

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 18 2023

SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Roger M. Young, Sr., circuit court judge

Appellate Case No.: 2023-001189
Circuit Court Case No.: 2023-CP-08-01884

Lashay Lloyd

Appellant

v.

Midtown Park Estates

Respondent.

RETURN TO MOTION TO RECALL REMITTITUR

The Respondent respectfully shows that Appellant’s request to recall remittitur should be denied because the Court lacks jurisdiction to entertain the request. While the Court has discretion to recall a remittitur where its issuance was the result of “mistake, error, or inadvertence,” the remedy of recalling a remittitur is not available to a litigant whose appeal is dismissed for lack of jurisdiction. On August 18, 2023, this Court dismissed the appeal because the appellant’s notice of intent to appeal was not timely, and the failure to file a timely notice of appeal is a jurisdictional defect that cannot be expanded or waived by the Court: “Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” Order filed August 18, 2023, citing *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) Even if the Court were to accept Appellant’s contention that her case were improperly dismissed on August 8, 2023, she had either 15 days to file a motion with Court of Appeals asking for rehearing under Rule 221(a) or 30 days to file a

Petition for Certiorari to the South Carolina Supreme Court under Rule 242(c). The former requires that the Petition for Rehearing “must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgement, or decree of the court.” Rule 221(a), *S. C. Appellate Court Rules*. In Appellant’s case, the 15th day fell on Labor Day, making a petition for rehearing due on or before Tuesday, September 5, 2023. The Court sent the remittitur on Wednesday, September 6, 2023, to which the Appellant filed a motion to recall the remittitur two days later on the 8th. The Appellant’s motion to recall remittitur asserts without proof that she mailed a petition for rehearing on Friday, September 1, 2023, but according to her own motion, the Court of Appeals has not received it, and she does not provide it.

Finally, the Respondent points out that this application for ejectment began on June 14, 2023, and after the Magistrate issued a writ of ejectment on July 6, 2023, the appellant filed, on July 7, 2023, her notice of appeal with the circuit court. The Magistrate Court scheduled a hearing on July 13, 2023 to set the appeal bond, but the Appellant did not attend. The Magistrate set the appeal bond at the normal monthly rent, due on the 13th of each month, which Appellant has not paid, and for this reason, the circuit court dismissed her appeal as required by statute: § 27-37-130, *S. C. Code. ann.* The Appellant has been holding over since June and has not paid the mandatory appeal bond or complied with a single Order.

Therefore, the Appellant’s application to recall the remittitur is not supported by the “good cause” standard of Rule 260(a), *S. C. Appellate Court Rules* and should be dismissed.

Respectfully submitted,

September 18, 2023

/s/Thomas R. Goldstein
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PROOF OF SERVICE

I certify that I have served the Return to Appellant's Motin to Recall Remittitur on the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on September 18, 2023, addressed to the Appellant at 108 Fairground Road, Lot 17, Moncks Corner, South Carolina 29461, and by transmitting a copy electronically to 110shay287@gmail.com.

September 18, 2023

/s/Thomas R. Goldstein

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September 18, 2023

Hon. Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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RE: Lloyd v. Midtown Park Estates
Appellate Case No.: 2023-001189

Dear Ms. Kitchings,

Midtown Park Estates asked that I file its return to the Appellant's Motion to Recall Remittitur (and proof of service), which I am filing under cover of this letter. By copy of this letter, I am providing a copy to the Appellant at both her street address and her e-mail address. Please let me know if you require anything further to perfect this filing. With kind regards, I am

Very truly yours,

TRG/



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: Return to Motion to Recall Remittitur

cc:
Ms. Lashay Lloyd
108 Fairground Road
Lot 17
Moncks Corner, South Carolina 29461
110shay287@gmail.com.