

**RECEIVED**

**Sep 01 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
JENNIFER B. MCCOY, CIRCUIT COURT JUDGE

Appellate Case No. 2020-000807

Aryana Lucas, .....Respondent.

v.

Shaun Birch, .....Appellant.

**MOTION TO DISMISS APPEAL**

Respondent Aryanna Lucas, through her undersigned counsel, moves to dismiss the above-captioned appeal for lack of jurisdiction as a result of Appellant Shaun Birch failing to serve the Notice of Appeal upon Respondent as required.

**FACTS**

The underlying trial court proceeding ended in a default judgment order dated July 26, 2021. That order provided for judgment in favor of Respondent against Appellant. The Court of Appeals’ index for the above-captioned matter reflects a filed Notice of Appeal from Appellant that is date-stamped as received on July 29, 2021. That filing contains a document entitled “Proof of Service” in which Appellant claims to have placed a copy of that Notice of Appeal in the United States Mail “postage prepaid” on July 29, 2021 and to have hand-delivered a copy of the Notice of Appeal to the undersigned counsel at her street address.

The Proof of Service is inaccurate. No such mailing, hand-delivery, or other means of service of the Notice of Appeal were ever made upon counsel for Respondent. To the contrary, Respondent and her counsel only became aware of the pendency of the above-captioned matter upon notice from the Sheriff of Beaufort County on August 24, 2021, who returned Respondent's requested Execution Against Property because of an apparent filing by Appellant with this Court.

Enclosed in support of this motion are two affidavits. See enclosed **Exhibit A**. Those affidavits confirms that this office has not received any documents from Appellant Birch by United States mail, nor via hand-delivery of Birch or anyone acting on his behalf. Further explained in those affidavits are the office security and COVID-related measures that restrict access to our office and provide for the handling of mail, which in this instance serve as the basis for confidence and confirmation that no such deliveries as claimed by Appellant could have been, or were ever, made without staff knowledge or affirmative assistance.

### **ARGUMENT**

1. Appellant failed to serve or file the notice of appeal as required.

Rule 203(a), SCACR states "A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules." (emphasis added). Rule 203(b)(1) states that a notice of appeal from the Court of Commons Pleas "shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." As explained hereinabove, no such service was done in compliance with those rules.

Further, Rule 203(d)(1)(A) requires a copy of the Notice of Appeal to be filed with the clerk of the lower court. Enclosed as **Exhibit B** is a copy of the online docket for the Beaufort

County Clerk of Court, which reflects that no filing of a Notice of Appeal had been made as of August 27, 2021.

Despite no evidence of having served the initial notice, even assuming that Appellant had served undersigned counsel with the Notice of Appeal as claimed in the Proof of Service, the records of this Court reflect that no transcript has been ordered as of this date, in contravention of Rule 207(a)(1) and its requirement that an appellant request the transcript of trial court proceedings from the Court Reporter within ten days after service of the notice of appeal. That rule further requires contemporaneous service upon this Court, the Office of Court Administration, and all counsel with a copy of the transcript(s) request. Had the notice of appeal actually been served on July 29, such transcript request(s) and service thereof would have been due no later than August 9, 2021. Yet the C-Track docket for this appeal and the docket from the Beaufort Clerk of Court fail to reflect that Appellant requested transcript(s). Additionally, this office has not received a copy of any request for transcript(s) from Appellant at any time or by any means.

As this motion was being initially prepared on the afternoon of August 27, 2021, the undersigned counsel received copies of deficiency letters to Appellant from the clerk of this court regarding Appellant's failure to comply with the rules regarding format for Proof of Service, failure to pay the filing fee, and failing to timely request the transcript(s). These letters to Appellant appear to have been transmitted to Appellant by this Court using United States Mail.

2. Failure to service notice of appeal is a jurisdictional defect necessitating dismissal.

Failure to timely serve the Notice of Appeal on Respondent is a jurisdictional defect, which deprives this Court of authority to grant any extensions of time to an appellant, as stated by the South Carolina Supreme Court:

The notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.

