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Mar 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Case No. 2022-CP-40-01415

Appellate Case No. 2023-000232

Rhonda Meisner, Appellant,

v.

Grant Meisner; Grant Meisner, MD, LLC; Shelia Robinson; Erwin Mangubat, MD; Moore, Taylor, & Thomas, P.A.; Moore Taylor Law Firm, P.A.; Moore Bradley Myers Law Firm, PA; Tricia L. Flowers; Flowers Consulting, LLC; Richard G. Whiting, Esquire; Law Offices of Richard G. Whiting, P.A.; John Doe (1-10), a fictional name assigned to identify parties that are not yet known or not yet determined, Respondents.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondent Erwin Mangubat, MD (“Dr. Mangubat”), by and through the undersigned counsel, respectfully requests this Court dismiss the untimely Notice of Appeal filed by Appellant on February 15, 2023. Dr. Mangubat hereby joins the Motion to Dismiss filed by Respondents Richard G. Whiting, Esquire and Law Offices of Richard G. Whiting, P.A. on March 9, 2023.

Pursuant to Rule 203(b) of the South Carolina Appellant Court Rules, an appellant must serve the notice of appeal on all respondents within thirty days after receipt of written notice of entry of the order or judgment. (“[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. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). “[S]ervice of the Notice of Appeal is a jurisdictional requirement, and [an appellate court] has no authority to extend or expand the time in which the Notice of Appeal must be served.” *Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000).

Appellant attempts to appeal the circuit court’s January 10, 2023 Order denying her motion for reconsideration. Pursuant to the Richland County Clerk of Court’s file, the clerk’s office mailed a copy of the Order to Appellant on January 10, 2023. Arguably, the Rules of Civil Procedure allow a party an additional five days after service by mail to allow for receipt before a deadline begins to run. Rule 6(e), SCRCP. There is a presumption under South Carolina law that a properly stamped and addressed letter that was mailed was received by the addressee as long as it was not returned by the post office. *State v. Langston*, 275 S.C. 439, 441, 272 S.E.2d 436, 437 (1980); *see also Hopkins v. Harrell*, 352 S.C. 517, 523, 574 S.E.2d 747, 750 (Ct. App. 2002); *Calder v. Commercial Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864, 866 (1936). Thus, at the latest, South Carolina law required Appellant to file and serve her Notice of Appeal by February 14, 2023. Appellant did not do so.

The Notice of Appeal is further untimely because Appellant does not include in the Notice of Appeal when she received written notice of the Order. *See Bowen v. Bowen*, 287 S.C. 188, 188, 337 S.E.2d 1, 1 (1985) (“Because appellant did not include in his notice of appeal the date he received written notice of the lower court's order, the notice of appeal appeared on its face to be untimely served.”); *id.* (“Henceforth, we shall require strict adherence to this rule.”).

Accordingly, this Notice of Appeal is untimely. Because service of the Notice of Appeal is a jurisdictional requirement, the Court has no authority to extend the time or rescue Appellant from her failure. Therefore, this Court does not have jurisdiction and must dismiss the appeal.

Respectfully submitted,

s/ Shanon N. Peake

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March 22, 2023.

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PROOF OF SERVICE

I certify that a true copy of the Motion to Dismiss Appeal in this case has been served on the following, this 22st day of March, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System and depositing a copy in the United States Mail, postage pre-paid to the below addresses of *pro se* parties pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

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Respectfully submitted,

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March 22, 2023.

From: [Shanon Peake](#)
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Subject: Appellate Case No. 2023-000232 Meisner v. Meisner, et al.
Date: Wednesday, March 22, 2023 1:52:00 PM
Attachments: [Mtn to Dismiss, 2.pdf](#)
[POS Mtn Dismiss, 2.pdf](#)

Good Afternoon,

Please find attached for service a Motion to Dismiss we are filing in the above-referenced appeal today.

Thank you,
Shanon

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Forward thinking. Results driven.

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