

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SALUDA COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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Appellate Case No. 2022-000369

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Stephen Wilkinson, as Trustee of George B. Buchanan,  
Jr. Irrevocable Family Trust Dated the 15th day of July,  
2001 .....

Respondent,

v.

Redd Green Investments, LLC; Anderson North  
Augusta, LLC; Herbert Anderson, Jr.; A. Bruce Green,  
Herbert Keith Anderson; and L. Cliff Redd .....

Defendants,

Of which Redd Green Investments, LLC; A. Bruce  
Green; and L. Cliff Redd are.....

Petitioners.

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**Return to Motion to Join in Arguments of Petitioners**

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The Estate of Herbert Anderson, Jr. (“Estate”) recently moved for “permission to join in the briefing and oral argument of Petitioners[] and to be added as a party to this appeal.” (Mot. to Join in Args. of Pet’rs at 1). Unlike Petitioners, the Estate failed to appeal the dispositive order in this matter. This Court has no jurisdiction over the Estate due to its failure to timely appeal. Currently ongoing before the Lexington County Probate Court is litigation to collect on the guaranty and judgment against the Estate. For the reasons set forth below, the Estate cannot correct its failure to appeal. Respondent therefore requests this Court deny the Motion and protect the finality of the order as to the Estate.

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**S.C. SUPREME COURT**

## **Background**

In 2009, the George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001 (“Trust”) executed a promissory note for a \$7,590,000.00 loan to Springs North Augusta, LLC (the “Loan”). (App. 273-79). Springs North Augusta was owned by Petitioner Redd Green Investments, LLC and Defendant Anderson North Augusta, LLC. (App. 170, 273). The Loan was secured by a mortgage on 1,420 acres of commercial real estate, and it was guaranteed by two agreements with Petitioner Redd Green Investments, LLC; Petitioner A. Bruce Green; Petitioner L. Cliff Redd; Defendant Anderson North Augusta, LLC; Defendant Herbert Anderson, Jr.; Defendant Herbert Keith Anderson; and one other individual. (App. 283-288).

When Springs North Augusta later defaulted on the Loan, the Trust filed an action to foreclose on the mortgage. (App. 186-87). The master in equity entered a default judgment against Springs North Augusta and ordered the property to be sold at an auction after which the proceeds would be applied to the debt, then totaling \$9,450,662.50. (App. 239). The property ultimately sold for \$7,160,000, and the master in equity entered a deficiency judgment against Springs North Augusta to cover the remaining debt. (App. 258, 272).

In 2013, the Trust filed this action to enforce the guaranty agreements and collect the deficiency judgment pursuant to the terms of those agreements. (App. 23-28). The case proceeded to trial, with Roy R. Hemphill appearing for Defendants Anderson North Augusta; Herbert Anderson, Jr.; and Herbert Keith Anderson. (App. 101). On September 7, 2017, the trial court entered an order (“the 2017 Order”) granting a directed verdict in favor of the Trust in the amount of \$4,781,882.65. (App. 17-18). Petitioners thereafter filed a motion for new trial or, in the alternative, to alter or amend the court’s judgment. (App. 301-302). Defendant Herbert Anderson, Jr. (“Mr. Anderson”) neither joined in Petitioners’ motion nor filed a motion of his own. On June

29, 2018, the trial court entered an order denying Petitioners’ motion (“the 2018 Order”). (App. 372-73). Petitioners appealed, and the court of appeals affirmed. (App. 372-73, 562-71). The Estate and other defendants did not appeal.

### Argument<sup>1</sup>

The Estate argues it should be allowed to join Petitioners’ appeal because Mr. Anderson “was on his deathbed during the trial below and was unable to attend or testify.” (Mot. to Join in Args. of Pet’rs at 2). The Estate claims “trial proceeded without Mr. Anderson—with Plaintiff, Defendants, and the court all understanding and agreeing that the defendants were defending jointly . . . .” (*Id.* at 9). This is a complete mischaracterization of the record. Mr. Hemphill was present and actively engaged in every phase of trial on Mr. Anderson’s behalf. Alongside Petitioners’ counsel, Mr. Hemphill participated in jury selection (App. 106-07, 109, 115, 117-18, 120), gave an opening statement (App. 153-59), consented to the withdrawal of counterclaims against Respondent (App. 181), cross-examined witnesses (App. 176-79, 208-11; *see* App. 189, 192, 219), and joined in Petitioners’ motion for a directed verdict (App. 223, 229). It was not until after trial that Mr. Hemphill’s involvement ceased.

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<sup>1</sup> The Estate and interested parties have numerous counsel in the ongoing probate case. Herbert R. Anderson, Jr. Construction, Inc. (“Anderson Construction”) is represented by Wesley Few, and Richard R. Gleissner represents the Estate in the ongoing probate litigation wherein Respondent is pursuing collecting of the guaranty judgment against the Estate. See Letter from Wesley D. Few to Thomas William McGee, III (Aug. 31, 2023) (Exhibit B); Letter from Richard R. Gleissner to Wesley D. Few (Oct. 31, 2023) (Exhibit C). The pending litigation involves Respondent’s claim as a judgment creditor of the Estate due to its failure to appeal the 2017 Order. Mr. Anderson and his immediate heirs (the “Anderson Family”) have lived in Greenwood for over sixty years. The Estate owns 96% of Anderson Construction, thus demonstrating the Anderson Family and Anderson Construction’s interest this litigation. In the probate litigation, Respondent seeks 96% of the value of the construction company through liquidation or other payment to satisfy the outstanding judgment. As stated herein, the Probate Court has recognized Respondent’s claim.

