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Aug 24 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2021-000652

Harold G. Worley and Thomas Wade Long and
Harold G. Worley as successor trustee of Trust B
of the Sandra Gall Worley Irrevocable Trust under
Trust Agreement dated July 31, 2010 Appellants

v.

Horry Electric Cooperative, Inc. Respondent

**APPELLANTS' RETURN TO
RESPONDENT'S MOTION TO DISMISS APPEAL**

John M. Leiter
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451; jleiter@48th.com
Attorney for Appellants

August 24, 2021

RETURN TO MOTION TO DISMISS

Appellants, Harold G. Worley, Thomas Wade Long and Harold G. Worley as successor trustee of Trust B of the Sandra Gall Worley Irrevocable Trust under Trust Agreement dated July 31, 2010 (hereinafter “the Appellants”) file this Return to Respondent Horry Electric Cooperative, Inc. (hereinafter “the Respondent”)’s Motion to Dismiss.

STATEMENT OF FACTS

The Appellants appeal the Order of the Honorable Paul M. Burch granting Respondent’s Motion for a Directed Verdict, dated and filed on May 27, 2021. The Appellants, through their undersigned attorney, who was retained for the purpose of pursuing the appeal of Judge Burch’s Order, timely filed the Notice of Appeal on June 21, 2021. The undersigned served Pope D. Johnson, III, Esq., as he had been Respondent’s counsel. The undersigned did not realize that Respondent had substituted Mr. Johnson with its current counsel by Order for Withdrawal and Substitution of Counsel filed on January 27, 2021 (Exh. C attached to Respondent’s Motion to Dismiss).¹

The Respondent is generally correct in its statement of the facts. However, it is incorrect in its assertion that Appellants failed to file the Notice of Appeal with the lower court within ten (10) days (Motion to Dismiss, p. 9). The Appellants filed the Notice of Appeal with the Horry County Circuit Court on July 1, 2021, which filing satisfies the ten-day requirement (see Exhibit A attached hereto). Although the Horry County Circuit Court acknowledged

¹ The undersigned served the Notice of Appeal to Mr. Pope as he filed the Answer to the Complaint filed in the lower court. Appellant’s counsel overlooked that a substitution of counsel had been entered.

receipt of the Notice of Appeal by mail, it requested that counsel file a Notice of Appearance in the lower court action and electronically file the Notice of Appeal, which counsel promptly did, and the Notice of Electronic Filing ("NEF") issued on July 2, 2021 (Exh. N to Respondent's Motion to Dismiss).

ARGUMENT AND CITATION OF AUTHORITIES

The Notice of Appeal was timely filed. The Appellants erred in not including the Respondent's current counsel in the Notice of Appeal. This error should be treated as a clerical error.

"Clerical errors in a notice of appeal do not destroy the appeal." Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct. App. 1995). The focus should be on whether the Respondent suffered any prejudice. See, e.g. Moody v. Dickinson, 54 S.C. 526, 534, 32 S.E. 563, 566 (1899) (finding that there was no "error in allowing the defendant to correct a mere clerical error in the title of his notice of intention to appeal, whereby it is not even claimed that plaintiffs were misled or in any way prejudiced, and were not delayed" where the error was an improper listing of the parties to the appeal in the notice); Weatherford v. Price, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000) (discussing that the moving party "demonstrates no prejudice as a result of the omission" from the notice of appeal); Charleston Lumber, 318 S.C. at 478, 458 S.E.3d at 436 ("Charleston Lumber's effort to take advantage of a mere clerical error by which they were in no way prejudiced or misled is rejected.").

In Conner v. City of Forest Acres, 348 S.C. 454, 460-61, 560 S.E.2d 606, 609 (2002), the Supreme Court recognized that failure to properly name respondents in a Notice of Appeal

could be a clerical error if the error was rectified promptly and prejudice did not occur. In Conner, the appellant filed a Notice of Appeal on January 12, 1998, naming only one of three defendants as a respondent. *Id.* at 460, 560 S.E.2d at 609. The Court of Appeals advised the appellant on January 14, 1998, that the caption should read differently and identify the additional two defendants as defendants if not respondents. *Id.* Despite such notice from the Court of Appeals, the appellant did not file an Amended Notice of Appeal until after the appellant's initial brief and designation of matter were filed in late May 1998 - almost five months after the Notice of Appeal was originally filed. *Id.* at 461,560 S.E.2d at 609. Under these facts and relying on Moody, the Court of Appeals found that the correction did not occur "soon" after the mistake was discovered and that the failure to take action promptly "misled [the two defendants] into believing they were not part of this appeal by the almost five-month delay in amending the Notice, and therefore, they clearly were prejudiced by the amendment." *Id.* at 462, 560 S.E.2d at 610.

This case is clearly distinguishable from Conner, and indeed, the contours of Conner would classify the deficiency in this matter as a clerical error. Unlike in Conner, this instant appeal is in its earliest stage, as no briefs have been filed, the record on appeal has not been filed; in fact, nothing but the Notice of Appeal has been filed, and the record shows that the Respondent received notice of the appeal on July 2, 2021 through the South Carolina Courts' electronic filing system and thus, has not been prejudiced in any manner.

CONCLUSION

For the reasons discussed above, Respondent's Motion to Dismiss Appellant's appeal should be denied.