*Elam v. SC Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

### **CONCLUSION**

For the reasons set forth above, Appellant has failed in respects that cannot be excused because they are jurisdictional in nature. Accordingly, Respondent request that the above-captioned matter be dismissed with prejudice for lack of jurisdiction.

BALLARD & WATSON

s/ Desa Ballard  
Desa Ballard (S.C. Bar No. 498)  
Harvey M. Watson III (S.C. Bar No. 74053)  
226 State Street  
West Columbia, South Carolina 29169  
Telephone 803.796.9299  
Facsimile 803.796.1066  
desab@desaballard.com  
harvey@desaballard.com

ATTORNEYS FOR RESPONDENT

September 1, 2021

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
JENNIFER B. MCCOY, CIRCUIT COURT JUDGE

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Appellate Case No. 2020-000807

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Aryana Lucas, .....Respondent.

v.

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**AFFIDAVIT OF KRISTYNE AMMERMAN**

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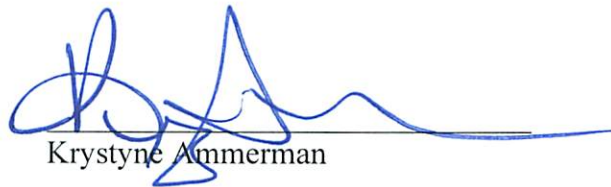
Personally appeared before me, Krystyne Ammerman, who being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated on information and belief, and as to those I have a good faith basis for believing to be true.
2. I work as an assistant at Ballard & Watson, Attorneys at Law. One of my responsibilities is to answer the door and collect all mail.
3. Our office hours are from 8:30 a.m. to 5:30 p.m.
4. The practice of our law firm is such that we are not open to the general public, thus our office doors are always locked.
5. We have an electronic doorbell for audio and visual communications. No one is allowed to enter our building without a staff member authorizing them to enter.
6. Since the COVID lockdown, we have limited entry to our building. A staff member

physically goes to the door to meet with anyone that rings the bell to determine if they need to enter the building and, if so, that the person is properly masked before entering.

7. I was in the office on July 29, 2021 from 8:30 a.m. to 3:30 p.m., at which time I left for a medical appointment. There was no delivery of a Notice of Appeal on July 29, 2021 from Mr. Birch or anyone acting on his behalf while I was at the office.

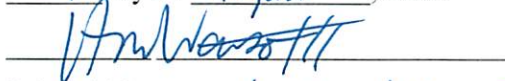
FURTHER, DEPONENT SAYETH NOT.



Krystyne Ammerman

SWORN TO before this

31 day of August, 2021



Printed Name: Harvey M. Watson III

Notary Public for SC

My commission Expires: 2-17-26

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Appellate Case No. 2020-000807

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Aryana Lucas, .....Respondent.

v.

Shaun Birch, .....Appellant.

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**AFFIDAVIT OF CYNTHIA HIGGS**

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Personally appeared before me, Cynthia Higgs, who being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated on information and belief, and as to those I have a good faith basis for believing to be true.
2. I work as the Office Manager at Ballard & Watson, Attorneys at Law.
3. I work on the main level of the office building.
4. Among my responsibilities is attending to visitors and couriers with mail deliveries.
5. Our office is open from 8:30 a.m. to 5:30 p.m.
6. Due to the nature of the law firm’s practice, we are not open to the general public. Therefore, our office is always locked.
7. We have an electronic doorbell for audio and visual communications. No one is allowed to enter our building without a staff member authorizing them to enter. Since the COVID lockdown, we have limited entry to our building. A staff member greets any visitor at the

door to determine if they need to enter the building and if so, ensures the visitor is properly masked before entering.


8. I was in the office on July 29, 2021 from 8:30 a.m. to 6:30 p.m. Neither Mr. Birch, nor anyone acting on his behalf delivered a Notice of Appeal on July 29, 2021.

FURTHER, DEPONENT SAYETH NOT.

