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Jul 31 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge
Trial Court Case No. 2022-CP-10-05916

Appellate Case No. 2017-005916

Marka Danielle Rodgers, Appellant

v.

CNT Foundations, LLC, Respondent

MOTION TO DISMISS

CNT Foundations LLC files this Motion to Dismiss pursuant to South Carolina Appellate Court Rule 240 for failure to timely file a Notice of Appeal pursuant to South Carolina Appellate Court Rule 203(b). The order from which Appellant, Marka Danielle Rodgers, is appealing was filed and served upon Respondent, CNT Foundations, LLC, on November 2, 2023. Appellant had until Monday, December 4, 2023, to file her notice of appeal *See* Rule 203(b), SCACR (affording an appellant thirty days to serve a notice of appeal); Rule 263(a), SCACR (“The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.”).

On November 10, 2023, Appellant filed a Motion to Amend Judgment pursuant to S.C.R.C.P. 59(e) but failed to serve a copy of the Motion to the Judge pursuant to S.C.R.C.P. 59(g) (see Form 4 Order of Hon Jennifer B. McCoy June 26, 2024 included in Appellant’s Notice of Appeal). The Court dismissed the Motion for failure to serve a copy of the Motion pursuant to S.C.R.C.P. 59(g) . As such the Motion was never valid and the issues in that Motion remain unaddressed by the Circuit Court. *S.C. Coastal Conservation League, Inc. v. Charleston Cty.*, 899 S.E.2d 609 (S.C. App. 2024) (“An unaddressed issue remains unpreserved when a motion to reconsider is denied on the basis of procedural defect under Rule 59(g)” As the motion was not properly filed, Appellant’s motion did not toll the time to appeal the November 2, 2023, and this court should dismiss the appeal as untimely filed. See generally Rule 203(b)(1).

s/Charles A. Krawczyk
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PROOF OF SERVICE

I certify that I have served Respondents' Motion to Dismiss on Marka Danielle Rodgers, by electronic mail to their attorney of record, Daniel Summa, Esquire, daniel@summalawfirm.com on July 31, 2024.



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