Respectfully submitted,



John M. Leiter (SC Bar ID #3187)
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451; jleiter@48th.com
Attorney for Appellants

August 24, 2021

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Jun 21 2021

APPEAL FROM HORRY COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2016-CP-26-07787

FILED
HORRY COUNTY
2021 JUL -1 P 1:12
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Harold G. Worley and Thomas Wade Long and
Harold G. Worley as successor trustee of Trust B
of the Sandra Gall Worley Irrevocable Trust under
Trust Agreement dated July 31, 2010 Appellants

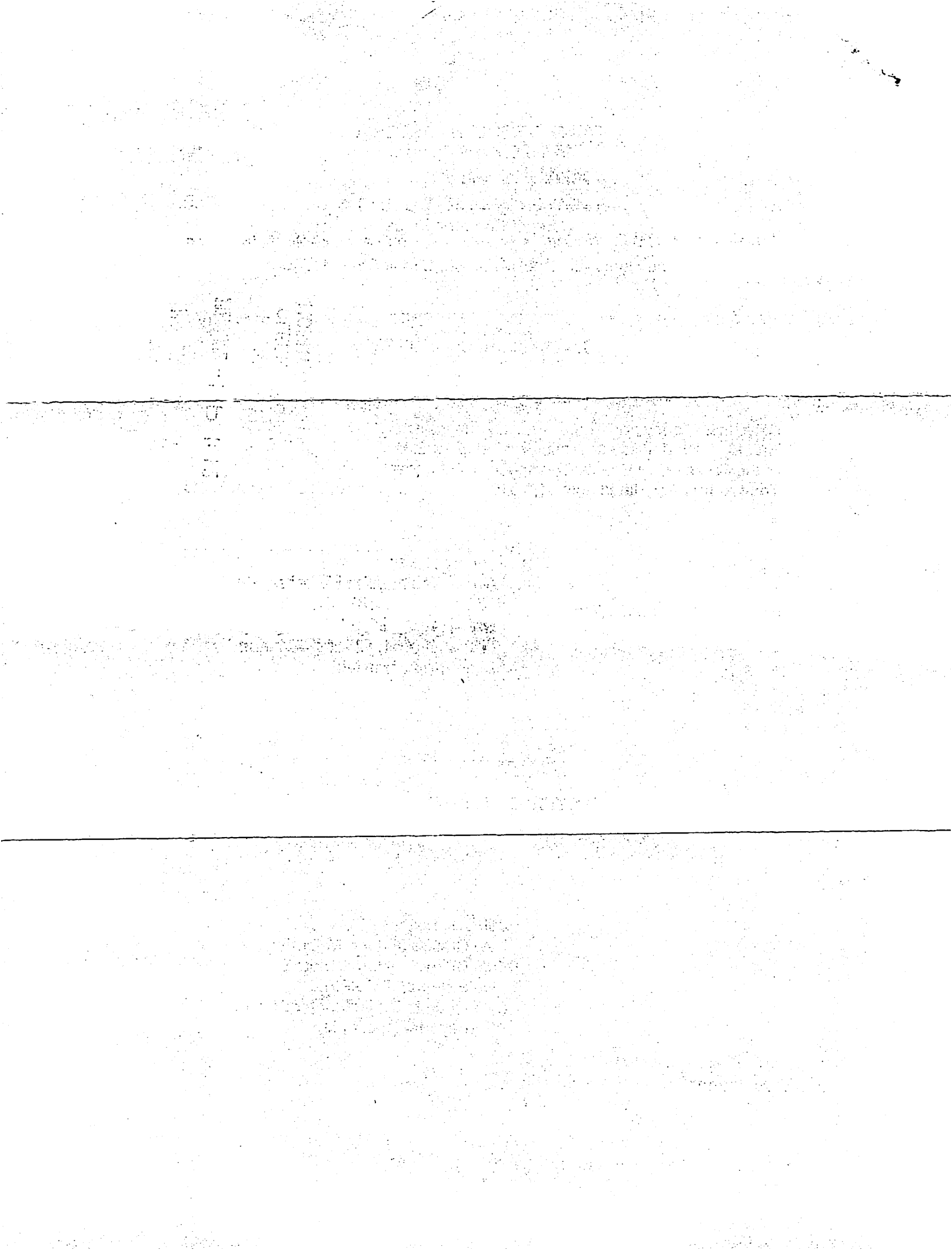
v.

Horry Electric Cooperative Respondents

NOTICE OF APPEAL

John M. Leiter
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451; jleiter@48th.com
Attorney for Appellants

June 21, 2021



NOTICE OF APPEAL

Appellants, Harold G. Worley, Thomas Wade Long and Harold G. Worley as successor trustee of Trust B of the Sandra Gall Worley Irrevocable Trust under Trust Agreement dated July 31, 2010, appeal the Order of the Honorable Paul M. Burch Granting a Motion for a Directed Verdict made in favor of the Defendant, Horry Electric Cooperative, Inc., which was electronically signed and served on May 27, 2021, and is attached to this Notice as Exhibit A.



John M. Leiter
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451; jleiter@48th.com
Attorney for Appellant

June 21, 2021

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Appellate Case No.: 2021-0000652

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v.

Horry Electric Cooperative, Inc. Respondent

PROOF OF SERVICE

I certify that I have served the **Appellant's Return to Respondent's Motion to Dismiss Appeal** on the Respondent, Horry Electric Cooperative, Inc., via e-mail and U.S. Mail, postage pre-paid, addressed to its attorneys of record: Brad.Waring@butlersnow.com, Stephen.Groves@butlersnow.com, Kenny.Gardner@butlersnow.com, and mailed to them at BUTLER SNOW, 25 Calhoun Street, Suite 250, Charleston, SC 29401, this 24th day of August, 2021.



Suzy Pettipas
Law Offices of John M. Leiter, PA
405 79th Ave., North, Suite B
Myrtle Beach, SC 29572
(843) 449-1451
(Paralegal to) Attorney for Appellant

August 24, 2021