

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 Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson,
Ellen N. Gifford, Robert M. McAlister, Barbara M. Vaughan, BDM Investments, LLC,
and J. Wyman Wall, III are Respondents.

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

Pursuant to Rules 240 and 260 SCACR, the Respondents Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson, Ellen N. Gifford, Robert M. McAlister, Barbara M. Vaughan, BDM Investments, LLC, and J. Wyman Wall, III, by and through their 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 update as requested by this court. Accordingly, Respondents' motion to dismiss is granted.

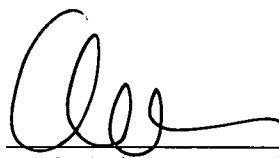
A Motion to Dismiss the Appellant's Appeal due to a lack of response to this Court's letter of November 14, 2012 was filed by other Defendant's in this matter. No response to those motions were received by counsel or by this Court. No response to the November 14, 2012, correspondence was received by 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 Motion to Dismiss filed by other Defendant's in this matter. 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.

Estill, South Carolina

May 14, 2013



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Attorneys for Respondents
Neil O. Gifford, Amy E. Gifford, H. Alvin
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Gifford, Robert M. McAlister, Barbara M.
Vaughan, BDM Investments, LLC, and
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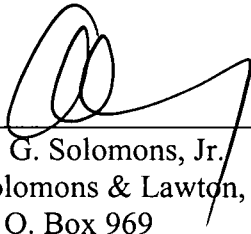
PROOF OF SERVICE

I hereby certify that I have served the Respondent's Return by depositing a copy of same in the U.S. Mail, postage prepaid, on May 14, 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*; G. Hamlin O'Kelley, III, 652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464, *Attorneys for George R. Dickey*; George H. O'Kelley, Jr., Esq., P.O. Box 1072, Beaufort, South Carolina 29901, *Attorneys for Karl A. Overcash*; 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*;

Estill, South Carolina

May 14, 2013



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WINSTON A. LAWTON, JR. (of Counsel)

803-625-3232
FAX 803-625-2148

May 14, 2013

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

RE: Timmons vs. Gifford, et al
Case No.: 2008-CP-07-3656
Ct. App. No. 20100166447

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondents, Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dobson, Ellen N. Gifford, Robert M. McAlister, Barbara M. Vaughan, BDM Investments, LLC, and J. Wyman Wall, III, Return to the Motion to Reinstate Appeal and for Rehearing for filing. Also enclosed is the Proof of Service of same.

Please file and return the extra stamped copy of each to me in the enclosed self-addressed stamped envelope.

Yours truly,

SOLOMONS & LAWTON, PC

By


A. G. Solomons, Jr.

AGS, JR/mdc

Enclosures

cc (w/enclosures):

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

Mr. Russell C. Amick
Mr. Johnny L. Brewer
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