

THE SOUTH CAROLINA COURT OF APPEALS

Shemuel Nahum Ben Yisrael and Plantation
Yisrael, Appellants,

v.

Roy Hughes, Sr.; Margaret Hughes; Hughes
General Merchandise; Town of Yemassee;
Yemassee Police Department; Gregory
Alexander, Police Chief; Law Office of
Darrell Thomas Johnson, Jr., LLC; Mills
Lane Morrison, Jr., Attorney; Fulcher Hagler,
LLP; Elizabeth McLeod, Attorney; Peters,
Murdaugh, Parker, Eltzroth & Detrick;
Randolph Murdaugh, III, Attorney; Duffy
Stone Law Firm, LLC; Duffy Stone,
Attorney; Vaux & Marscher Law Firm, LLC;
Roberts Vaux; Republic Services; F & ME
Consultants; CSX Transportation, Inc.;
David Poston, Road Master; Kirby Peeples;
Ross Gregorie Estate; Joseph L. Goodwin,
Former Mayor; Beaufort County 911
Emergency Dispatch; Hampton County 911
Emergency Dispatch; Jerry's Auto Parts;
Jerry Cook; Colin Morre; Jackie Moore; and
Jerry Thompson, Respondents.

And

Shemuel Nahum Ben Yisrael, Appellant,

v.

Judge Griffith, Town of Yemassee, Darrell
Thomas Johnson, Jr. LLC, Peters,
Murdaugh, Parker, Eltzroth & Detrick,
Griffith Freeman & Liipfert, LLC, Vaux &
Marscher Law Firm, LLC, Vaux Marscher
Berglind, P.A., Respondents.

Appellate Case No: 2019-001108

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**Respondents Duffy Stone, Judge Griffith,
Griffith, Freeman & Liipfert, LLC, and
Beaufort County 911 Emergency
Dispatches' Return to Appellant's
Motion to Reinstate Appeal**

**TO: SHEMUEL NAHUM BEN YISRAEL, PRO-SE APPELLANT, AND
ATTORNEYS FOR PARTIES ABOVE-NAMED:**

The Respondents Beaufort County 911 Emergency Dispatch, Duffy Stone, Judge

Griffith, and Griffith, Freeman & Liipfert, LLC (collectively “Respondents”), by and through undersigned counsel, hereby respond to the Appellant’s motion to reinstate the appeal, and respectfully request that the Appellant’s motion be denied on the grounds that the Appellant has failed to demonstrate “good cause” to re-instate the appeal pursuant to Rule 260, SCRAP.

I. Procedural History

Mr. Yisrael filed the notice of appeal on June 24, 2019. On July 31, Mr. Yisrael was notified by the Clerk of Court for the South Carolina Court of Appeals (“Clerk”) that the transcript was to be ordered within ten days or the appeal would be dismissed. Twenty days later, on August 22, the clerk sent Mr. Yisrael a second letter notifying him that the deadline to order the transcript had expired, and he must file a letter showing he had ordered the transcript within ten days or the appeal would be dismissed. Mr. Yisrael filed the letter ordering the transcript on August 26, 2019. Included with this filing was an August 14 email from the court reporter indicating that Mr. Yisrael **must pay for the transcript before it would be prepared and she had told him this several times previously.** On August 29, 2019, the Clerk sent Mr. Yisrael a third letter notifying him that he needed to pay for the transcript within ten days or his appeal would be dismissed. Twenty days later, on September 18, 2019, Mr. Yisrael filed a notice with the clerk of court that he could not pay for the transcript and blaming the Respondents for his inability to pay. On September 24, the Clerk wrote Mr. Yisrael a fourth letter instructing him that if he failed to pay for the transcript within fifteen days, his appeal would be dismissed. On October 7, 2019, Mr. Yisrael filed a motion for emergency order of protection asserting that the Town of

Yemassee should be enjoined from falsely arresting him. On October 14, 2019, the court denied this motion. On October 21, 2019, more than four months after Mr. Yisrael filed his notice of appeal and after repeated warnings that his failure to pay for the transcript would result in the dismissal of his appeal, the clerk of court dismissed Mr. Yisrael's appeal. On November 4, 2019, Mr. Yisrael filed a motion to reinstate the appeal that is currently pending.