  
Cynthia Higgs

SWORN TO before this

31 day of August, 2021

  
\_\_\_\_\_

Printed Name: Harvey M. Watson III

Notary Public for SE

My commission Expires: 2-17-26



# Beaufort County Fourteenth Judicial Circuit Public Index



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Switch View














## Aryanna Lucas VS Shaun L Birch

<b>Case Number:</b>	2021CP0700110	<b>Court Agency:</b>	Beaufort County Common Pleas	<b>Filed Date:</b>	01/22/2021
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Relief 820	<b>File Type:</b>	Non-Jury
<b>Status:</b>	Ended	<b>Assigned Judge:</b>			
<b>Disposition:</b>	Ended by Judgment/Dismissal-Arbit/Mediat	<b>Disposition Date:</b>	07/26/2021	<b>Disposition Judge:</b>	McCoy, Jennifer B.
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>	2021CP0700110	<b>Court Roster:</b>			

[Case Parties](#) [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lucas, Aryanna	NEF(07-30-2021 11:02:11 AM) Motion/Execution of Judgment	Filing		07/30/2021-16:04		
Lucas, Aryanna	Execution/Issued	Filing		07/30/2021-11:02		
Lucas, Aryanna	NEF(07-26-2021 11:23:04 AM) Order/Judgment and Form 4	Filing		07/26/2021-11:23		
Lucas, Aryanna	Entry of Judgment and Form 4 (Concludes Matter)	Order		07/26/2021-11:23		
Birch, Shaun L	Judgment/Judgment	Judgment		07/26/2021-11:22		
Lucas, Aryanna	Judgment/Judgment	Judgment		07/26/2021-11:22		
Lucas, Aryanna	NEF(06-14-2021 04:16:06 PM) Proposed Order/Judgment and ...	Filing		06/15/2021-11:30	07/26/2021-11:30	
Lucas, Aryanna	Order Cover Sheet \$25.00-Waived-Propsoed Order/Entry Judgmen	Filing		06/14/2021-16:16	07/26/2021-16:16	
Lucas, Aryanna	Exhibit/Exhibit List	Filing		06/11/2021-09:44	07/26/2021-09:44	
Lucas, Aryanna	NEF(06-09-2021 12:44:09 PM) Amended/Other	Filing		06/09/2021-13:47	07/26/2021-13:47	
Lucas, Aryanna	Amd Cert Serv (Notice of Damages Hearing) 5-26-21	Filing		06/09/2021-12:44	07/26/2021-12:44	
Lucas, Aryanna	NEF(05-27-2021 12:48:23 PM) Service/Certificate Of Servi...	Filing		05/27/2021-15:36	07/26/2021-15:36	
Lucas, Aryanna	Crt Svc Notice of Damages Hearing to Def 3-26-2021	Filing		05/27/2021-12:48	07/26/2021-12:48	
Lucas, Aryanna	NEF(05-13-2021 12:16:18 PM) Motion/Damages	Filing		05/13/2021-15:47	07/26/2021-15:47	

