

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Circuit Court

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-001129
Appellate Case No. 2023-001740

DANNY ROSE,

Respondent,

v.

ROBERT ROSE, GLORIA ROSE-RUCH,
MARY MARGARET DOLL ROSE, and
JOHN DOES 1-99,

of whom ROBERT ROSE, GLORIA ROSE-RUCH,
and MARY MARGARET DOLL ROSE are the

Appellants.

RETURN TO MOTION TO
DISMISS _____

1. As recited in the Respondent’s Motion, the Circuit Court’s Order of October 16, 2023 denied the requested relief of discovery and indicated Respondent’s counsel was to supply a fuller Order.
2. On October 26, 2023, the Appellants timely filed a Motion under Rule 59(e) requesting reconsideration.
3. In response, counsel for Appellants drafted and submitted an Order again denying relief which was signed by the Circuit Judge on October 3, 2023.
4. On November 6, 2023, the Appellants filed their Notice of Appeal as to both Orders above.
5. On the basis of the above events, the Respondents assert that the Orders of the Circuit Court are not immediately appealable.
6. It is Appellants’ understanding that a Rule 59 Motion is required before an appeal if there is any indication that the original Order did not consider issues later raised for the first time on appeal. *See, e.g., Rives v. Balsa*, 325 S.C. 287, 478 S.E.2d 878, 880 (Ct.App. 1990).

7. In this case, the Respondents concede a) that the issues resolved by the October 30th Order were identical to those argued and referenced in the October 16th Order., and b) do not contend that those issues were not fully addressed in the Order of October 30th.

8. Under the facts as set out above, the most that can be argued by the Respondents is that the Appellants filed “too soon”. It is submitted that, since the appeal was timely filed and is directed to the substance of both Orders, this argument is without merit.

9. The other argument made by the Respondents is that the Orders above are not appealable, the Appellants briefly re-state their position on the request for discovery:

10. The Respondent DANNY ROSE sold his house and placed the proceeds in an existing joint account with his son ROBERT ROSE. ROBERT and GLORIA ROSE-RUCH also held DANNY ROSE’s Power of Attorney. ROBERT withdrew funds and he and his sister GLORIA made investments. The Appellants maintain their father DANNY knew of the investments and allowed them.

11. DANNY ROSE filed suit claiming theft of the monies and breach of a trust relationship, fraud and related causes. This Court issued its Orders freezing the Defendants’ accounts and, on May 26, 2023, granted sanctions and judgment on the pleadings. After a Rule 59 Motion was refused by Order on June 14th, 2023, the Defendants filed their first appeal, now pending.

12. The Orders of the Circuit Court in the first appeal, issued on May 26th and June 14th, 2023, stated that those Orders did not end the underlying action.

13. In *Metts v. Mims*, *infra*, our Supreme Court held:

Pursuant to Rule 205, the service of a notice of appeal gives the appellate court **exclusive** jurisdiction over the appeal. Nonetheless, this rule also provides that a trial court may proceed "with matters not affected by the appeal." Here, the contempt order resulted from Newspapers' refusal to comply with a discovery order compelling it to provide financial data relevant to petitioner's punitive damages claim. Newspapers' motion for summary judgment, however, was on the merits of petitioner's libel claim. We find the summary judgment matter was unaffected by the appeal of the contempt order. *Cf. Grosshuesch v. Cramer*, 377 S.C. 12, 31 n. 7, 659 S.E.2d 112, 122 n. 7 (2008) (where the Court noted that the trial court properly ruled on a second discovery matter involving a deposition after the parties had filed appeals from the trial court's first order because the first order dealt with the subject of initial discovery responses).

[*Id.*, 384 S.C. 491, ___, 682 S.E.2d 813, 817 (2009); *emphasis in original.*]

14. In short, in *Metts* the Supreme Court both entertained an appeal and allowed discovery to proceed on an un-appealed issue in the Circuit Court, in line with the language of Rule 205, S.C.A.C.R. allowing the Circuit Court to proceed with matters not affected by the appeal.

15. Even if the Orders of the Circuit Court in the first appeal were upheld on appeal, the Respondent plead for, and has not waived, his right to other damages. This obviously leaves issues other than those dealt with by the Order in the first appeal to be decided.

16. The Appellants requested to take the Respondent's deposition and have him tested. Based upon matter filed below, the Appellants have grave doubts as to the Respondent's mental and physical capacity, his knowledge of the control granted his children, and of their investments on his behalf. That request was refused.

17. The facts in this appeal are foursquare with those of *Metts, supra*. The Orders herein are appealable and the Appellants are entitled to brief and argue their position.

November 17, 2023

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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Reply to Motion to Dismiss; and
this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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