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May 23 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT
Retire Chief Justice Jean Toal, Circuit Court Judge

Case No. 2023-000232

Rhonda Meisner,

Appellant

Grant Meisner; Grant Meisner, MD, LLC.
Sheila 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;
Flowers Consulting, LLC; Richard G. Whiting, Esquire;
Law Offices of Richard G. Whiting, PA;
John Doe, (1-10) a fictional name assigned to identify parties
that are not yet known or not yet determined,

Respondent(s)

MOTION TO ACCEPT THE RETURN TO THE MOTION TO DISMISS OUT OF TURN of
Grant Meisner; Grant Meisner, MD, LLC. Sheila Robinson; Erwin Mangubat, MD; Moore,
Taylor, & Thomas, P.A; Moore Taylor Law Firm, P.A; Moore Bradley Myers Law Firm, PA
LLC'S
THE RETURN TO THE RESPONDENTS AS IDENTIED ABOVE MOTIONS TO DISMISS
AND
MOTION FOR AFFIRMATIVE RELIEF

The appellant, Rhonda Meisner respectfully motions this Honorable Court to (1)
accept her Return to Motion to Dismiss out of turn of Respondent's Grant Meisner; Grant
Meisner, MD, LLC. Sheila Robinson; Erwin Mangubat, MD; Moore, Taylor, & Thomas, P.A;
Moore Taylor Law Firm, P.A; Moore Bradley Myers Law Firm, PA LLC'S and (2) requests this
Honorable Court require the Respondent's to copy the *pro se* party on emails sent to the
attorneys or in the alternative file theri documents with the Court of Appeals via email so that the

Appellant timely receives notices filed because she travels frequently and does not have access to mailed documents when she is out of town.

Return to Motion to Dismiss of Grant Meisner; Grant Meisner, MD, LLC. Sheila Robinson; Erwin Mangubat, MD; Moore, Taylor, & Thomas, P.A; Moore Taylor Law Firm, P.A; Moore Bradley Myers Law Firm, PA LLC

The Appellant requests this Honorable Court to incorporate her return to Richard Whiting and the law offices of Richard Whiting's motion to Dismiss into this Return, by reference.

As an initial matter, none of the subsequent Motions to Dismiss advanced any new theories or suggests they personally served the Order on the Appellant. Rather, the Respondents simply reiterate that the appellant *should have received* the Order from the Clerk of Court but again, ignored the Court's electronic notice instructions which required the Respondents to serve the Order on the Appellant by mail, as required.

The Notice of Appeal unequivocally states the appellant had *not* yet received the written Order by the time the appeal was filed on February 15, 2023 but noticed the Order in the electronic filings. The appellant avers her affirmative statement that the written order *had not yet been received* coupled with the statement this appeal was served within 30 days of her viewing the Order online satisfies the jurisdictional statement requirements challenged by the Respondents and overcomes the presumption that Order *should have been received* by the Appellant. The Respondents' arguments ignore the instructions that the *pro se* party must be served by regular mail. Again, no Respondent claims they served the Order on the Appellant. Respondents in this appeal, were not even counsel of record at the trial court, so it is clear they could not have served the Order. None of the trial Respondents claim, as of yet, that they served the Order on the Appellant.

Rule 203(b)(1), South Carolina Appellate Court Rules (SCACR), requires notice of appeal be served within thirty days after *receiving* written notice of entry of an order or judgment. *Emphasis by the appellant.*

A purely technical reading of the rule would suggest because the Appellant has not *received* written notice, and rather viewed the Order online in the electronic file, that the time to file the appeal *has not yet run*. Further, the Respondent's interpretation of the rule ignores their obligation to serve the Order by regular mail. The Respondent's complaint the Appellant did not state the date she viewed the order likewise ignores the Appellant's further statement that "this appeal was filed within 30 days." The Appellant maintains her appeal was timely filed and urges this Court to decline to entertain the Respondent's Motion based on the fact that none of the Respondents claimed to have served the Order on the Appellant as instructed, but rather suppose that the Clerk of Court mailed the Order. The electronic instructions specifically instruct the parties that pro-se parties *must be served* by regular mail and no party *served or claimed to have served* the Order on the appellant by regular mail.

