mr. Smith was served the order while in Probate  
7 Court. Rule, well code, it is not even a Rule, it is a  
8 Code Section, 61-1-308, covers appeals from Probate Court  
9 to Circuit Court provided that he had ten days to file his  
10 notice of intent to appeal and serve. There has actually  
11 been a couple of cases, where the benefits of a couple of  
12 cases that say that that is exactly what it says, that  
13 they must be served, put them in the U.S. Mail and those  
14 things are insufficient. And so in terms of Mr. Mosley's,  
15 you know, lack of transcripts and lack of a full grasp of  
16 all the facts, it is simply not relevant for today. So I  
17 think the need for a continuance for today is not  
18 necessary. The only issue is whether or not Mr. Smith  
19 filed and served his notice of intent to appeal within the  
20 ten days required by statute. And I would offer, even his  
21 own--

22 THE COURT: When did he file this?

23 MS. CAIRNS: He filed, he was served the order on  
24 February 12th. He filed it in the court on February 16th  
25 and it was received by my office on February 28th which is

1 a full five days after the deadline necessary by the  
2 rules.

3 THE COURT: Wait a minute. You say he filed his  
4 appeal on the 16th?

5 MS. CAIRNS: He filed his notice of intent to appeal  
6 on the 16th.

7 THE COURT: That was within the ten days.

8 MS. CAIRNS: That was within the ten days. But the  
9 rule also requires service on all the parties within the  
10 ten days. And our office was not served with this until  
11 the 28th, if I accept service being received by U.S. Mail  
12 which I would offer that that would be okay.

13 THE COURT: He was detained at the Department of  
14 Corrections?

15 MS. CAIRNS: He was, he was in Alvin S. Glenn until  
16 the end of February. That is correct.

17 THE COURT: Do you have a date as to when he mailed  
18 it from Alvin S. Glenn. Because, you know, they have--

19 MS. CAIRNS: He mailed it on the 27th, it is  
20 postmarked on the 27th, received by my office on the 28th.

21 THE COURT: Okay. You know, sometimes Alvin S. Glenn  
22 has a delay.

23 MS. CAIRNS: Yes, there was an effort to actually  
24 serve on the order and the order was issued on the 8th, he  
25 was brought up to the court on the 12th. He had not

1 received it so the Court served him on the 12th. So,  
2 yeah, we all know that documents in and out of Alvin S.  
3 Glenn doesn't always occur. He did have a son acting as a  
4 Power of Attorney. The Court insisted on the 12th. He  
5 was taken into, no, it was on January the 11th when he was  
6 taken into custody for contempt of court, failure to  
7 comply with the Court order that required him to return  
8 the funds to the Estate. And he was incarcerated from  
9 January the 11th until February 28th on that contempt  
10 action.

11 THE COURT: So the notice of appeal was filed on the  
12 16th so that was timely.

13 MS. CAIRNS: That was timely. However the rule  
14 requires service on the parties, yes.

15 THE COURT: So that should have been on the 27th?

16 MS. CAIRNS: I would offer no later than the 23rd if  
17 you don't count the day he was served. But the 23rd was a  
18 Friday and then, you know, then it was not received to our  
19 office until the next Wednesday. And the two cases I was  
20 able to pull up make it very clear that the ten days mean  
21 ten days and it means service on the parties. And so it  
22 is our position that what we are asking the Court today is  
23 just simply dismiss the appeal on lack of timeliness. And  
24 so, I mean there is many aspects of the procedural posture  
25 of this case which Mr. Mosley has not had an opportunity

1 to fully understand. And this is actually not an appeal  
2 from a ruling on the merits, it was an appeal from a  
3 motion.

4 THE COURT: And so that case, the case in Probate  
5 Court is still open?

6 MS. CAIRNS: Yes, when Mr. Smith filed his notice of  
7 intent to appeal, until I can get that dismissed the  
8 probate matter just sits. This is a two-year-old probate  
9 case that is ready to distribute but for Mr. Smith's  
10 continued efforts to change the distribution plan.

11 THE COURT: There is not a final order?

12 MS. CAIRNS: There is a final order, well, Probate  
13 Courts are a little bit different. Most of the  
14 distributions in Probate Court are done in an informal  
15 proceeding without court orders. What happened in this  
16 matter was that Mr. Smith had attempted to probate a copy  
17 of a will and there is a process by which you have to go  
18 through to probate a copy of a will. That order was  
19 issued in September denying him the copy of the will and  
20 deeming that Ms. Newton died intestate, in declaring who  
21 all the intestate heirs were. So we know who the heirs  
22 are, what their percentages are. All that is in a Court  
23 order. That Court order, Mr. Smith attempted to appeal,  
24 again he missed deadlines. The Court of Appeals, that one  
25 was dismissed. He then filed a Rule 60 motion to try to

1 change that order. That is what was heard in January, was  
2 a Rule 60 order, a Rule 60 motion, I apologize. The Rule  
3 60 motion was also denied in January. That is what this  
4 appeal is about, the denial of the Rule 60 motion based on  
5 surprise, trying to tiejack, (phonetic), in this September  
6 order. But, again, my whole position today for the Court  
7 is, the only thing before the Court today was, you know,  
8 under Rule 62-1-308, he had ten days to serve his notice  
9 of intent to appeal. He failed to, therefore his appeal  
10 should be dismissed. And I haven't found anything, you  
11 know, to offer the Court that allows relief on those ten  
12 days.

13 THE COURT: All right. Thank you. Yes sir, Mr.  
14 Mosley.

15 MR. MOSLEY: Judge, I have no way to, I mean, to  
16 contradict or deny anything that she said because I don't  
17 know, you know, to me it seems like a very simple thing  
18 but it has been a lot going on. And I realize the need,  
19 bringing things to rest. But I think that a brief, what  
20 she is going to present, that case filed through the  
21 court, certainly the Court has a, maybe you want to say,  
22 hey, Mosley, if you come up with something to argue the  
23 single issue or whatever you decide, Judge. Thank you,  
24 Judge.

25 THE COURT: All right. I will take a look at those

1 cases in this pack and we will get something out to you  
2 all. Thank you.

3 MR. MOSLEY: Thank you. How is the family?

4 THE COURT: Everything is good.

5 MS. CAIRNS: Thank you. Here is the two cases.

6 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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CERTIFICATE OF REPORTER

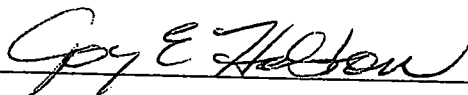
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State of South Carolina )  
County of Newberry )

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Richland, South Carolina on the 11th day of May, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 28, 2019



Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

Isaac Smith, Jr  
PLAINTIFF(S)

Johnnie Mae Muller Newton  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

The appeal is Dismissed. Pursuant to South Carolina Code Annotated Section 62-1-308(a), the appeal from probate court was not timely filed. The Notice of Intent to Appeal was filed on February 16 and the parties were served on February 28, which is outside ten day service deadline.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/26/2018 .

Isaac Smith, Jr for Isaac Smith, Jr  
Isaac Smith, Jr for Isaac Smith, Jr

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**


**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials



Isaac Smith, Jr, Pro Se  
2918 W. Vernon Avenue  
Los Angeles, CA 90008  
Telephone 323-295-9500

May 24, 2019

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