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Nov 15 2021

SC Court of Appeals

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

Case No.: 2021-000835

**South Carolina Farm Bureau Mutual
Insurance Company,**

Plaintiff-Appellant,

v.

Marion L. Driggers,

Defendant-Appellant,

and

**Shiralee Driggers, Tammy D. Floyd,
Estate of Arthur 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,**

Of Whom,

**The Travelers Home and Marine
Insurance Company is the,**

Defendant-Respondent.

**RETURN OF DEFENDANT-APPELLANT, MARION L. DRIGGERS, TO
DEFENDANT-RESPONDENT, THE TRAVELERS HOME AND MARTINE
INSURANCE COMPANY'S MOTION TO DISMISS APPELLANT'S APPEAL**

Defendant-Appellant, Marion L. Driggers (“Mr. Driggers”), hereby makes a Return to Travelers Motion to Dismiss Appellant’s Appeal. Mr. Driggers asks that the motion be denied.

The basis for Travelers Motion to Dismiss is an alleged failure of Mr. Driggers to file a proof of service during the time he was a *pro se* litigant. Although Mr. Driggers failed to file proof, Mr. Driggers did actually serve notice on all parties *via* e-mail to each attorney’s primary email address listed in the Attorney Information System (“AIS”). This an acceptable form of service by a lawyer on another lawyer pursuant to S.C. Supreme Court August 25, 2021, Order establishing methods for electronic service under SCRAP 262(c)(3). It is also important to note that Mariel D. Norton, Esq., for Travelers Home and Marine Insurance Company, also was in actual receipt of Mr. Driggers’ Notice of Appeal, as evidenced by her response to Mr. Driggers on August 2, 2021, to “[p]lease add my email to all correspondence in this case.”

This was not the first error of Mr. Driggers as a *pro se* litigant. In response to Mr. Driggers’ failure to conform exactly with the SCRAP, the South Carolina Court of Appeals previously granted Mr. Driggers the opportunity to cure such deficiencies. Mr. Driggers amended his Notice of Appeal to correct the caption, to include a statement of the date of receipt of the Order, and to file a certificate of service. On or around the end of September, 2021, Mr. Driggers retained the undersigned counsel. On October 14, 2021, Mr. Driggers received another letter of deficiency from the South Carolina Court of Appeals, granting him 10 days to cure the incorrect proof of service he had submitted. At this point, Mr. Driggers’ counsel contacted the South Carolina Court of Appeals in an attempt to piece together what had been filed and what needed to be

filed. The South Carolina Court of Appeals advised Mr. Driggers' counsel that they would accept an amended Notice of Appeal along with a Notice of Appearance. Such Amended Notice of Appeal was filed within 10 days of Mr. Driggers' receipt of the October 8, 2021, letter, and conformed to the SCRAP.

While Mr. Driggers did fail to comply with a technical Procedural Rule of Appellate Court as a *pro se* litigant, this Court should accept substance over form in this situation. All parties herein have received actual service of Mr. Driggers' original Notice of Appeal and on each of Mr. Driggers amendments thereto. Counsel for the movant specifically acknowledged receipt of such notice, which was emailed to counsel in a way that is consistent with the parties prior course of dealings. It is inconsistent for Respondent to assert that "Appellant cannot substantiate that proper service was made on Respondent" when service has been actually acknowledged by Respondent.

Upon retaining counsel, Mr. Driggers' counsel filed a properly conforming Amended Notice of Appeal, as directed by the South Carolina Court of Appeals. Given this, the Amended Notice of Appeal relates back to the original Notice of Appeal. Travelers cannot possibly be prejudiced by such amended notice, as they were aware of such Notice of Appeal within the 30 day time period required.

