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Apr 18 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2020-CP-36-0479

David C. Bennett and Kristen L. Bennett, Respondents,

v.

Harbor View Homeowners Association, Inc., Appellant.

MOTION TO DISMISS APPEAL

Respondents David C. Bennett and Kristen L. Bennett hereby move for dismissal of the above-captioned appeal because Appellant's Notice of Appeal is untimely, and the Court lacks subject matter jurisdiction to consider the appeal. A final order was entered and received by counsel for Appellant on January 19, 2023. Appellant filed a motion pursuant to Rule 59(e), SCRCF on February 3, 2023 and served opposing counsel and the trial judge with the same. The deadline to file a motion to alter or amend the judgment was January 30, 2023. Here, no timely motion to alter or amend the judgment was made, and therefore the January 19, 2023 judgment was the final judgment for purposes of this appeal. Appellant filed a Notice of Appeal on April 18, 2023, which was untimely, and this appeal must be dismissed. This motion is supported by a memorandum of law which is submitted herewith.

s/ Paul S. Landis

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Attorney for Appellant

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

Respondents David C. Bennett and Kristen L. Bennett hereby move for dismissal of the above-captioned appeal because the Notice of Appeal was filed by Appellant Harbor View Homeowners Association, Inc. on April 18, 2023, which was more than 30 days after Appellant received the final order which was entered and received by counsel for Appellant on January 19, 2023. Accordingly, this Court lacks subject matter jurisdiction to consider this appeal.

Appellant filed a motion pursuant to Rule 59(e), SCRPC on February 3, 2023 and served the trial judge with the same. The deadline to file a motion to alter or amend the judgment was January 30, 2023. Here, no timely motion to alter or amend the judgment was made, and therefore the January 19, 2023 judgment was the final judgment for purposes of this appeal.

Rule 203(b), SCACR, requires a party to serve a notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and “failure to do so divests

this court of subject matter jurisdiction and results in dismissal of the appeal.” Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999). Rule 203(b), SCACR, provides that a **timely** motion to alter or amend the judgment stays the time to file a notice of appeal (emphasis added). “To be timely, a post-trial motion to alter or amend must be served within ten days of receipt of written notice of the entry of the original order or judgment. Rule 59(e), SCRCP. Id.

Here, Appellant’s motion pursuant to Rule 59(e), SCRCP, was not timely. Therefore, the January 19, 2023 judgment was final, and the deadline to file and serve a notice of appeal was February 20, 2023. Appellant filed a notice of appeal on April 18, 2023, and therefore said notice of appeal was untimely.

The January 19, 2023 Order is attached as Exhibit A. The February 3, 2023 Motion is attached as Exhibit B. Email correspondence serving the February 3, 2023 Motion is attached as Exhibit C. The April 18, 2023 Notice of Appeal is attached as Exhibit D.

For the reasons set forth herein, this appeal must be dismissed.

s/ Paul S. Landis

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PROOF OF SERVICE

The undersigned certifies that he served Respondents' Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal on counsel for Appellant Harbor View Homeowners Association, Inc., Eugene C. Fulton, Jr., Esq., by email at efulton@sc.rr.com on April 18, 2023.

s/ Paul S. Landis

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April 18, 2023