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Feb 11 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge
CASE NO. 20-ALJ-17-0044-CC

APPELLATE CASE NO. 2021-001045
20-ALJ-17-0044-CC

William W. Hulvey,

Appellant.

v.

Horry County Assessor,

Respondent

MOTION OPPOSING DISMISSAL OF APPELLANT'S APPEAL

and

MOTION REQUESTING RECONSIDERATION OF DISMISSAL

and

MOTION REQUESTING CHANGE OF VENUE

Now comes, William W. Hulvey, Appellant, pro se, by motion opposing the Appeal Court's dismissal of his appeal of the decision of the Honorable Shirley C. Robinson dated August 17, 2021 in the Administrative Court of South Carolina and by motion requesting the Court's reconsideration of its "untimely" dismissal of Appellant's appeal.

As grounds for these motions Appellant states the Court's "untimely" dismissal of this appeal at such a late date is without merit and unlawful in accordance with the cited South Carolina statute the Court relies on as grounds for dismissal. According to the Court's "undated" order of dismissal received by Appellant, the Court apparently bases dismissal of Appellant's "timely submitted" appeal on grounds that Appellant's appeal was received by the Court outside the "30-day timeframe" permitted for appeal to the Court of Appeals of the lower court's decision - as has also been asserted in counsel for Respondent's desperation Motion to Dismiss also received by Appellant and dated November 1, 2021 . Moreover, Appellant notes the Court's dismissal order, although absent of any date whatsoever on its face, was not postmarked until January 12, 2022, being over "three and a half months" after Appellant's appeal was formally accepted and docketed by letter from the Court dated September 23, 2021. Appellant asserts and finds that such a dismissal action by the Court at this "late date" is a "preposterous action" by the Court that must be reversed in the interest of justice as well as for good cause shown by Appellant.

As grounds for his motions Appellant states the Court's untimely dismissal of his appeal at such a late date is without merit and unlawful in accordance with the cited South Carolina statute the Court relies on as grounds for dismissal. According to the Court's "undated" order of dismissal the Court apparently bases dismissal of Appellant's "timely appeal" submission on grounds that the appeal was received by the Court outside the "30-day timeframe" permitted for his appeal to the Court of Appeals, as asserted in Respondent's desperation Motion to Dismiss submitted by Respondent's counsel.

Moreso, Appellant notes the Court's dismissal order is absent of "any date whatsoever" on its face, however the mailing envelope is not postmarked until January 12, 2022, being over "three and a half months" after Appellant was informed by the Appeals Court by letter from the Court dated September 23, 2021, that his appeal had been formally accepted and docketed - which letter Appellant did not actually receive from the Court until September 28, 2021.

To wit, the Court cites as grounds for dismissal S.C. Code Ann. § 26-6-150-(B) ("[A]n electronic record is received when it (1) enters an information processing system that the recipient has designated or uses for the receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and, (2) is in a form capable of being processed by that system." Appellant makes specific note here of the "controlling verbiage" contained therein - that "the recipient is able to retrieve the electronic record." By way of explanation, Appellant states he was in "travel status" with only his laptop computer and cell phone available to him when the Administrative Court transmitted its decision via email and Appellant's laptop computer battery had failed therefor making it impossible for Appellant to view the Administrative Court's decision on the date it was transmitted. And, although the decision itself may have been available to Appellant via his cell phone Appellant did not become aware of the Court's email transmission when it was sent because Appellant receives over 100 email transmissions per day from various sources. Moreso, even if Appellant had become aware of the Court's email transmission via his cell phone, Appellant would not have been able to read a lengthy court decision on the small screen on his cell phone due to Appellant's "failing eyesight." Hence, Appellant did not become rightfully aware of the subject decision transmission that occurred on August 17, 2021, until he was able to view and digest said decision on his desktop home computer on August 18, 2021, as was truthfully stated in Appellant's Notice of Appeal to the Court submitted on September 17, 2021.