II. Argument

In paragraph 1.A. of the Plaintiff's motion to reinstate the appeal, the Plaintiff asserts that his motion to proceed in forma pauperis was granted. While he doesn't specifically state the significance of this, presumably he is implying that he should not be required to pay for the transcripts because his motion to proceed in forma pauperis was denied. This argument fails because prior to the dismissal of the appeal, in her letter dated September 24, 2019, the Deputy Clerk of Court informed the Appellant that she had received his letter stating he could not afford the transcript, and that pursuant to Rule 207, he would need to make arrangements to pay for the transcript or his appeal would be dismissed. The Appellant sought to avoid paying for the transcript because he could not afford it before his appeal was dismissed. Now that his appeal has been dismissed, he raises the same argument again. As this argument was previously rejected before the appeal was dismissed, it cannot be the basis of "good cause" to reinstate the appeal.

In Paragraph 1.B. of the Plaintiff's motion to reinstate the appeal, he references his motion for an emergency protective order that was previously denied by the Court. In the motion for emergency protective order, the Plaintiff raised issues unrelated to the issues on

appeal and requested that the Court enjoin the Town of Yemassee from arresting him. This has nothing to do with Mr. Yisrael's failure to make proper arrangements to pay for the transcript, and the Court denied this motion on October 14, 2019. The Plaintiff cannot rely on a motion that was denied by the court before his appeal was dismissed as grounds for good cause to reinstate his appeal because this is improper. The Plaintiff was aware of the denial of his motion before his appeal was dismissed, but even with this knowledge, the Plaintiff failed to make proper arrangements to order the transcript before his appeal was dismissed.

In Paragraph 2 of his motion to reinstate the appeal, the Plaintiff argues that the evidence clearly shows clearly shows that the Respondents carried on a conspiracy against him that has resulted in his inability to pay for the transcript. This simply restates an argument that the Plaintiff raised to the court in his "notice that respondents are engaging in criminal acts to prevent appellants' payment for court transcripts" on September 18, 2019. After receiving this notice, the clerk of court wrote to Mr. Yisrael on September 26, 2019 and informed him for the fourth time that if he failed to make arrangements to pay for the transcript, his appeal would be dismissed. Mr. Yisrael knew that his argument that the Respondents' alleged conspiracy to prevent him from paying for the transcripts would not prevent his appeal from being dismissed when he received the clerk's September 26, 2019 letter. Restating this argument in his motion to reinstate the appeal does not provide any new grounds for good cause to justify reinstating the appeal.


In Paragraph 3 of his motion to reinstate the appeal, the Plaintiff argues that the "documents and exhibits clearly show that Appellant can win his appeal without transcripts."

The Appellant has failed to file any documents and exhibits or other items to be included in the record. Pursuant to Rule 208(a)(1), SCRAP, “if no transcript is ordered, within thirty (30) days after serving the notice of appeal, the appellant shall serve one copy of the [initial brief...” The Appellant had numerous opportunities to notify the court that he intended to proceed without the hearing transcripts before his appeal was dismissed. Again, the of court notified him four times in writing that he must order the transcript. Mr. Yisrael filed the notice of his inability to pay for the transcript, and he filed his motion for a protective order while the case was pending. He could have alerted the court that he wanted to proceed without the transcripts at any time before the appeal was dismissed, but he did not. He could have filed his initial brief within 30 days of filing the notice of appeal, but he did not. On September 24, the Clerk wrote Mr. Yisrael a fourth letter instructing him that if he failed to pay for the transcript within fifteen days, his appeal would be dismissed. The deadline to pay for the transcript was October 9, 2019. The clerk of court did not dismiss his appeal until October 21, 2019. Mr. Yisrael had ample opportunity to attempt to move forward without the transcripts before the appeal was dismissed, but he failed to do so. However, within fifteen days of his appeal being dismissed, Mr. Yisrael filed the motion to reinstate the appeal seeking to move forward without the transcripts. He clearly could have done so before his case was dismissed, but he did not, and his request to proceed with his appeal without the transcripts in his motion to reinstate the appeal cannot be good cause to reinstated the appeal in light his failure to do seek to move forward without the transcripts prior to the appeal being dismissed.

