

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

Thomas L. Hughston, Jr., Circuit Court Judge
Trial Court Case No. 2020-CP-08-01232

Appellant Case No. 2023-001703

Mia Anderson, on Behalf of the Estate of Jessie Heyward
a/k/a Jessie Bell AndersonAppellant,

v.

Richard Miles Thompson, M.D. and ACS Primary Care
Physicians – Southeast, P.C., Respondents.

RESPONDENT’S REPLY BRIEF AS TO ITS
MOTION TO DISMISS APPEAL

1. The time to make post-trial motions began to run when the jury was discharged.

The first question is when the time for Appellant to make post-trial motions began to run. Post-trial motions can be made under Rule 50(b) (motions for judgment notwithstanding the verdict), Rule 59(a) (motions for new trial), and 59(e) (motions to alter or amend a judgment, known among the bench and bar as motions to reconsider). In her post-trial motion she moved “for a new trial in this action pursuant to South Carolina Rules of Civil Procedure, Rule 59.” Ex. F to Respondent’s Motion to Dismiss, Pg. 1. In the memorandum in support of her motion she says she “moves for a new trial and/or judgment notwithstanding the verdict due to the following factual

and legal arguments.” *Id.*, third page. In the conclusion of her memorandum she “requests the Court grant the Plaintiff’s Post-Trial Motions and grant the Plaintiff’s Motion for a New Trial.”

She never uses the words “alter,” “amend,” or “reconsider.” She asks a new trial and does not refer to the judgment or a specific order.

So, we submit, the time to make her motion for new trial was ten days after the jury was discharged and not ten days after she received written notice of entry of the order ending the case (plus five more for E-service by the court system).

To accept her argument would be to eviscerate Rule 59(b) to the extent it requires that motions for new trial be made “promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.”

2) If the deadline to make the motion was Monday, September 25, 2023, Appellant did not meet the deadline because transmitting for filing a non-conforming document for filing does not constitute making, serving, or filing a motion.

Appellant did not file anything on Monday, September 25, and that night she did not transmit her papers “in accordance with the policies and procedures and the Filer Interface User Guide.” Under Guideline 4(d)(1), when on Tuesday morning the clerk rescinded the NEF that the system had created the night before, Monday night’s NEF was not effective as proof of service.

3) Other Points

Not a Formatting Error: We take issue with Appellant’s argument that the rejection notice was due to a formatting error. The NEF was rescinded because Monday night’s transmission included personally identifiable information. Privacy concerns are so important to the General Assembly that including a social security number in a filing with the clerk of court (as in the Death Certification transmitted to the Clerk in this case) is a misdemeanor. SC Code § 30-2-331. And privacy concerns are even more important to the Judicial Department. Rule 41.2(a) of the South

Carolina Rules of Civil Procedure states, “A person filing a document in paper or electronic format shall not include, or will redact where inclusion is necessary, the following personal identifying information.” And then it lists social security numbers, home addresses of non-parties, and dates of birth, all of which were contained in Monday night’s transmission.

No Time to Oppose: While it is true Respondents did not serve or file a response to Appellant’s motion for a new trial, the Court denied the motion on October 2, just six days after the motion was filed and before Respondents had a chance to prepare such an opposition. Rule 9(d) allows ten days to respond to a motion, and Rule 4(e)(4) of the South Carolina Electronic Filing Policies and Guidelines allows an additional 5 days. So the court entered its order on Day 6 of a 15-day schedule.

Appellant also says the trial court “did not find the post-trial motions untimely.” True, but the trial judge was not asked whether the motion was filed timely, and he decided to deny the motion on its merits.

Federal Approach was Rejected by South Carolina: Appellant points out that in the federal electronic filing system, if a filed document needs redaction or a formatting error exists, the clerk emails the submitting attorney and requests the substitute which is filed by the clerk. The South Carolina Judicial Department “carefully examined” such a process during implementation of the electronic filing system and ultimately rejected it for three distinct reasons:

1) The state’s system “was not capable of substituting one document for another and retaining the same date and time stamp”;

2) “It was believed that attorneys would be strongly opposed to granting Clerks of Court the power to alter a time stamp”; and

3) Such a system ensures that documents that are timely submitted are deemed timely served and filed, regardless of whether they are reviewed and formally accepted by the clerk of court that day or on a subsequent day.

The entire FAQ on the topic is found at www.sccourts.org/efiling/FAQs.cfm under “Summary of E-Filing Public Comments and Responses” and is attached hereto.

Appellant’s Request for Relief from This Court: On Page 4 of her Response Appellant cites ECF Guideline 4, which allows a party to seek appropriate relief from the court upon good cause shown, and “requests that relief from this Court.” We do not believe this is a motion that can be granted under SCACR 240 because it does not meet the requirements of that rule, because the Electronic Filing Rules apply to circuit courts and the court to which relief can be requested is the trial court and not an appellate court. Further, if the court were inclined to grant such relief, we ask permission to debate whether good cause has been shown.

Conclusion

Because the notice of appeal was not served within 35 days of entry of the trial court’s order ending the case, the appeal must be dismissed. Appellant’s late-filed post-trial motion did not stay the time to appeal. Furthermore, because the Court of Appeals does not have jurisdiction to set aside facts settled by a jury, the appeal of the jury verdict should be dismissed.

All of which is respectfully submitted.

February 16, 2024.

/s/ Robert P. Wood

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