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Feb 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox Jr., Circuit Court Judge

Circuit Court Case No. 2022-CP-04-01976

EYZC RE, LLC,

Respondent

and

Danny L. Ivester, Sr.,

Appellant

RESPONDENTS MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION FOR AN
EXTENSION OF TIME

Appellant has requested that this Court allow him additional time to correct deficiencies in his Notice of Appeal. Appellant appears to acknowledge that he is beyond the required time to correct said deficiencies. 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.

(b) Time for Service.

(1) Appeals From the Court of Common Pleas

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. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

(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.

In the instant matter, the lower court's final order was filed and served on January 4, 2023. Pursuant to Rule 203, Appellant had 30 days from that date with which to file an Appeal with this Court. Appellant attempted to file a Notice of Appeal on January 11, 2023 with either the Court of Appeals and/or the Supreme Court (it was not clear in the filing). Thereafter, the Appellant was notified by this Court on January 24, 2023, that deficiencies existed in the Appellant's filing. Appellant was given ten (10) days from the date of the letter to correct any deficiencies, or the appeal would be dismissed. Appellant failed to file anything within those ten (10) days. In fact, Appellant did not file anything with the Court of Appeals until filing this Motion on February 15, 2023.

Pursuant to Rule 203(d)(1)(B), Appellant was required to file the Notice of Appeal with the clerk of the lower court within ten (10) days after the Notice of Appeal was served to Respondent. However, Appellant failed to file the Notice of Appeal with the lower court. In fact, Appellant did not file anything with the lower court, including the Motion for an Extension of Time.

Therefore, Respondent respectfully requests that this Court deny this Motion for Extension of Time and dismiss Appellant's appeal.

Respectfully submitted,

By: /s/ M. Stokely Holder
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February 28, 2023
Greenville, South Carolina

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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Respondent EYZC RE, LLC, do hereby certify that I have served Respondent's Memo in Opposition to Appellant's Motion for an Extension of Time on Danny L. Ivester, Sr. by mailing a copy of the same to 211 Hwy 17, Piedmont, South Carolina 29673. I also certify that I have served the Respondent's Memo in Opposition to Appellant's Motion for an Extension of Time on the South Carolina Court of Appeals by mailing a copy of the same 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
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February 28, 2023