

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Judge

Appellate Case No. 2020-000056

RECEIVED

Jun 03 2020

SC Court of Appeals

Sterling Hills Homeowners Association,.....Respondent,

v.

Elliot Hayes,.....Appellant.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant hereby submits this return to the Respondent's motion seeking dismissal of this appeal. This appeal should not be dismissed, as the following shows:

1. The affidavit of Andrew Radeker submitted herewith is incorporated herein by reference as if here set forth verbatim.
2. The Respondent's pending motion to dismiss this appeal is based on Appellant's counsel's failure to respond to a letter dated April 23, 2020, that is filed in the C-Track system as though it had been sent to him by court staff.
3. It appears very likely, however, that this letter was never sent to Appellant's counsel or to anyone, as discussed in Appellant's counsel's affidavit. It seems that what led to the letter not being sent was the failure of a system the clerk of court's office had tried using that was supposed to automatically email letters to counsel; however, that system did not work well. Appellant's counsel is apparently not the only lawyer to have discovered correspondence on C-Track that was not actually sent.

4. The Respondent complains of ostensible prejudice to it as a result of Appellant's counsel not earlier informing the court that he had not received a copy of the transcript.
5. First, Respondent has provided the court with no evidence of any such prejudice. At most, all the Respondent has provided is argument to the effect that it does not like the time this appeal is taking. This appeal is not taking an exceptionally long period of time.
6. Second, even if the Respondent were to have provided the court with evidence of some prejudice of some sort, that prejudice would not have been caused by Appellant's counsel not earlier informing the court that he had not received a copy of the transcript.
7. Appellant's counsel has no control over when or even whether the court reporter furnishes him with the transcript. If he had advised the court earlier that he had not yet received the transcript, that would not have made the court reporter furnish him with the transcript.
8. This court is under no obligation to dismiss this appeal. Further, to dismiss this appeal under the circumstances present here would be woefully unjust. Appellant's counsel has now done what was asked of him in the April 23 letter he never got.
9. The just result of the Respondent's motion is that it be denied.

WHEREFORE, the Appellant respectfully asks that this court deny the Respondent's motion to dismiss this appeal.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
Attorney for Appellant

June 3, 2020

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AFFIDAVIT OF ANDREW RADEKER

Personally appeared Andrew S. Radeker, who, first being duly sworn as a member of the South Carolina Bar, certifies, deposes and says as follows:

1. My name is Andrew S. Radeker. I am the attorney for the Appellant in the above-captioned appeal. I have personal knowledge of the facts stated in this affidavit and am competent to testify about them.
2. The Respondent's pending motion to dismiss this appeal is based on my failure to respond to a letter dated April 23, 2020, that is filed in the C-Track system as though it had been sent to me by court staff.
3. It appears very likely, however, that this letter was never sent to me or to anyone. I know I never saw it before I got a copy of the Respondent's motion and that my office has no record of having ever received it. This is borne out by the email messages from me and from opposing counsel that are submitted as Exhibit A to this affidavit.

4. After sending my email message in Exhibit A, I have spoken with the clerk of this court and with the staff member assigned to this case, both of whom stated that it is indeed likely that the letter was never sent to me. They explained that the clerk of court's office had tried using a system that was supposed to automatically email letters to counsel; however, that system did not work well. They advised that I am not the only lawyer to have brought such a situation to their attention.
5. As noted in the email exchange, I complied with the instructions in the April 23 letter right after I became aware of it, and I would have done so earlier if I had received it earlier.
6. The Respondent complains of supposed prejudice to it as a result of me not earlier informing the court that I had not received a copy of the transcript. I have no control over when or even whether the court reporter furnishes me with the transcript. I requested it at the beginning of this appeal and have still not received a copy of it. Sometimes court reporters take a short time to furnish transcripts, and sometimes they take a long time. If I had advised the court earlier that I had not yet received the transcript, that would not have made the court reporter furnish me with the transcript.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT BY CONTEMPT.

FURTHER AFFIANT SAYETH NOT.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant

June 3, 2020

Drew Radeker

From: Christian Saville <Christian.Saville@mccabetrotter.com>
Sent: Thursday, May 28, 2020 2:06 PM
To: Drew Radeker; Allen, Claire
Cc: Rhonda Schaub; transcripts@sccourts.org
Subject: RE: Sterling Hills HOA v. Hayes - Appellate Case No. 2020-000056

Good afternoon Ms. Allen,

While I retrieved the letter from C-Trac in response to my client's inquiry about the time of the appellate process, it may be that our office did not receive this letter by mail either. It doesn't appear we have a stamped "Received" copy.

I do want to note our Motion under the rules cited therein remains applicable notwithstanding, but it may very well be that there was an issue with mailing of the letter I retrieved from C-Track.

Thank you,

CHRISTIAN SAVILLE
ASSOCIATE ATTORNEY
MCCABE, TROTTER, AND BEVERLY, P.C.
4500 FORT JACKSON BLVD. (29209)
SUITE 250
PO Box 212069
COLUMBIA, SC 29221
OFFICE 803-724-5000
FAX 803-724-5001



MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, May 28, 2020 11:43 AM
To: Allen, Claire <CAllen@sccourts.org>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Christian Saville <Christian.Saville@mccabetrotter.com>; transcripts@sccourts.org
Subject: Sterling Hills HOA v. Hayes - Appellate Case No. 2020-000056

Ms. Allen:

I hope this message finds you doing well. Yesterday I received the respondent's motion to dismiss this appeal based on my failure to respond to the attached letter. The trouble with that is that, until today, I had never seen the attached letter. I have not yet received the transcript from the court reporter. I assure you that, had I received the letter, I would have promptly notified the court and court administration that I had not received the transcript. I notify court administration of this now by copy of this email message.

I write to ask this: Is your office in possession of anything indicating the attached letter was ever actually sent to me? If so, would you provide me with a copy of whatever you have that indicates the letter was sent? I have no record of having received it by mail, email, or any other means.

Thank you.

Drew Radeker



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PROOF OF SERVICE

I certify that I served the appellant's return to motion to dismiss appeal in this case by providing a copy of it by email to opposing counsel at the email address shown below and on the date shown below:

Christian Saville, Esq.
Christian.Saville@mccabetrotter.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker & Smith, P.A.
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(803) 779-2211
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Attorney for Appellant

June 3, 2020