

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

FEB 16 2021
SC Court of Appeals

Roger E. Henderson, Circuit Court Judge

Case No. 2020-000058

Angel Phillips,Appellant

v.

Hartsville Department of Social Services,Respondent

RETURN TO MOTION TO REOPEN CASE

Undersigned counsel for respondent received a copy of appellant’s motion to reopen case on or about February 8, 2021. By way of return, respondent states as follows:

FACTS

1. The notice of appeal in this matter is dated December 14, 2019. Attached to the notice of appeal was a “motion for waiver of filing fees” which the court construed as a motion to proceed *in forma pauperis*. No proof of service of the notice of appeal was filed. No proof of service of the “motion for waiver of filings fees” was filed, and the motion was not in accordance with Rule 240, SCACR. Appellant was advised of these deficiencies in two separate letters from the court both dated January 16, 2020. If proof of service was subsequently filed, counsel for respondent never received a copy, therefore, does not know the date of service. Regardless, counsel for respondent received a copy of

the notice of appeal and “motion for waiver of filing fees” from appellant on or about December 19, 2019.

2. By letter from the court to appellant dated January 27, 2020, the court advised that the time for ordering the transcript had expired. The same letter instructed appellant on how to correct that deficiency and warned the appellant that the appeal will be dismissed if no corrective steps are taken.

3. The “motion for waiver of filing fees” which the court construed as a motion to proceed *in forma pauperis* (see paragraph 1) was denied by an order of the court filed March 11, 2020. That same order advised appellant that it will not consider her “motion filed on February 4, 2020”, unless the motion filing fee was paid. Counsel for respondent is informed and believes that appellant’s “motion filed on February 4, 2020” was her motion of judicial misconduct. No proof of service was filed with that motion, and the appellant was advised of this deficiency in letter from the court dated February 07, 2020. If proof of service was subsequently filed, counsel for respondent never received a copy of it and, therefore, does not know the date of service. Regardless, counsel for respondent received a copy of the motion of judicial misconduct on or about February 10, 2020, and filed and served its return on February 20, 2020,

4. On or about May 21, 2020 appellant filed a “motion to reopen and proceed without costs” which the court construed as a request to rehear the denial of the motion to proceed *in forma pauperis*. By letter from the court dated June 4, 2020, appellant was advised that this motion did not include proof of service, and undersigned counsel has never received a copy of that motion. Regardless, the court denied the motion in its order filed

July 8, 2020. Appellant was also instructed in that order for the second time to pay the notice of appeal filing fee within 20 days or the appeal will be dismissed.¹

5. By letter to appellant dated August 28, 2020, the court inquired about the transcript for the second time and requested that appellant inform the court about the status of the transcript within 10 days. The same letter advised appellant that the court had not received appellant's initial brief.

6. On an unknown date, appellant filed a motion to remand. No proof of service was filed. The motion was never served on undersigned counsel who only received a copy of it from the court as an attachment to its letter to appellant dated September 21, 2020, advising appellant that the motion filing fee was not paid and instructing her to file proof of service. Regardless, the motion to remand was denied by order of this court filed November 13, 2020.

7. By letter to appellant dated November 13, 2020, enclosing a copy of the order denying the motion to remand, the court repeated its inquiries from its letter of August 28, 2020, concerning the status of the transcript and filing of the initial brief.

8. By order filed December 18, 2020, the court dismissed the appeal for failure to file a status update regarding the transcript and failing to file an initial brief as required by the rules and as instructed in the court's letter to appellant dated November 13, 2020.

9. On an unknown date, appellant filed a "motion to reopen case." No proof of service was filed, and the motion was not received by undersigned counsel until approximately February 8, 2021, and only after correspondence from the court to appellant

¹ Respondent assumes the filing fee for the notice of appeal was paid since the appeal was not dismissed until December 18, 2020.

dated January 21, 2020, advising appellant that the filing fee was not paid and instructing her to file proof of service.

10. The motion to reopen case is the matter currently before the court, and the reasons it should be denied are discussed below.