III. Conclusion

The Appellant has failed to state any grounds that would establish “good cause” for why his case should be reinstated. The first two paragraphs of his motion simply restate arguments for his failure to order the transcripts that he had previously raised before the dismissal of his appeal. He was informed by the clerk of court that these arguments were invalid before the appeal was dismissed and given additional time to comply with Rule 207, SCRAP, but he failed to do so. The third paragraph of the Plaintiff’s motion asserts that he can prevail on his appeal without the transcripts, but the motion is silent as to why he failed to raise this before his appeal was dismissed in spite of receiving four written warnings from the clerk of court. The Plaintiff’s new argument that he can prevail without the transcripts cannot constitute good cause to reinstate the appeal because the Plaintiff has not raised any reason he could not have raised this argument before the appeal was dismissed, and the Plaintiff’s failure to raise this argument while his appeal was pending, without a compelling reason why he failed to do so, does not constitute good cause to reinstate his appeal. For these reasons, the Respondents respectfully request that the Appellant’s motion to reinstate the appeal be denied.

GRIFFITH, FREEMAN & LIIPFERT, LLC

By:  _____

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ATTORNEYS FOR BEAUFORT COUNTY
911 EMERGENCY DISPATCH, DUFFY
STONE, JUDGE GRIFFITH, AND
GRIFFITH, FREEMAN & LIIPFERT, LLC

March 13, 2020
Beaufort, South Carolina

CERTIFICATE OF SERVICE

On March 13, 2020, I served *Respondents Duffy Stone, Judge Griffith, Griffith, Freeman & Liipfert, LLC, and Beaufort County 911 Emergency Dispatches' Memorandum Supporting Their Motion to Dismiss Appeal* pursuant to Rule 5, SCRPC by depositing it in the United States mail, with postage prepaid, and addressed as follows:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Shemuel Nahum Ben Yisrael
PO Box 2603
Beaufort, SC 29902

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***Re: Yisrael, S. v Beaufort Co. 911 Emergency Dispatch
2019-001108***



O. Edworth Liipfert, III

Beaufort, South Carolina



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March 13, 2020

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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RE: Yisrael v. Beaufort Co. 911 Emergency Dispatch, et al.
Civil Action No: 2019-001108
GF&L File No: 1011-135

Dear Madam Clerk:

Please find enclosed the original and six (6) copies of *Respondents Duffy Stone, Judge Griffith, Griffith, Freeman & Liipfert, LLC, and Beaufort County 911 Emergency Motion to File Their Return to Plaintiff's Motion to Reinstate Appeal Outside of Time* and *Respondents Duffy Stone, Judge Griffith, Griffith, Freeman & Liipfert, LLC, and Beaufort County 911 Emergency Dispatches' Return to Appellant's Motion to Reinstate Appeal* in this case. Also enclosed is our \$25.00 check for the filing fee. I would appreciate you filing the originals and returning a clocked copy of each to me in the enclosed envelope.

Thank you for your assistance. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

O. Edworth Liipfert, III
OEL/rdp
Enclosures

cc: Shemuel Nahum Ben Yisrael
Neil E. Alger and Daniel E. Henderson, Peters, Murdaugh, Parker, Eltzroth & Detrick, PA
Roberts "Tabor" Vaux, Jr. and Mark S. Berglind, Vaux Marscher Berglind, PA
Michael Nicholas Loebel, Fulcher Hagler LLP
Darrell Thomas Johnson, Jr. and Mills L. Morrison, Jr., Law Offices of Darrell Thomas Johnson, Jr., LLC