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**May 02 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Appellate Case No.: 2023-000621

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

v.

Harbor View Homeowners Association, Inc., ..... Appellant.

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REPLY TO APPELLANT’S RETURN TO MOTION TO DISMISS APPEAL

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The relevant timeline in this case is undisputed. The final order in the trial court was entered and received by counsel for Appellant Harbor View on January 19, 2023. The deadline for filing a motion to alter or amend pursuant to Rule 59(e), SCRPC, was January 30, 2023. Appellant filed a motion to alter or amend on February 3, 2023 and served the same. Accordingly, no timely post-trial motion was filed. As a result, the January 19, 2023 order was the final order and judgment, and Appellant had a deadline of February 20, 2023 to serve and file a Notice of Appeal. Appellant did not serve a Notice of Appeal until 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, the trial court lacked jurisdiction to rule on Appellant’s untimely motion, and this Court lacks subject matter jurisdiction to consider this appeal.

In its Return, Appellant Harbor View argues that the deadline in which to file a motion pursuant to Rule 59(e) should be extended by Rule 6(b), SCRPC, or by equitable doctrines. Appellant also argues that the trial judge stated that Appellant's motion was timely. The South Carolina Supreme Court has foreclosed Appellant's position entirely. In Overland, Inc. v. Nance, 423 S.C. 253, 255-257, 815 S.E.2d 431, 432-433 (2018), the Court unequivocally stated that the ten-day deadline in which to file a Rule 59(e) motion cannot be extended. The Court stated as follows:

“Rule 6(b) of the South Carolina Rules of Civil Procedure gives trial courts limited authority to extend deadlines set forth in the Rules. However, Rule (6)(b) explicitly excludes Rule 59 and certain other rules from that authority. Rule 6(b) states, ‘The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them.’ Rule 59(e) does not have any "conditions stated" which would allow such an extension. Rather, Rule 59(e) states, ‘A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.’ We have previously held that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline. In Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000), the circuit court entered a dispositive order on January 10, 1997. 339 S.C. at 493, 530 S.E.2d at 127. ‘Neither party filed a Rule 59(e), SCRPC, motion within the ten day period allowed by that rule.’ Id. Nevertheless, on February 10, the circuit court issued another dispositive order completely reversing itself from the January 10 order. We held, the trial judge's . . . order filed February 10, 1997, more than thirty days later, was patently untimely. Under Rule 59(e), SCRPC, the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative . . . . When no timely Rule 59 motion was made nor timely sua sponte order filed under Rule 59(e), the January . . . order

"matured" into a final judgment. The order filed on February 10 was a nullity because the trial judge no longer had jurisdiction over the matter. 339 S.C. at 494, 530 S.E.2d at 128; *see also Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) ("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (on appeal from an order entered just before the effective date of the Rules of Civil Procedure, holding the trial court lost the power to modify the final order after end of the term of court, and noted that under Rule 59(e) the trial court would have the power to alter or amend such an order for a ten-day period after entry of judgment)." *Id.*

The South Carolina Supreme Court summarized its decision in *Overland* as follows: "In light of these authorities, we repeat that the ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, *Leviner*, 339 S.C. at 494, 530 S.E.2d at 128, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion, *see Alston v. MCI Commc'ns Corp.*, 84 F.3d 705, 706 (4th Cir. 1996) ('It is clear . . . that the district court was without power to enlarge the time period for filing a Rule 59(e) motion.'). The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." *Id.*, 423 S.C. 253, 255-257, 815 S.E.2d 431, 432-433.

Here, the final order dated January 19, 2023 became a final judgment of the trial court when no timely motion was filed pursuant to Rule 59(e). The trial court lacked jurisdiction over this matter after January 30, 2023. Appellant failed to serve a Notice of Appeal by its deadline on

February 20, 2023. Accordingly, this Court lacks jurisdiction over this appeal, and the appeal should be dismissed.

For the reasons set forth herein and in Respondents' Motion to Dismiss Appeal and Memorandum in Support, this appeal should be dismissed.

s/ Paul S. Landis

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PROOF OF SERVICE

The undersigned certifies that he served Respondents' Reply to Appellant's Return to Motion to Dismiss on counsel for Appellant Harbor View Homeowners Association, Inc., Eugene C. Fulton, Jr., Esq., by email at [efulton@sc.rr.com](mailto:efulton@sc.rr.com) on May 2, 2023.

s/ Paul S. Landis

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