

**RECEIVED**

**Apr 25 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, Master in Equity

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Appellate Case No. 2022-000277

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Georgia Harrison, Barbara Harrison, Joyce Ellen Harrison,  
William S. Harrison III, Stanley Roberts, and Diana  
Mendheim, individually and as agent and attorney in fact,

Respondents.

v.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,  
Keita Nicole White and Cheryl Kirkland,

Appellants,

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APPELLANT'S REPLY TO RESPONDENTS  
RETURN IN OPPOSITION TO APPELLANT'S  
MOTION TO HOLD OR RECALL  
REMITTITUR AND TO REINSTATE APPEAL  
and  
TO EXTEND TIME FOR FILING PROOF OF SERVICE

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The Appellate Courts of South Carolina have consistently and uniformly applied its policy of engaging in any ex parte communications with litigant parties before it and would not have deviated from this practice in any letter sent to Appellants' counsel. Therefore, it is logical that if this letter were either emailed or mailed by USPS the same letter of March 18, 2022 would have been sent to the Respondents' counsels. Their lengthy rebuttal is absent of any recognition that they as Respondents' counsels, in fact, received a copy of this letter from the court by e-mail or mail by through the USPS. The only conclusive evidence of the existence of the letter is that it was filed and entered upon the Court's records. No evidence exists that the letter or a copy thereof was mailed or e-mailed to either the Appellants' or Respondents' counsels. The Court may be assured that had the letter been received by Appellant's counsel it would have been immediately and appropriately responded to.

Our Supreme Court has made a judicial distinction between jurisdictional defects and defects it called mere irregularities'. *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233, 236-37 (1946 S. Ct.), The Supreme Court, Kittredge, J., held that failure to complete the pre-suit mediation process for medical malpractice claims in a timely manner does not divest trial court of subject matter jurisdiction, and dismissal is not mandated, and that the Circuit court retained jurisdiction after the expiration of the statutory 120-day pre-suit mediation process for medical malpractice claims. The Supreme Court similarly ruled upon this same principle of law in *Ross v. Waccamaw Community Hosp.* 404 S.C. 567, 44 S.E.2d 547(2013 S. Ct.)

This principle is applicable in this present matter. The timely filing of the notice of appeal is a jurisdictional requirement. The filing of the proof of service is a mere irregularity that may be cured. Rule 260, SCRA P provides the remedy and

cure for this irregularity upon which the appellant's have filed its Motion for the reinstatement of the appeal.

Rule 260 SCRAP reads as follows:

*(a) Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).*

Respectfully submitted,

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April 23, 2022

Hilton Head Island, SC