

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Circuit Court

SC Court of Appeals

H. Steven DeBerry, IV, Circuit Court Judge

Trial Court Case No. 2023-CP-10-00112
Appellate Case No. 2023-000751

In the Matter of: The Estate of Juleanne Judy Bryan

Margaret Elaine Chapman,Appellant,

v.

Grady W. DuBose, Wilson Wade Judy and Marvin Lee Judy, III Respondents

MOTION TO DISMISS APPEAL

There is no appellate jurisdiction in this matter because the Appellant, Margaret Elaine Chapman, failed to comply with the requirements of S.C. Code Ann. § 62-1-308 in appealing from the probate court to the circuit court. As such, this appeal should be dismissed.

Chapman appeals from the circuit court’s order dismissing her appeal from an order granting a motion to enforce a settlement reached at mediation. (Order attached as Exhibit 1).¹ The underlying order of the probate court was transmitted to counsel on December 22, 2022.

¹ As set forth in detail by the probate court, this case was mediated in August 2022, resulting in a settlement agreement signed by all parties and their counsel in satisfaction of Rule 43(K), SCRCF. (Probate Court Order attached as Exhibit 2). Despite this binding mediation agreement, Chapman refused to comply with the agreed upon terms, thereby necessitating the filing of a motion to enforce the settlement by the Respondents.

(Transmittal of Order attached as Exhibit 3). Chapman filed a notice of intent to appeal on January 5, 2023. (Notice attached as Exhibit 4).

Following the filing of the notice, Chapman did not order a transcript and did not timely file a statement of issues on appeal within the deadlines established by § 62-1-308. Respondents filed a motion to dismiss the appeal on February 15, 2023. (Motion attached as Exhibit 5). Chapman then failed to file or serve her appellant's brief with the circuit court. (Supplemental Materials Submitted in Support of Motion to Dismiss Appeal attached as Exhibit 6 at Public Index).

After a hearing, the circuit court granted the motion to dismiss by order dated April 6, 2023, finding that there was no appellate jurisdiction due to Chapman's failure to comply with the requirements of the statute governing appeals from probate court. In that order, the circuit court cited numerous, independent failures to comply with § 62-1-308, as follow:

(i) The appeal was not timely filed. As set forth in § 62-1-308(a), the "notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court." Here, the parties received written notice of the order on appeal on December 22, 2022 by email from the Probate Court's law clerk. The notice of appeal was filed more than ten days later, and, therefore, was not timely.

(ii) As a separate an independent basis for dismissal, Appellant did not file a statement of issues on appeal within the deadline set by § 62-1-308(b) ("Within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties."). The filing deadline expired for the Statement of Issues on Appeal on February 6, 2023 (the next business day after 45 days from the receipt of written notice of the order). Appellant's after the fact filing of a statement of issue on appeal on February 13, 2023 cannot correct this deficiency.

(iii) As a separate an independent basis for dismissal, Appellant has not perfected her appeal as required by § 62-1-308(c) because she made no

arrangements with the court or court reporter for furnishing the transcript. As set forth in § 62-1-308(c), “[w]here a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript.” Here, Respondents submitted an affidavit from the court reporter demonstrating that Appellant made no arrangements with the court or court reporter for furnishing the transcript. This fact was undisputed by Appellant.

(iv) As a separate an independent basis for dismissal, Appellant has not perfected her appeal as required by § 62-1-308(e) because she has not filed her brief. As set forth in S.C. Code Ann. § 62-1-308(d), “[w]ithin thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.” Section 62-1-308(e) states, “[a]t the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service.” Appellant filed her Designation of Matter to be Included in the Record on Appeal on March 15, 2023, but she has yet to file her brief as required by the statute.

(Ex. 1 at 2-3).

The circuit court’s ruling was correct. “[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction.” *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (citing *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004)); *Great Games, Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000); *see also* Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules).” “The 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) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)).

Because the circuit court did not have appellate jurisdiction, this Court also lacks appellate jurisdiction. “[T]his court simply cannot consider the matter if it is divested of appellate jurisdiction.” *Devore*, 416 S.C. at 124, 784 S.E.2d at 695 n. 4; *see also Keep Our Dollars in Indep. Cnty. v. Mitchell*, 518 S.W.3d 64, 67 (Ark. 2017) (“when the circuit court lacks jurisdiction, this court also lacks jurisdiction on appeal.”).

Simply stated, there is nothing to appeal. The absence of a timely, perfected appeal renders the underlying order the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). Accordingly, this appeal should be dismissed so that the parties can proceed with the settlement reached at mediation.

Respectfully submitted,

s/ Sarah P. Spruill

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