Moreso, the Motion to Dismiss Appellant's appeal, as tendered by Respondent's counsel, aptly references the Supreme Court decision in Wells Fargo Bank N.A. v. Fallon Props, SC, LLC, wherein it addresses the thirty-day deadline for filing a notice of appeal, stating, "[A]n email providing written notice of entry of an order or judgment for the purposes of Rule 203(b)(1), SCACR, triggers the time to appeal as long as the email is received from the court, an attorney, or a party." 422 S.C. 211,217, 810, S.E. 2d 856, 859 (2018). So, once again, Appellant makes specific reference to the "controlling verbiage" therein - "as long as the email is received from the court, attorney, or a party." Hence, the Court's decision in Wells Fargo language again makes clear that the email transmission must "actually be received" by the intended recipient before the 30-day time period begins to run.

Accordingly, in view of the above arguments citing both the exigent circumstances surrounding Appellant's failure to receive the Court's emailed decision transmission and in accordance with by applicable prevailing case law, Appellant contends his appeal from the decision of the Administrative Court was unlawfully dismissed on grounds that Appellant's appeal was "untimely filed" - as apparently relied upon by the Appeals Court and by Respondent in its Motion to Dismiss.

Appellant therefore contends the Appeal Court's dismissal of Appellant's appeal must be reversed and the appeal must be reinstated as "timely submitted" and once again placed on the Court docket to be decided on the merits.

Regarding reversal of the Order of Dismissal and the re-docketing of Appellant's appeal, upon further review of the S.C. Appeals Court Procedural Rules, Appellant has now become aware of Rule 204 – Transfer of Cases, wherein Paragraph (b) states as follows:

Rule 204(b) In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

Accordingly, Appellant herein by Motion, requests that his appeal of the Administrative Court's decision in Case No. CASE NO. 20-ALJ-17-0044-CC, be immediately transferred to the Supreme Court for docketing and for decision on its merits. In support of this Motion, Appellant declares that this case involves an issue of significant public interest as well as a legal principle of major importance that must be decided in the public interest. To wit, Appellant contends that the assessment and re-assessment scheme employed by the Assessor of Horry County, South Carolina, (whether or not sanctioned by the State itself) violates the South Carolina Constitution, specifically:

ARTICLE I. DECLARATION OF RIGHTS

SECTION 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Moreso, Appellant further contends the assessment and re-assessment scheme employed by the Assessor of Horry County, South Carolina, likewise violates the Fifth Amendment of the U.S. Constitution. The U.S. Supreme Court has undeniably established that the imposition of taxes by a governmental taxing entity upon the owners of real property, based on value of such property, creates a "property interest" requiring a governmental taxing entity to impose taxes fairly, uniformly, and equally upon individual property owners. Failure by a taxing entity to employ a tax assessment scheme that imposes taxes fairly, uniformly, and equally on real property falls under the Fifth Amendment protection to the U.S Constitution that "[no] person [shall] be deprived of life, liberty, or property without due process of law" – "nor shall any person be denied the equal protection of the laws." **U.S. Supreme Court, Allegheny-Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336 (1989).**

Appellant further contends the Horry County Assessor has failed to impose taxes fairly, uniformly, and equally on Appellant's real property by virtue of an assessment scheme that violates both the South Carolina Constitution and the U.S. Constitution. Moreso, Appellant clearly alleged in both his opening and closing statements before the Administrative Court that the assessment scheme employed by the Horry County Assessor in the re-assessment of Appellant's property was unlawful in accordance with State and Federal law and Appellant alluded to same as well throughout his case presentation before the Administrative Court. Accordingly, Appellant contends that the evidence presented by Appellant before the Administrative Court clearly establishes that this case involves an issue of significant public interest as well as a legal principle of major importance that must be decided by the Supreme Court in the public interest.

February 10, 2022

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PROOF OF SERVICE OF A NOTICE OF APPEAL

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v.
William W. Hulvey, Appellant.

PROOF OF SERVICE

I certify the following named counsels of record for Respondent have been served the enclosed **Motion in Opposition To Dismissal, Motion Requesting Reconsideration of Dismissal, and Motion Requesting Change of Venue** relevant to Appellant's Notice of Appeal of the South Carolina Administrative Court's decision in Case No. 20-ALJ-17-0044-CC. Served via electronic mail this day, February 11, 2022, to the following:

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