

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

DEC 29 2023

SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge
Case No. 2017-CP-10-01324

APPELLATE CASE NO. 2023-000898

Steven McLemore and Bonnie Jean Eagle as Natural Parents for the Estate of D. M.,

Plaintiffs,

vs.

Charleston County Parks and Recreation Commission d/b/a James Island County Park;
Yearround Pool Co., Inc.; SGA Architecture; South Carolina Department of Health and
Environmental Control; and John Doe and/or John Doe Corporation,

Defendants.

OF WHOM:

Bonnie Jean Eagle is Appellant

and

Charleston County Parks and Recreation Commission
d/b/a James Island County Park is

Respondent

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. RESPONDENT FAILED TO TIMELY APPEAL THE ORDER APPROVING SETTLEMENT.

Respondents fail to address the elephant in the room – no appeal was ever filed of Judge McCoy’s Order approving settlement. If Respondent had an issue with that Order they should have appealed after getting notice of the decision. South Carolina law provides a challenge to an Order of the Circuit Court must be filed within thirty (30) days. See Rule 203 (b)(1), SCACR, (notice of appeal must be served within thirty (30) days after receipt of written notice of entry of the order or judgment.).

See also *USAA v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2009):

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.” *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999). “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.” *Elam v. S.C. Dept. of Trans.* 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

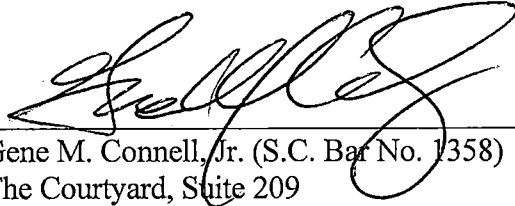
CONCLUSION

In sum, Respondent did not appeal the Order approving the settlement which it had notice of and thus cannot now complain of that ruling as this Court has no jurisdiction.

Respectfully submitted,

(Signature on following page)

KELAHER, CONNELL & CONNOR, P.C.



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December 27, 2023

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Defendants.

OF WHOM:

Bonnie Jean Eagle is..... Appellant

and

Charleston County Parks and Recreation Commission
d/b/a James Island County Park is

Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of Initial Reply Brief of Appellant on the 27th day of December, 2023, by depositing a copy of same in the United States Mail, postage prepaid, to:

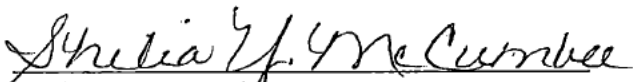
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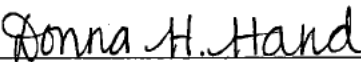
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SWORN AND SUBSCRIBED before me,
this 27th day of December, 2023.


Notary Public for South Carolina
My Commission Expires: 3-28-26

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December 27, 2023

The Honorable Jenny Abbot Kitchings
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Post Office Box 11629
Columbia, South Carolina 29211

Re: Appellate Case No. 2023-000898
*Steven McLemore, Individually and as Personal Representative of the Estate of D.M. and
Bonnie Jean Eagle, Individually and as natural parent of deceased minor, D.M. v.
Charleston County Parks & Recreation Commission ("CCPRC") d/b/a James Island
County Park; et al.*; Case No: 2017-CP-10-01324
Our File No. 2020-0393C

Dear Ms. Kitchings:

Enclosed please find the Initial Reply Brief of Appellant and Proof of Service of same in the
above-captioned case.

By copy of this letter, we hereby serve the above-stated documents on counsel of record.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures
cc w/enc.:

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