

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No: 2014-CP-45-00132

Appellate Case No: 2021-000835

South Carolina Farm Bureau Ins. Co, Plaintiff,
v.

Marion L. Driggers, Shiralee Driggers, Tammy D.
Floyd, Estate of Arthur McKenzie, Arthur McKenzie
a/k/a Arther McKenzie, The Travelers Home and Marine
Insurance Company, The United States of America acting
by and through Its agency, The Internal Revenue Service,
and The South Carolina Tax Commission, Defendants,

Of Whom Marion L Driggers is Appellant and The Travelers
Home and Marine Insurance Company is the Respondent.

RETURN OF PLAINTIFF, SOUTH CAROLINA FARM
BUREAU INS. CO., TO RESPONDENT THE TRAVELERS
HOME AND MARINE INSURANCE COMPANY'S
MOTION TO DISMISS APPELLANT'S
APPEAL

RECEIVED
Nov 08 2021
SC Court of Appeals

The Plaintiff, South Carolina Farm Bureau Insurance Company (“Farm Bureau”), hereby makes a Return to Travelers Motion To Dismiss Appellant’s Appeal. Farm Bureau asks that the motion be denied.

The basis for Travelers’ Motion To Dismiss is the alleged failure of *pro se* appellant, Marion Driggers, to serve his Notice of Appeal via US Mail. Farm Bureau does not represent Mr. Driggers, and was not privy to his service records. However, assuming that Mr. Driggers only served his August 3 Notice of Appeal by email, it is significant that it was actually timely received by Travelers. Driggers emailed the Notice of Appeal to counsel, directing it to Travelers via Mr. William P. Davis, who represented the company throughout this case, through and past the point of the Order(s) at issue, until his fairly recent retirement. Then, Ms. Norton took over as counsel for Travelers. Ms. Norton received the email serving the Notice of Appeal and acknowledged receipt by emailing Mr. Driggers with a request as follows: “Please add my email to all correspondence on this case. Thank you.” **Exhibit A, MLD email service of Notice of Appeal on August 2, 2021; Exhibit B, M Norton email reply to MLD of August 2, 2021.**

The Fourth Circuit has held that a *pro se* litigant should not be “tripped up” by procedural niceties. *Beaudett v. City of Hampton*, 775 F2d 1274 (4th Cir. 1985), citing *Gordon v. Leeke*, 574 F2d 1174, cert. denied, 439 US 970, 99 S.Ct. 464 4th Cir. 1978). Farm Bureau acknowledges that timely service of a Notice of Appeal is a jurisdictional requirement and that this court lacks authority to extend the deadline. *Elam v. South Carolina Department of Transportation*, 361 SC 9, 602 SE2d 772 (2004). However, in this case, Ms. Norton acknowledged that she actually received service on the Notice of Appeal by Mr. Driggers on August 2, 2021. **Exhibit A, MLD email service of Notice of Appeal on August 2, 2021; Exhibit B, M Norton email reply to MLD of August 2, 2021.**

Moreover, throughout this case, all parties have been dealing with Mr. Driggers by email. Ms. Norton's file will show that to be the case. So, Ms. Norton's email to Mr. Driggers of August 2, 2021, acknowledged receipt of his Notice of Appeal, and continued the prior history of parties responding to him by email. Ms. Norton's Motion to Dismiss in this case raises a procedural technicality that is contrary to the prior course of dealings of the parties. Travelers Motion does not allege that their counsel failed to receive timely service of Mr. Driggers Notice of Appeal. It speaks to whether they got notice by email or by US Mail. It seeks to have this court dismiss this appeal as a matter of form, rather than of substance.

Dismissing this appeal on the grounds sought by Travelers would deny Mr. Driggers rights to due process and would contravene, rather than serve, the interests of justice. Due process requires safeguards to protect individual rights in accord with settled law for the class of cases involved. *Dacus v. Johnston, Governor*, 180 SC 329, 185 SE 490 (1936). Due process requires notice and the right to be heard. *States v. Dukes*, 404 SC 553, 558, 745 SE2d 137, 140 (Ct. App. 2013). The Code of Judicial Conduct requires that each person legally interested in a proceeding have the full right to be heard according to the law. *Herring v. Retail Credit Co.*, 266 SC 455, 224 SE2d 463 (1976). The US Supreme Court holds that the right to be heard is fundamental to the right to due process. *Lehr v. Robertson*, 463 US 248 (1983). "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 US 385, 394, 34 S.Ct. 779 (1914).

Procedural rules should promote the ends of justice and should not be construed to defeat them. *Thomas v. Arn*, 474 US 140, 106 S.Ct. 466 (1985). Here, Mr. Driggers, as a *pro se* litigant, timely filed and served a Notice of Appeal. Counsel for Travelers acknowledged receipt of the Notice of Appeal on the day that it was served. Now Travelers seeks to dismiss the appeal because

it was served by email, rather than by US Mail. Travelers had actual, timely notice of the appeal, and dismissing it because that notice was by email would construe procedural rules to defeat the ends of justice.

As to the Amended Notice of Appeal and the Interpleader Order, Farm Bureau notes its understanding that this Appeal was properly marked as held in abeyance for a fair length of time to allow Mr. Driggers to address the Court's issues, and his own. Given this, the Amended Notice of Appeal should relate back to the original Notice of Appeal. Again, the ends of justice should control, especially given the involvement of a litigant was was, at the time, *pro se*, and especially given that Mr. Driggers has now retained very competent counsel.

Farm Bureau asks that the court deny Travelers Motion to Dismiss this appeal.

Respectfully Submitted,

/s/ J. Dwight Hudson

J. Dwight Hudson (SCB# 2753)
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Dated: November 8, 2021

**Attorney For Plaintiff, South Carolina
Farm Bureau Insurance Company**

Exhibit A

mgraham hudsonlawoffice.com

From: Marion Driggers <mldriggers@yahoo.com>
Sent: Monday, August 2, 2021 12:43 PM
To: Curtis, Kristi F. Law Clerk (Kimberly Land)
Cc: Edward Pritchard; Daryl Corbin; mgraham hudsonlawoffice.com; William P. Davis; Laura Brown; Conits George (USASC); tasha.thompson@schousing.com
Subject: 2014-CP-45-132
Attachments: mld appeal_210802114609_0001.pdf

Please see attached

Exhibit B

From: Norton, Mariel <mnorton@brblegal.com>
Sent: Monday, August 2, 2021 1:50 PM
To: 'Marion Driggers'
Cc: Edward Pritchard; Daryl Corbin; mgraham hudsonlawoffice.com; Davis, William P.; Laura Brown; Conits George (USASC); tasha.thompson@schousing.com; Curtis, Kristi F. Law Clerk (Kimberly Land)
Subject: 2014-CP-45-132

Mr. Driggers,

Please add my email to all correspondence on this case. Thank you.

Mariel D. Norton
Baker, Ravenel, & Bender LLP
mnorton@brblegal.com



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