1. Interpleader Appeal

"The historical and still the primary purpose of interpleader is to enable a neutral stakeholder . . . to shield itself from liability for paying over the stake to the wrong party." First Union Nat'l Bank of S.C. v. FCVS Commc'ns, 321 S.C. 496, 499, 469 S.E.2d 613, 616 (Ct. App. S.C. 1996), rev'd in part, 328 S.C. 290, 494 S.E.2d 429 (1997)(internal citations omitted). If Mr. Driggers asserted a cause of action against Travelers for

tortious behavior or breach of contract, it necessarily makes Travelers a non-neutral stakeholder, and a party interested in the outcome of such litigation. The lawsuit must dispose of such claims that allege Travelers is liable to such other parties, and until such resolution is made, no interpleader could possibly be granted. Therefore, when Mr. Driggers had outstanding causes of action against Travelers for (1) civil conspiracy; (2) breach of contract; and (3) bad faith, Travelers was an interested party. Mr. Driggers' motion for reconsideration on those same causes of action also acted to continue to incorporate Travelers as interested persons, until the June 25, 2021 Order, which is the premise of this Appeal. The appeal of interpleader, then, is necessarily incorporated with the appeal of the other such actions action relating to Travelers' liability to Mr. Driggers.

In addition, there is confusion regarding the date on which the Trial Court granted Travelers' interpleader motion. In Judge Curtis' email dated November 19, 2020, she indicates that Travelers' interpleader motion was granted with consent of all parties. This condition for granting the interpleader motion, consent, was never obtained or submitted to the Trial Court. Regardless, Judge Curtis ordered Travelers to deposit funds on January 5, 2021, and dismissed Travelers from the Lawsuit on April 19, 2021. Mr. Driggers' motion to reconsider would necessarily require Judge Curtis to reconsider her position on the interpleader, as Travelers would not be discharged from liability and permitted an interpleader if summary judgment as to breach of contract had been reversed. Judge Curtis seems to have overlooked Mr. Driggers' Motion to Reconsider on March 17, 2021; in fact, her Order denying his Motion to Reconsider contains the following explanation for the oversight:

It appears Mr. Driggers' motion was filed with the Williamsburg County Clerk of Court on 3-17-2021, although as of this date no documents to that effect appear in the e-filing system or public index. (There is an entry for the motion in the e-filing system with no corresponding document or attachment.) Nevertheless, the Clerk's office is in receipt of those documents and has provided a copy to the court. After review, Mr. Driggers' motion to reconsider is DENIED.

Because the appeal of Mr. Driggers causes of actions against Travelers necessarily incorporated the appeal of Traveler's grant of interpleader, the appeal of interpleader is preserved for this Court.

In addition, South Carolina Farm Bureau, the Plaintiff-Appellant, appealed the lower court's grant of interpleader to Travelers. Because this issue has already been preserved for appeal in the same appellate action by an adverse party, the South Carolina Court of Appeals has oversight on this issue.

The remainder of Defendant-Respondent's Motion to Dismiss is a repetition of the former argument that Mr. Driggers' Notice of Appeal failed to contain the Proof of Service. As Mr. Driggers began such proceedings as a pro se litigant, and such Amended Notice of Appeal conformed with the SCRAP, such deficiency has been cured.

Mr. Driggers respectfully requests that this Court deny Traveler's Motion to Dismiss his appeal.

Respectfully submitted,

s/ Reese R. Boyd, III

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Dated: November 15, 2021
Myrtle Beach, South Carolina

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**Shiralee Driggers, Tammy D. Floyd,
Estate of Arthur 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,**

Of Whom,

**The Travelers Home and Marine
Insurance Company is the,**

Defendant-Respondent.

PROOF OF SERVICE

I certify that on the 15th day of November, 2021, I served (1) the *Motion for Enlargement of Time* and (2) the *Return of Marion L. Driggers to Travelers Motion to Dismiss* on each party or counsel of record by mailing or hand delivery in the manner

prescribed by the applicable Rule of Civil Procedure as follows:

By e-mail directed to the address registered with AIS:

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Dated: November 15, 2021
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November 15, 2021

Via email only to: ctappfilings@sccourts.org, et al.

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

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SC Court of Appeals

Re: Marion L. Driggers, Appellant v. The Travelers Home and Marine Ins. Co, Respondent
Appellate Case No: 2021-000835,
Our File Number: 021.084

Dear Ms. Kitchings:

Attached for filing in the above referenced matter please find Appellant Marion L. Driggers' (1) Motion for Enlargement of Time, (2) Return to Travelers Motion to Dismiss; and (3) Proof of Service thereof via electronic mail.

If you have any questions or wish to discuss this matter at any time, please do not hesitate to contact me at your convenience.

With kind regards, I remain,

Yours sincerely,



Reese R. Boyd, III

RRB/KMT
Encl.