Lucas, Aryanna	Motion for Damages Hearing	Motion		05/13/2021-12:16	07/26/2021-12:16	
Ballard, Desa	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		05/13/2021-11:02	07/26/2021-11:02	
Ballard, Desa	6/14/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		05/13/2021-11:00	07/26/2021-11:00	
Lucas, Aryanna	NEF(05-12-2021 11:33:06 AM) Service/Certificate Of Servi...	Filing		05/12/2021-12:09	07/26/2021-12:09	
Lucas, Aryanna	Crt Svc Amd Order Order Directing Clerk of Court to Sign Tra	Filing		05/12/2021-11:33	07/26/2021-11:33	
Lucas, Aryanna	NEF(05-11-2021 12:34:38 PM) Service/Certificate Of Servi...	Filing		05/11/2021-14:45	07/26/2021-14:45	
Lucas, Aryanna	Crt Svc Motion for Entry of Default etc on Shaun Birch	Filing		05/11/2021-12:34	07/26/2021-12:34	
Lucas, Aryanna	NEF(04-09-2021 12:35:52 PM) Order/Other	Filing		04/09/2021-12:39	07/26/2021-12:39	
Lucas, Aryanna	Amended Order Directing Clerk of Court to Sign Transfer	Order		04/09/2021-12:35	07/26/2021-12:35	
Lucas, Aryanna	NEF(04-05-2021 12:19:55 PM) Order/Entry of Default	Filing		04/05/2021-12:20	07/26/2021-12:20	
Lucas, Aryanna	Order for Entry of Default	Order		04/05/2021-12:19	07/26/2021-12:19	
Lucas, Aryanna	NEF(03-31-2021 10:23:55 AM) Motion/Entry of Default	Filing		03/31/2021-13:17	07/26/2021-13:17	
Lucas, Aryanna	Motion for Entry of Default and for Damages Hearing	Motion		03/31/2021-10:23	05/25/2021-10:23	
Lucas, Aryanna	NEF(03-26-2021 03:57:37 PM) Motion/Alter and/or Amend	Filing		03/26/2021-16:29	07/26/2021-16:29	
Lucas, Aryanna	Motion to Correct Clerical Error	Motion		03/26/2021-15:57	04/09/2021-15:57	
Lucas, Aryanna	NEF(03-25-2021 01:41:39 PM) Order/Other	Filing		03/25/2021-13:41	07/26/2021-13:41	
Lucas, Aryanna	Order Directing Clerk of Court to Sign Transfer Documents	Order		03/25/2021-13:41	07/26/2021-13:41	
Lucas, Aryanna	NEF(03-22-2021 12:28:04 PM) Proposed Order/Other	Filing		03/22/2021-13:50	07/26/2021-13:50	
Lucas, Aryanna	Order/Order Cover Sheet \$25.00	Filing		03/22/2021-12:28	07/26/2021-12:28	
Lucas, Aryanna	NEF(03-08-2021 10:37:25 AM) Service/Certificate Of Servi...	Filing		03/08/2021-10:50	07/26/2021-10:50	
Lucas, Aryanna	Cert Serv (Notice of Hearing) 3-8-21	Filing		03/08/2021-10:37	07/26/2021-10:37	
Ballard, Desa	3/17/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		03/05/2021-12:00	07/26/2021-12:00	
Lucas, Aryanna	NEF(03-03-2021 10:58:03 AM) Affidavit/Attorney	Filing		03/03/2021-11:17	07/26/2021-11:17	
Lucas, Aryanna	Supplemental Affidavit of Desa Ballard	Filing		03/03/2021-10:58	07/26/2021-10:58	
Lucas, Aryanna	NEF(03-02-2021 12:11:02 PM) Motion/Rule to Show Cause	Filing		03/02/2021-15:42	07/26/2021-15:42	
Lucas, Aryanna	Petition and Rule to Show Cause	Motion		03/02/2021-12:11	03/17/2021-12:11	
Lucas, Aryanna	NEF(02-25-2021 04:30:37 PM) Service/Certificate Of Servi...	Filing		02/25/2021-16:55	07/26/2021-16:55	
Lucas, Aryanna	Certificate Of Service of Second Amended Summons/Complaint	Filing		02/25/2021-16:30	07/26/2021-16:30	
Lucas, Aryanna	NEF(02-22-2021 03:55:44 PM) Amended/Amended Summons And ...	Filing		02/22/2021-16:51	07/26/2021-16:51	
Lucas, Aryanna	Second Amended Summons And	Filing		02/22/2021-	07/26/2021-	