DISCUSSION

Respondent construes the motion to reopen case as a motion for reinstatement under Rule 260(a), SCACR which requires a showing of good cause by appellant for reinstatement of her appeal. Appellant states she was in an automobile accident in Alabama on November 16, 2020. A friend from Texas came to Alabama to assist her after the accident and took her back to Texas. Therefore, she did not receive the court's letter dated November 13, 2020, which was mailed to her address in Camden, S.C. However, by November 13, 2020, the appeal had been pending one day shy of eleven months with blatant disregard for the court rules and instructions from the court. Apparently, no transcript has ever been ordered, and appellant has not responded to the court's two prior letters concerning the transcript., *See*, letters dated January 27 and August 18, 2020. If appellant did not want or need the transcript, her initial brief was due 30 days after service of the notice of appeal, which would have been sometime in January 2020.² *See*, Rule 208(a)(1), SCACR. Apparently, no initial brief has been filed, and appellant has not responded to the inquiry from the court concerning the initial brief. *See*, letter dated August 18, 2020, Thus, even if appellant did not receive the court's letter dated November 13, 2020, she was on ample prior notice of the deficiencies in her appeal from the court's previous letters to her and the court's orders. The letters of January 27, 2020, and August


² As stated above, the date of service of the notice of appeal is unknown to respondent, but a copy was received by counsel for respondent on December 19, 2019.

18, 2020, advised her on how to correct the deficiencies and warned her that her appeal may be dismissed if she did not, which is exactly what happened.

Moreover, appellant did not pay filing fees on time for four separate motions and was warned in the court's order filed July 8, 2020, that may also result in her appeal being dismissed. She has also failed to serve counsel for respondent with four separate motions and file proofs of service with the court.

“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon [appellant] to provide material that complies with the Rules and facilitates appellate review.” *Henning v Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992). It is true that appellant is *pro se* and therefore entitled to a less stringent standard than a licensed attorney. *See, Estelle v Gamble*, 429 U.S. 97, 50 L.Ed. 2d. 251, 97 S.Ct. 285 (1976). Still, she has not ordered a transcript and has not filed an initial brief. Instead, for over a year she has filed five separate motions each in violation of the rules in one way or the other and then largely disregarded the instructions of the court on how to correct those violations. Meanwhile, respondent continues to incur costs and attorney's fees. It has also been put at a disadvantage by not being served with four motions and, not being on notice, was unable to file a return. Finally, the court has shown appellant every deference and consideration, but its resources are being consumed by appellant's repeated violations of the rules and disregard for the instructions of the court.

Appellant has failed to establish good cause to reinstate the appeal. Therefore, motion to reopen case should be denied.



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Attorney for Respondent

Florence, South Carolina
February 12, 2021

Pro se appellant
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1012 Queen Street
Camden, South Carolina 29020

and

1100 South Cherry Street
Apt. 2301
Tomball, Texas, 77375

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Angel Phillips,Appellant

v.

Hartsville Department of Social Services,Respondent

CERTIFICATE OF SERVICE

I certify that I have served the Return to Motion to Reopen on Angel Phillips by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2021, addressed to

Angel D. Phillips
1012 Queen Street
Camden, S.C. 29020

Angel D. Phillips
1100 South Cherry Street
Apt. 2301
Tomball, Texas, 77375



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Florence, South Carolina
February 12, 2021

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February 12, 2021

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
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SC Court of Appeals

RE: Angel D. Phillips v. Hartsville Department of Social Services
Appellant Case No. 2020-000058
Our File No. 19-116

Dear Ms. Kitchings:

I enclose for filing in your office the original and six (6) copies of Respondent's Return to Motion to Reopen Case together with Proof of Service attached.

Thank you for your assistance and your attention to this matter.

With kind regards,

Yours very truly,

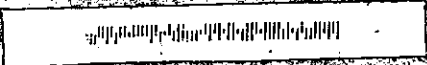
JOSEPH P. MCLEAN

JPM:

Enclosures

cc: Angel D. Phillips
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 SC Court of Appeals

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