

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen Tevis Mullen, Circuit Court Judge

Case No. 2008-CP-07-03656

Ernest Alvin Timmons as Trustee of the
Ernest A. Timmons Revocable Trust..... Appellant

v.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer, Joseph Gray Peeples,
Brian M. Hinson, Karen B. Hinson, George R. Dickey, H. Alvin Dobson, Jr.,
Kimberly A. Dobson, Gene G. Slice, Andrea C. Klucsarits, Becky P. Hildebrand,
Gregory T. Hildebrand, Marsha Dean Ford, Harriet H. Ford, Lucas W. Durham,
Marianne Durham, John D. Meyer, Meryl V. Truett, Christian W. Kern,
Russel V. Schumpert, Carlton Mark Schumpert, Elizabeth O'Neal Schumpert,
Russell C. Amick, Pamela S. Burnett, Mary Alice Broderick, Ellen N. Gifford,
Robert M. McAlister, Barbara M. Vaughan, Margie J. Crews, Will Mills,
Tracy Mills, BDM Investments, LLC, James P. Thomas, Lillian M. Thomas,
J. Wyman Wall, III, Karl A. Overcash, Patsy V. Coppage, Steven M. Robison,
Charles Schmid, Larry M. Bane, Renee C. Bane, Robert Gallina, Margaret E. Gallina,
Bert Kerwin, Richard C. Guarneri, Maria Guarneri, and James P. Thomas,
if any of these persons are living, and if not living, then the heirs, devisees or successors
in title to them; and all persons unknown having or claiming to have any right, title,
interest in, easement upon, or lien upon the real property described in the complaint
herein being designated collectively as John Doe and Mary Roe; including all persons
who may be deceased, minors, in the Armed Forces of the United States,
Non Compos Mentis or under any other disability,

of whom George R. Dickey isRespondent.

RESPONDENT'S RETURN TO THE MOTION
TO REINSTATE
APPEAL AND FOR REHEARING

RECEIVED
APR 10 2013
SC Court of Appeals

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Respondent

Pursuant to Rules 240 and 260 SCACR, the Respondent George R. Dickey (hereinafter "Dickey"), by and through his undersigned counsel, submits this Return to the Appellant's Motion to Reinstate Appeal and for Rehearing. For the reasons stated herein, Dickey requests that this Court not reinstate the appeal and uphold its Order of March 22, 2013, dismissing the appeal. As properly noted in Judge Cureton's Order:

On November 14, 2012, this court requested Appellant to provide a written update on the status of the reconstruction of the record and warned that this appeal may be dismissed if the written updated is not received in ten days. Appellant has not provided a written updated as requested by this court. Accordingly, Respondents' motion to dismiss is granted.

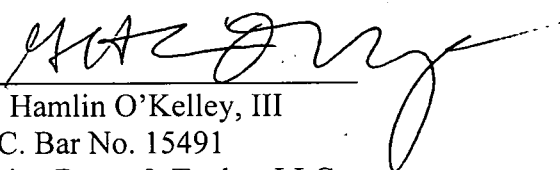
On December 14, 2012, Mr. Dickey filed his Motion to Dismiss the Appellant's Appeal due to a lack of response to this Court's letter of November 14, 2012, to Appellant's Counsel and due to a lack of prosecution of the appeal since February 11, 2011, to move forward with recreating the record to be submitted to this Court. No return to that motion was received by counsel or by this Court. No response to the November 14, 2012, correspondence was received by counsel or by this Court. It was only after this Court's March 22, 2013, Order dismissing the appeal that Appellant responded to this Court by way of the current pending motion, some four months after the original requested response. For this reason alone, the dismissal should stand.

The Appellant and his counsel cannot show a response to the court and cannot show a return to the Motion to Dismiss. As stated in the Appellant's motion, Appellant's counsel is not stating that the court did not send a request for information dated November 14, 2012, but, instead, is saying the lack of response is due to mistake or inadvertence. The same mistake or inadvertence must also apply to the lack of return to the December 14, 2012, motion to dismiss. The failure of the Court reporter to produce a

transcript is long known. On numerous occasions, counsel has been in contact with Appellant's counsel about recreating the record to submit to this Court. Construction at the Beaufort County Courthouse has nothing to do with this matter. Counsel and the parties are in possession of the exhibits submitted to the Court and notes regarding same involving the trial before Judge Mullen. There has simply been no effort on the part of the Appellant to have the record recreated and certified so that this Court could rule upon the matter. Accordingly, the appeal should still be dismissed as ordered on March 22, 2013.

