

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from RICHLAND COUNTY

Deandrea G. Benjamin, Circuit Court Judge

Court of Common Pleas

Case No. 2018-002167

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MAR 02 2020
SC Court of Appeals

Isaac Smith, Jr., Appellant

v.

Johnnie Mae Muller Newton, Respondent

**SUPPLEMENTAL
RECORD ON APPELLANT**

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Attorney for Respondent

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, when 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

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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

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

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

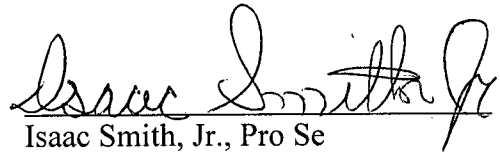
THE COURT: Everything is good.

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

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

Certificate of Counsel

The undersigned hereby certifies that the Supplemental Record on Appeal complies with SCACR.



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