

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Jun 26 2023**

APPEAL FROM DARLINGTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Paul M. Burch, Circuit Court Judge  
Patrick J. McLaughlin, Special Referee

Appellate Case No. 2023-001016

Samantha Joanne Carwile, individually and  
as the Personal Representative of the Estate  
of Marlayna Joan Carwile,.....Respondent,

v.

Chris Anderson and Danielle Anderson,.....Appellants.

RESPONDENT’S MOTION TO DISMISS APPEAL OR REMAND

Respondent Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, moves the Court for an order dismissing the appeal as premature because Appellant’s post-judgment motions are still pending before the special referee or remanding the appeal so that the special referee will have jurisdiction to rule on the motions.

This is an appeal from an Order of Default Judgment (and additional interlocutory orders) entered by a Special Referee on May 23, 2023. (Order of Default Judgment). On June 2, 2023, Appellants filed a (1) Motion to Alter or Amend, and/or Reconsider pursuant to Rule 59(e), SCRPC, and a (2) Motion to Amend, pursuant to Rule 52(b) and Rule 59(e), SCRPC, and/or in the alternative, Motion for a New Trial, pursuant to Rule 59(a), SCRPC.

Appellants did explain to the Court in their cover letter filed with the Notice of Appeal that their motions are still pending before the Special Referee and that they filed this appeal “in

an abundance of caution to avoid any potential argument that might be made that the Rule 59(e) motion from the Special Referee's May 23, 2023 order denying the Rule 55 motion could be considered a successive motion under the decision in *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004)." Appellants ask the Court to hold the briefing schedule in abeyance pending the special referee's ruling on their motions.

Respondent conferred with Appellants before filing this motion. Respondent believes that the notice of appeal was unnecessary because Rule 203(b)(1), SCACR, stays the time for filing a notice of appeal in this situation. More importantly, Respondent believes that Appellants' notice of appeal deprived the special referee of jurisdiction to rule on their motions. Under Rule 205, SCACR, "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal." Appellants ask the Court to hold the appeal in abeyance while the special referee rules on their motions, but Respondent believes that their filing of the Notice of Appeal deprived the special referee of the jurisdiction to do that.

Further, our appellate courts have held that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal **shall** be dismissed without prejudice." (emphasis added)); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal **will** be dismissed without prejudice as premature). Because the special referee has not rule on Appellants' motions, the Court should dismiss the appeal as premature and not immediately appealable.

In the alternative, Respondent asks the Court to remand the case to the special referee to rule on Appellants' motions and, most importantly, to ensure the special referee has jurisdiction to rule on them.

June 26, 2023

Respectfully submitted,

s/Kathleen C. Barnes

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