Argument

1. The Notice of Appeal specifically states, "the plaintiff had not yet been served the Order; however, she noticed the Order in the electronic records...this appeal is filed within 30 days of her notice." Respondents suggest that the Appellant had an additional five days for mailing from the date of the Order was entered to receive the Order, but this argument does not comport with the rule because *receipt* is what governs the timeline. For example, if the appellant was out of town for 10 days and did not have access to her mail, then the time to appeal would *still run* thirty days from her return, because the Rule is fashioned around receipt. If the

Rule were fashioned as the Respondents allege, the Rule would be written to require appeals to be filed within 35 days of the Order being filed with the Clerk of Court. As such, the Appellant avers the rule specifically provides for the fact some Orders may not be served on the other party as is the case here or received.

2. The Notice of Appeal specifically stated this appeal was filed within thirty days of noticing the order electronically and her further notice that she had not yet been served the Order complies with the Rules and is evidenced this appeal was timely filed.

3. Respondent's arguments that dismissal is warranted due to untimely filing of the Notice of Appeal are fatally flawed because they themselves do not base the claim on their personal service of the Order. Rather, they suppose the Clerk of Court should have mailed and the Appellant should have received the Order.

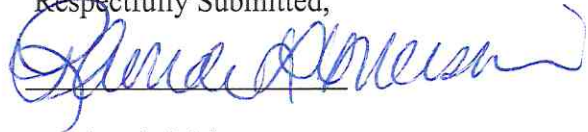
4. The appellant avers the appeal *was timely filed*. Additionally, the Respondent's reliance that the Appellant *should have* received the order from the Clerk of Court fails because the Court directs the electronic filers to serve the paper filers via U.S. Mail which was not done.

5. Finally, the certificate of service of some parties indicates the attorneys serve the other attorneys of record electronically but continue to only serve the Appellant via U.S. mail, which quite obviously may be delayed. The appellant respectfully requests this Court to Order all parties to be served in the same manner and in the same way as required by the Rules, or in the alternative, require the filings be made via email instead of the internal filing system.

For the above reasons and references to her first return, the Appellant respectfully requests this Court accept her return out of turn and incorporate her return to Richard Whiting and the law office of Richard Whiting into this return, deny all Respondents' request to dismiss this appeal and order the parties to communicate in the same way so as to reduce further late receipt and filings.

May 23, 2023

Respectfully Submitted,



Rhonda Meisner
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT
Justice Jean Toal, retired, Circuit Court Judge

2022-CP-001415

Rhonda Meisner,

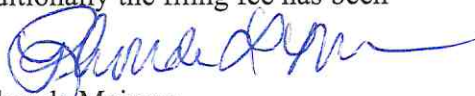
Appellant

Grant Meisner; Grant Meisner, MD, LLC;
Sheila Robinson; Erwin Mangubat, MD;
Moore, Taylor, & Thomas, P.A;
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Moore Bradley Myers Law Firm, PA;
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Respondent(s)

PROOF OF SERVICE-MOTION TO FILE RETURN TO MOTIONS TO DISMISS OUT OF
TURN AND FOR ADDITIONAL RELIEF The appellant certifies that she has served a copy of
the above documents on the following parties by placing a copy of the following in the United
States Postal service with adequate postage attached Tricia Flowers and Flowers Consulting,
LLC both located at 69 Cherry Grove Drive West Columbia, SC 29170. James Edward Bradley,
MOORE BRADLEY MYERS LAW FIRM, P. A Post Office Box 5709 West Columbia, South
Carolina 29171 ,James E. Parham, Jr 220 Ministry Drive Irmo, South Carolina 29063;Stephanie
Burton 308 E. Saint John Street Spartanburg, SC 29302.Murrell Smith and Shanon Peake at
Smith Robinson 2530 Devine Street Columbia, SC 29201 Additionally the filing fee has been
mailed to the Court 1220 Senate Street Columbia SC 29201.

May 23, 2023


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