

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

JUN 13 2022

Frank R. Addy Jr., Circuit Court Judge

SC Court of Appeals

Circuit Court Case No. 2020-CP-30-00814

Norman Goering and Donna Goering,

Respondents,

and

Earl E. Kelley d/b/a Kelley General Contractors,

Appellant

**RESPONDENTS' RETURN TO APPELLANT'S PETITION TO FILE A NOTICE OF  
APPEAL THAT IS OUT OF TIME**

Appellant has requested that this Court allow him to file his Notice of Appeal of the lower court decision with this Court. Additionally, Appellant acknowledges that he is beyond the required time to file said Notice of Appeal with the Court of Appeals.

**LEGAL STANDARD**

Appellant is bound by Rule 203 of SCACR. This Rule states, in pertinent part:

**RULE 203 NOTICE OF APPEAL**

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

**(d) Filing.**

*(1) Appeals from the Circuit Court, Family Court and Probate Court.*

*(A) Where to File.*

...In all other cases, the notice of appeal shall be filed with the clerk of the lower court and Clerk of the Court of Appeals.

**(B) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.**

(3) *Effect of Failure to Timely File.* If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed . . .

*Rule 203 SCACR (emphasis added).*

ARGUMENT

In the instant matter, the lower court’s final order was filed and served on April 12, 2012. Pursuant to Rule 203, Appellant had 30 days with which to file a Notice of Appeal. Appellant did file a Notice of Appeal with the trial court and Respondents’ attorney. Although there is no Proof of Service on the Notice of Appeal, Respondents’ attorney did receive the time stamped copy of the one page Notice of Appeal on May 11, 2022.

Appellant was required to file with the Clerk of the Appellate Court the Notice of Appeal within 10 days after the Notice of Appeal was served to Respondent. However, Appellant has failed to file the Notice of Appeal with the Court of Appeals. As of yesterday, June 9, 2022, the Clerk for the Court of Appeals has indicated that they still have not received anything from Appellant - including the Petition to File the Notice of Appeal Out of Time.

Appellant is asking this Court to excuse the tardiness and to “relax the requirements” of Rule 203, SCACR. In support of his argument, Appellant cites to Rule 263(b), which states, in pertinent part:

**RULE 263 TIME**

...  
**(b) Extending and Diminishing Time Prescribed by These Rules.** The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

*Rule 263, SCACR.*

Upon review of Appellant's Petition to File Notice of Appeal Out of Time, no reason has been offered for the lack of the timely filing with this Court. Appellant merely apologizes. In fact, it has been almost three weeks since the time expired, and as of June 9, 2022, the Clerk's office for the Court of Appeals indicated that they still have not received anything – even via email- from the Appellant.

CONCLUSION

Therefore, there is no cause shown, good or otherwise, to allow for an extension of the time to file the Notice of Appeal with this Court. Further, the extension of time without any showing of cause renders the rules meaningless. Further still, the appeal is completely without merit and designed for mere delay.

Respondents respectfully request that this Court deny the request to file the Notice of Appeal.

Respectfully submitted,

/s/ M. Stokely Holder

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Janel M. Newell (SC Bar #77639)

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*Attorneys for Respondents Norman Goering and Donna Goering*

June 10, 2022

Greenville, South Carolina

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Circuit Court Case No. 2020-CP-30-00814

**CERTIFICATE OF SERVICE**

I, the undersigned attorney for the Respondents Norman Goering and Donna Goering, do hereby certify that I have served the Respondents' Return to Appellant's Petition to File a Notice of Appeal That is Out of Time on Earl E. Kelley d/b/a Kelley General Contractors by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2022, addressed to their attorneys of record, Stephen G. Geoly, Esq., 222 Phoenix Street, Greenwood, SC 29646, and Matthew P. Pinckney, Esq., 414-B Monument Street, Greenwood, SC 29646, and by electronic mail at: geolylawfirm@yahoo.com and mpp@pinckneylaw.com. I also certify that I have served the Respondents' Return to Appellant's Petition to File a Notice of Appeal That is Out of Time on the Laurens County Clerk of Court by electronic filing on June 10, 2022. I also certify that I have served the Respondents' Return to Appellant's Petition to File a Notice of Appeal That is Out of Time on the South Carolina Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2022, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, P.O. Box 11629, Columbia, SC 29211, and by electronic mail at: ctappfilings@sccourts.org.

By: /s/ M. Stokely Holder  
M. Stokely Holder (SC Bar No.: 73892)  
Janel M. Newell (SC Bar No.77639)  
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*Attorneys for the Respondents Norman Goering and Donna Goering*

June 10, 2022

HOLDER  
PADGETT  
LITTLEJOHN+  
PRICKETT LLC  
ATTORNEYS AT LAW

Catherine Martin

Reply to: Greenville  
direct: 864.569.0147  
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June 10, 2022

Via U.S. Mail and Email

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
ctappfilings@sccourts.org

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RE: Norman Goering and Donna Goering v. Earl E. Kelley d/b/a  
Kelley General Contractors  
Circuit Court Case No.: 2020-CP-30-00814

Dear Ms. Kitchings:

Please find enclosed herewith one copy of Respondents' Norman Goering and Donna Goering's Return to Appellant's Petition to File a Notice of Appeal That is Out of Time.

Should you have any questions or concerns, feel free to contact our office.

Regards,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC

*Catherine Martin*

Catherine Martin  
Paralegal to M. Stokely Holder

/cem

cc: Stephen G. Geoly, Esq.  
Matthew P. Pinckney, Esq.

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JUN 10 2022

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

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00011-162929