Unlike Mr. Anderson, Petitioners sought review of the 2017 Order in the method and manner contemplated by the South Carolina Appellate Court Rules. Namely, Petitioners moved for a new trial or, in the alternative, for the trial court to alter or amend its judgment pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. Despite being timely served with Petitioners' motion, Mr. Anderson neither joined in the motion nor filed a similar motion of his own within the ten-day deadline for doing so. (*See* App. 300, 303); Rule 59(b), SCRCP ("The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter."); Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."). In fact, the Estate's filing shows it affirmatively decided *not* to appeal. The Estate says, "Mr. Anderson's wife (now widow) was worried that the stress of carrying on with the case would be too much for Mr. Anderson. Thus, she asked his attorney not to pursue an appeal." (Mot. to Join in Args. of Pet'rs at 9 (footnote omitted)).

After the denial of Petitioners' motion, the judgment became final. (App. 373 ("The Orders are appealable pursuant to S.C. Code § 14-3-330(1) (providing for appellate review of final judgments in actions commenced in the court of common pleas) and (2) (providing for appellate review of an order that refuses a new trial)."); *see* Rule 59(f), SCRCP ("The time for appeal for all parties shall be stayed by a timely motion under this Rule and *shall* run from the receipt of written notice of entry of the order granting or denying such motions." (emphasis added)).

Mr. Anderson did not join in Petitioners' appeal. *See* Rule 203(b)(1) ("A notice of appeal *shall* be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely . . . motion to alter or amend the judgment (Rules 52 and 59, SCRCP)[] or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal

for all parties shall be stayed and *shall* run from receipt of written notice of entry of the order granting or denying such motion.” (emphasis added)). Because Mr. Anderson did not appeal, this Court is without jurisdiction over the final judgment as it pertains to Mr. Anderson. *See, e.g., Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“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.”); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“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.”); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999) (“Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.”).

Because the Estate failed to appeal, jurisdiction over the probate action lies with the probate court. Jurisdiction over collection of the judgment against the Estate is vested solely with the Lexington County Probate Court. The probate court recognized the finality of the 2017 Order as to Mr. Anderson when it ruled the doctrine of *res judicata* barred the Estate from conducting discovery on the same issues that were presented and finally decided in the 2017 Order. *See* Order Den. Estate’s Mots. to Quash & Mot. to Compel at 2-3, *In re Estate of Herbert Rivers Anderson, Jr.*, Civil Action No. 2020-ES-32-01119 (Lexington Cnty. Jun. 21, 2023) (Exhibit A). Additionally, the probate court found Respondent “has an allowed claim as a matter of law” as judgment creditor of the Estate. *Id.* at 4.

The Estate alleges Mr. Anderson’s wife instructed Mr. Hemphill not to pursue an appeal because she “was worried that the stress of carrying on with the case would be too much for Mr. Anderson[,] and she trusted “Mr. Anderson’s interests on appeal would be fairly and completely represented by [Petitioners], who were striving to reverse the directed verdict as a whole and the judgment in its entirety.” (Mot. to Join in Args. of Pet’rs at 9). Respectfully, any concerns about the stress of an appeal are insufficient grounds upon which to circumvent established appellate procedure and try to alter or create grounds the Court’s jurisdiction. If the stress of an appeal was too much for Mr. Anderson, Mr. Hemphill should have moved for the appointment of a guardian ad litem to handle the appeal on Mr. Anderson’s behalf. *See* S.C. Code Ann. § 62-5-303. Yet, Mr. Hemphill failed to do so. Even further, the Estate did not seek to join Petitioners’ appeal upon Mr. Anderson’s death—when any allegations of stress would have been nonexistent—nor did it seek to join Petitioners’ petition for rehearing before the court of appeals or file a notice of appeal. (App. 572-80).

The trial in this matter occurred seven years ago, and by the Estate’s own admission, Mr. Anderson elected not to pursue an appeal. The 2017 Order constitutes a final adjudication of the Estate’s rights, and the Court is without jurisdiction to allow the Estate to belatedly join in an appeal that will not in any way affect the Estate’s rights and obligations. *See Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775. The judgment is final as to the Estate. To the extent the Estate relies upon Respondent’s offer to settle *the appeal* with Petitioners, that offer is wholly irrelevant to the Estate’s liability under the 2017 Order, which was *not* appealed by Mr. Anderson.<sup>2</sup>

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<sup>2</sup> The filing does not accurately portray the settlement offer. Nor does it portray the reason behind the offer.

**Conclusion**

Because Mr. Anderson failed to appeal the 2017 Order, this Court should deny the Estate's Motion to Join in Arguments of Petitioners. Any ruling to the contrary would only serve to undermine the finality of the 2017 Order and prejudice Respondent's justifiable reliance upon its rights and obligations as to the Estate.

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Columbia, South Carolina  
December 15, 2023