
IN THE
Supreme Court of Virginia

RECORD NO. 210389

**KEN McKEITHEN, Successor Trustee of the
Craig E. Caldwell Trust U/A Dated December 28, 2006,**

Petitioner - Appellant,

v.

CITY OF RICHMOND,

Respondent - Appellee.

**PETITION FOR REHEARING AFTER DISMISSAL
OF PETITION FOR APPEAL**

**R. Kevin Kennedy (VSB No. 21117)
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**PETITION FOR REHEARING AFTER DISMISSAL
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Pursuant to Rule 5:20 of the Rules of the Supreme Court of Virginia, Petitioner, Ken McKeithen, Substitute Trustee of the Craig E. Caldwell Trust U/A dated December 28, 2006, petitions the Court to rehear the Court’s Order entered on July 15, 2021 dismissing the Petition for Appeal (the “Order of Dismissal”) and moves this Court to grant this petition for rehearing and dismiss the Court’s Order of Dismissal. This petition for rehearing is filed within fourteen (14) days of this Court’s entry of the Order of Dismissal in accordance with Supreme Court Rule 5:20.

The Court confirmed receipt of the Circuit Court of the City of Richmond’s Record on Appeal in this cause on April 16, 2021. The Trial Court filed an Addendum to the Record of Appeal with the Court on July 20, 2021. The Addendum corrected an error in the initial Record on Appeal by including the Trial Court’s February 19, 2021 date-stamped receipt of the Petitioner’s Notice of Appeal as part of the Record of Appeal thereby certifying that the Petitioner filed its Notice of Appeal on February 19, 2021. In submitting the Addendum to the Court, the Trial Court confirmed that “The Appeal was noted timely”. The Trial Court further advised the Court that the Trial Court’s failure to scan the Notice of Appeal validly filed on February 19, 2021 into the Trial Court’s file was the cause of it being inadvertently absent from its Record on Appeal as initially filed with the Court. On April 15, 2021, the Trial Court entered its Written Statement of Facts in Lieu of Transcript confirming that “The Caldwell Trust timely filed its Notice of Appeal to the Court’s Orders.” The Respondent executed the Written Statement of Facts in Lieu of Transcript, without objection, as Seen and Agreed.

The Trial Court entered the Order for which Petitioner filed its Notice of Appeal on January 20, 2021. The Record on Appeal now correctly certifies that Petitioner filed its Notice of Appeal with the Trial Court on February 19, 2021. The Notice of Appeal was therefore timely filed within 30 days after the Trial Court entered its Order in accordance with Supreme Court Rules 5:9(a) and 3:3(a).

Based on the foregoing, the Petitioner respectfully requests the Court to rehear the Respondent's Motion to Dismiss and Petitioner's Response to Motion to Dismiss and, in light of the corrected Record on Appeal, vacate the Court's Order of Dismissal.

Respectfully submitted,

**KEN McKEITHEN, SUBSTITUTE
TRUSTEE** of the Craig E. Caldwell Trust
U/A dated December 28, 2006
By Counsel

/s/ R. Kevin Kennedy

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