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Jun 09 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Appellate Case No.: 2022-000674

Kevin Dion Hollinshead, Senior.,Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids,
Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas,
Godrey A. Gibson, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward,
and Teach for America, Inc. Respondents

MOTION TO DISMISS APPEAL

Respondent Charleston Coalition for Kids (“CCK”), by and through its undersigned counsel, moves before this Honorable Court for an order dismissing the appeal for lack of jurisdiction as a result of Appellant's failure to timely serve a Notice of Appeal as to CCK.

On April 5, 2022, Judge Cothran issued a form order dismissing Appellant’s Second Amended Complaint specifically as to Respondents CCK and Leeza Steward (the “First Order”). (See Exhibit A, attached hereto.) The First Order was served the same day on all counsel of record, including counsel of record for Appellant, Edward K. Pritchard. No motion for reconsideration was filed by any of the parties after the First Order was issued, but counsel for the remaining Respondents informally contacted Judge Cothran for clarification as to the effect of the order on the remaining Respondents. Then, on April 26, 2022, Judge Cothran issued a second form order

dismissing Appellant’s Second Amended Complaint as to all the Respondents, specifically identifying each Respondent (the “Second Order”). Appellant did not file a Notice of Appeal thirty (30) days from the date of the First Order – May 5, 2022. Instead, on or about May 12, 2022, Appellant filed the Notice of Appeal with this Court attaching only the Second Order. As more than thirty (30) days elapsed between the date of the First Order and when Appellant filed the Notice of Appeal, this appeal must be dismissed as to CCK.

Rule 203(b)(1), SCACR, provides in mandatory terms as follows: “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. This Court has consistently held that, “[t]he failure to timely serve a notice of appeal ‘divests this court of subject matter jurisdiction and results in dismissal of the appeal.’” *Holroyd v. Requa*, 361 S.C. 43, 54, 603 S.E.2d 417, 423 (Ct. App. 2004) (internal citation omitted). The South Carolina Supreme Court has held, “[t]he requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *see also*, *USAA Property & Casualty Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (same).

Here, the Notice of Appeal filed on May 12, 2022, more than thirty (30) days after the First Order dismissing Appellant’s Second Amended Complaint as to Respondent CCK, was not timely served, and as a result, this Court lacks jurisdiction over the appeal as it relates to CCK. The only exception to the requirement of service of a Notice of Appeal within thirty (30) days is contained in Rule 203(b)(1), SCACR, which holds the period for appealing in abeyance only “[w]hen a form or other short order. . . indicates that a more full and complete order or judgment is to follow...”

That did not occur here. The form First Order issued on April 5, 2022 was a final, complete order as to any relief sought against CCK, and did not state that a more full or complete order was to follow. The thirty-day deadline for service of the Notice of Appeal began to run from the earliest date that Appellant's counsel received notice of the entry of Judge Cothran's First Order, which was April 5, 2022. The issuance of the form Second Order, which restated the earlier grant of dismissal as to CCK, did not begin the time to appeal any orders in CCK's favor over again.

WHEREFORE, having fully set forth the grounds for the relief sought herein, Respondent CCK moves for an order dismissing this appeal.

Dated: June 9, 2022

Respectfully submitted,

s/Brittany T. Bihun _____
Brittany T. Bihun (S.C. Bar No. 102496)
GORDON & REES LLP
40 Calhoun Street, Suite 350
Charleston, SC 29401
Telephone 843-278-5900
bbihun@grsm.com

ATTORNEYS FOR RESPONDENT COALITION
FOR KIDS

EXHIBIT A

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motions to Dismiss Plaintiff's Second Amended Complaint as to Defendant Charleston Coalition for Kids and Defendant Leeza Steward is GRANTED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/05/2022 .

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS Thomas J Bell ,
defendant, et al
Case Number: 2021CP1000426
Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-04-05 13:21:53 page 3 of 3

Certificate of Electronic Notification

Recipients

Julianne Farnsworth - Notification transmitted on 04-05-2022 03:07:06 PM.

Edward Pritchard - Notification transmitted on 04-05-2022 03:07:05 PM.

Victoria Kepes - Notification transmitted on 04-05-2022 03:07:06 PM.

Dwayne Green - Notification transmitted on 04-05-2022 03:07:06 PM.

Joseph McCulloch - Notification transmitted on 04-05-2022 03:07:06 PM.

David Cobb - Notification transmitted on 04-05-2022 03:07:05 PM.

Nickisha Woodward - Notification transmitted on 04-05-2022 03:07:05 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1000426

Official File Stamp: 04-05-2022 03:06:54 PM

Court: CIRCUIT COURT

Common Pleas

Charleston

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS
Thomas J Bell , defendant, et al

Document(s) Submitted: Order/Motion to Dismiss Pltf 2nd Amnd Cmplt is
Granted Order/Electronic Form 4

Filed by or on behalf of: Gayle Brunson

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Julianne Farnsworth for Charleston Coalition For
Kids, Angelica M Colwell, Lee P Deas, Godfrey A
Gibbison, Eric P Strickland, Loren R Ziff, Thomas
J Bell

Edward K. Pritchard, III for Kevin Dion
Hollinshead, Sr

Nickisha M Woodward for Teach For America Inc

David Starr Cobb for Teach For America Inc

Dwayne Marvin Green for Courtney S Waters

Victoria Therese Kepes for Charleston Coalition
For Kids, Angelica M Colwell, Lee P Deas,
Godfrey A Gibbison, Eric P Strickland, Loren R
Ziff, Thomas J Bell

Joseph M. McCulloch, Jr. for Leeza D Steward

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Kevin Dion Hollinshead, Sen

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Godrey A. Gibson, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward,
and Teach for America, Inc. Respondents

PROOF OF SERVICE

I certify that I have served Respondent Charleston Coalition for Kids’ Motion to Dismiss Appeal by U.S. Mail, postage prepaid, and by Email upon the respective attorneys of record as properly addressed below this 9th day of June, 2022:

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June 9, 2022

VIA ELECTRONIC FILING

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

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SC Court of Appeals

Re: *Kevin Dion Hollinshead, Senior v. Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, et al.*
Appellate Case No.: 2022-000674

Dear Ms. Kitchings:

Please find enclosed for filing, Respondent Charleston Coalition of Kids' Motion to Dismiss Appeal with Proof of Service in regards to the above referenced matter. Please file all and forward a file-stamped copy for our records. A check to cover the requisite filing fee is being placed in the mail.

We appreciate your assistance in this matter and please do not hesitate to contact me should you need anything further.

Sincerely,

GORDON REES SCULLY MANSUKHANI, LLP



Michelle Sergio
Paralegal

MS:
Enclosures as stated

Cc: Edward K. Pritchard, III, Esq., David Starr Cobb, Esq., Nickisha M. Woodward, Esq., Dwayne Marvin Green, Esq., Joseph M. McCulloch, Esq., and Kathy R. Schillaci, Esq.