<b>Aryanna</b>	<b>Complaint</b>			<b>15:55</b>	<b>15:55</b>	
<b>Lucas, Aryanna</b>	<b>NEF(02-22-2021 02:47:35 PM) Order/Consent Order</b>	<b>Filing</b>		<b>02/22/2021-14:47</b>	<b>07/26/2021-14:47</b>	
<b>Lucas, Aryanna</b>	<b>Consent Order for Substitution of Counsel</b>	<b>Order</b>		<b>02/22/2021-14:47</b>	<b>07/26/2021-14:47</b>	
<b>Lucas, Aryanna</b>	<b>NEF(02-17-2021 04:57:14 PM) Lis Pendens Filed</b>	<b>Filing</b>		<b>02/17/2021-17:09</b>	<b>07/26/2021-17:09</b>	
<b>Lucas, Aryanna</b>	<b>Lis Pendens - R100 024 000 0351 0000, M100 024 000 0351 0000</b>	<b>Filing</b>		<b>02/17/2021-16:57</b>	<b>07/26/2021-16:57</b>	
<b>Lucas, Aryanna</b>	<b>NEF(02-16-2021 10:21:26 AM) Notice/Notice of Appearance</b>	<b>Filing</b>		<b>02/16/2021-10:36</b>	<b>07/26/2021-10:36</b>	
<b>Lucas, Aryanna</b>	<b>Notice of Appearance (Ballard)</b>	<b>Filing</b>		<b>02/16/2021-10:21</b>	<b>07/26/2021-10:21</b>	
<b>Lucas, Aryanna</b>	<b>Order/Order Cover Sheet \$25.00</b>	<b>Filing</b>		<b>02/16/2021-10:21</b>	<b>07/26/2021-10:21</b>	
<b>Lucas, Aryanna</b>	<b>NEF(02-08-2021 09:06:15 AM) Service/Affidavit Of Service</b>	<b>Filing</b>		<b>02/08/2021-09:42</b>	<b>07/26/2021-09:42</b>	
<b>Lucas, Aryanna</b>	<b>Aff Svc Amd SC on Shawn L Birch 2-3-2021 on Shaun L Birch</b>	<b>Filing</b>		<b>02/08/2021-09:06</b>	<b>07/26/2021-09:06</b>	
<b>Lucas, Aryanna</b>	<b>NEF(01-25-2021 02:07:52 PM) Amended/Amended Summons And ...</b>	<b>Filing</b>		<b>01/25/2021-14:43</b>	<b>07/26/2021-14:43</b>	
<b>Lucas, Aryanna</b>	<b>Amended Summons And Complaint</b>	<b>Filing</b>		<b>01/25/2021-14:07</b>	<b>07/26/2021-14:07</b>	 
<b>Lucas, Aryanna</b>	<b>Summons &amp; Complaint</b>	<b>Filing</b>		<b>01/22/2021-16:44</b>	<b>07/26/2021-16:44</b>	 

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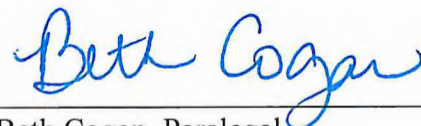
v.

Shaun Birch, ..... Appellant.

**PROOF OF SERVICE**

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on September 1, 2021, I served a copy of the **Motion to Dismiss**, in the above-captioned case on the following individual by United States Mail, with sufficient first-class postage affixed, addressed as follows:

**Shaun Birch  
85 Murray Drive  
Beaufort, South Carolina 29906**



Beth Cogan, Paralegal

September 1, 2021



**Ballard & Watson**  
Attorneys at Law  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171.  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

September 1, 2021

*Via Email* ([ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))  
The Honorable Jenny Abbot Kitchings  
Court of Appeals Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
**Sep 01 2021**  
**SC Court of Appeals**

Re: *Aryanna Lucas v. Shaun Birch*  
Appellate Case No.: 2021-000807

Dear Ms. Kitchings:

Enclosed for filing please find a Motion to Dismiss and Proof of Service for the above-referenced matter. Pursuant to paragraph (c)(4) of the Supreme Court's amended administrative order dated August 25, 2021 ("Operation of the Appellate Courts During the Coronavirus Emergency" originally dated March 20, 2020) a check for the filing fee is being forwarded via US mail.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon pro se Appellant. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

*Desa Ballard /ekc*

Desa Ballard  
[desab@desaballard.com](mailto:desab@desaballard.com)

Enclosures

cc: *Via U.S. Mail*  
Shaun Birch