Mt. Pleasant, SC
April 8, 2013

Respectfully submitted,


G. Hamlin O'Kelley, III
S.C. Bar No. 15491
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652 Coleman Blvd., Suite 200
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(843) 856-4488

Attorneys for the Respondent George R.
Dickey

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APPEAL FROM BEAUFORT COUNTY
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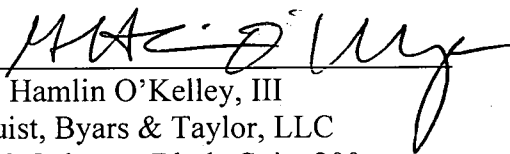
PROOF OF SERVICE

I hereby certify that I have served the Respondent's Motion to Dismiss the Appellant's Appeal Pursuant to Rules 240 and 260 SCACR by depositing a copy of same in the U.S. Mail, postage prepaid, on April 8, 2013, addressed to the following parties or counsel of record as follows:

James J. Wegmann, Esq., Mikell, Weidner, Wegmann & Harper, LLC, 6 Professional Village Circle, Beaufort, South Carolina, 29907, *Attorneys for the Appellant*; George H. O'Kelley, Jr., Esq., P.O. Box 1072, Beaufort, South Carolina 29901, *Attorneys for Karl A. Overcash*; A. G. Solomons, Jr., Esq., Solomons & Lawton, PC, P.O. Box 969, Estill, South Carolina 29918, *Attorneys for Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, Barbara M. Vaughn and J. Wyman Wall, III*; Karl D. Twenge, Esq., 1001 Paris Avenue, Port Royal, South Carolina 29935, *Guardian ad Litem*; Mr. Russell Amick, 252 McNeary Ferry Road, Leesville, South Carolina 29070, Defendant *Pro Se*; Mr. Johnny L. Brewer, 96 Fort Freemont Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*; Mr. Gregory Hildebrand and Ms. Becky Hildebrand, 201 Blaine Lane, Lexington, South Carolina 29072, Defendants *Pro Se*; Mr. Steven M. Robinson, 7 Klebold Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*; Ms. Mary Alice Broderick, 5 Fort Freemont Road, St. Helena Island, South Carolina 29920, Defendant *Pro Se*;

Mt. Pleasant, South Carolina

April 8, 2013


G. Hamlin O'Kelley, III
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Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for Respondent

The South Carolina Court of Appeals

Ernest Alvin Timmons as Trustee of the Ernest A.
Timmons Revocable Trust, Appellant,

v.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer,
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S. Burnett, Mary Alice Broderick, Ellen N. Gifford,
Robert M. McAlister, Barbara M. Vaughan, Margie J.
Crews, Will Mills, Tracy Mills, BDM Investments, LLC,
James P. Thomas, Lillian M. Thomas, J. Wyman Wall,
III, Karl A. Overcash, Patsy V. Coppage, Steven M.
Robison, Charles Schmid, Larry M. Bane, Renee C.
Bane, Robert Gallina, Margaret E. Gallina, Bert Kerwin,
Richard C. Guarneri, Maria Guarneri, and James P.
Thomas; if any of these persons are living, and if not
living, then the heirs, devisees or successors in title to
them; and all persons unknown having or claiming to
have any right, title, interest in, easement upon, or lien
upon the real property described in the complaint herein
being designated collectively as John Doe and Mary Roe;
including all persons who may be deceased, minors in the
Armed Forces of the United States, Non Compos Mentis
or under any other disability, Respondents.

Appellate Case No. 2010-166447

ORDER

On November 14, 2012, this court requested Appellant to provide a written update on the status of the reconstruction of the record and warned that this appeal may be dismissed if the written update is not received within ten days. Appellant has not provided a written update as requested by the court. Accordingly, Respondents' motion to dismiss is granted.


FOR THE COURT

Columbia, South Carolina

FILED

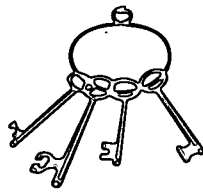
3-22-13 AS

cc:

James John Wegmann
George H. O'Kelley, Jr.
A. G. Solomons, Jr.
George Hamlin O'Kelley, III
Karl D. Twenge
Gregory and Becky Hildebrand
Johnny L. Brewer
Mary Alice Broderick
Russell Amick
Steven M. Robinson

CLERK OF COURT
COLUMBIA, SOUTH CAROLINA
3-22-13

Buist, Byars & Taylor, LLC
652 Coleman Blvd.
Suite 200
Mt. Pleasant, SC 29464



April 8, 2013

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

G. HAMLIN O'KELLEY III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Timmons v. Gifford, et al.
Case No.: 2008-CP-07-3656
Ct. App. No. **20100166447**
Client File No.: 2009060036

Dear Ms. Kitchings:

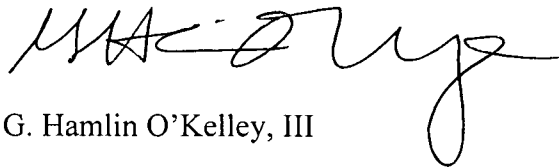
Enclosed are the following for filing in the above-referenced matter:

1. An original and (7) copies of the Respondent's Return to Appellant's Motion to Reinstate appeal and for Rehearing;
2. An original and one (1) Proof of Service re same.

Please file the originals and return the extra copy of each to me in the enclosed envelope. By copy of this letter, I am serving same as indicated in the Proof of Service.

Should you have any questions, please feel free to contact me. With kind regards, I remain

Sincerely,



G. Hamlin O'Kelley, III

Enclosures
cc. (w/enc.):

James J. Wegmann, Esq.
A.G. Solomons, Jr., Esq.
Karl D. Twenge, Esq.
George H. O'Kelley, Jr., Esq.
Ms. Mary Alice Broderick

Mr. Russel Amick
Mr. Johnny L Brewer
Mr. Gregory Hildebrand
Ms. Becky Hildebrand
Mr. Steven M. Robinson

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SC Court of Appeals

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