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**Aug 09 2024**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Judge

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Appellate Case No. 2024-001160  
Charleston County Case No.: 2023-CP-10-03607

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Sheila Slomovitz & Maryco Realty, LLC ..... Respondents,

v.

Andrew Sperling and Nina Sperlings ..... Appellants.

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**RESPONDENTS’ RESPONSE TO APPELLANTS’ MOTION TO RESINTATE APPEAL**

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PLEASE TAKE NOTICE that the Respondents, Sheila Slomovitz and Maryco Realty, LLC, by and through their undersigned counsel, respond to Appellants’, Andrew Sperling and Nina Sperling’s, Motion to Reinstate their Appeal pursuant to Rule 260, SCACR.

**FACTUAL BACKGROUND**

On May 29, 2024, Judge McFaddin entered an Order granting Respondents’ Motion for Summary Judgment, or in the Alternative, Respondents’ Motion for Entry of Default.

On July 1, 2024, Appellants filed their Notice of Appeal seeking to appeal the Orders granting Summary Judgment, Entry of Default, and Writ of Ejectment. Incorporated within the July 1, 2024 Notice of Appeal is an admission from Appellants that they received notice of the Orders on May 29, 2024.

On July 22, 2024, the Court of Appeals issued an Order dismissing the appeal for failure to timely serve the Notice of Appeal pursuant to Rule 203(b)(1), SCACR. The Order set forth the following:

“The notice of appeal indicates counsel received written notice of entry of the order on appeal on May 29, 2024. The notice of appeal was not served until July 1, 2024, which is more than 30 days after receipt of written notice. Accordingly, this appeal is dismissed for the failure to timely serve the notice of appeal.”

(See July 22, 2024 Order by S.C. Court of Appeals). The Notice of Appeal was never served on Respondent’s counsel until July 11, 2024 by way of email correspondence. A copy of the email serving the Notice of Appeal is attached hereto as Exhibit A. The Respondents never received any other service of the Notice of Appeal from Appellants.

On August 7, 2024, Appellants filed a Motion to Reinstate their Appeal.

#### ARGUMENT

“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.” Rule 203(b)(1), SCACR (emphasis added). Timely service of the notice of appeal is the essential jurisdictional act. Absent timely service, the appellate courts do not have and cannot acquire appellate jurisdiction over the appeal and must dismiss the appeal. USAA Prop. & Cas. Ins. Co. v. Clegg, 661 S.E.2d 781, 794-795 (S.C. 2008); accord Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 776 S.E.2d 575, 577-578 (S.C. App. 2015). “If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.” Rule 203(d)(3), SCACR.

Under South Carolina Appellate Court Rule 260(a), “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the

appellate court.” Rule 260(a), SCACR. “A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Id. Only an appeal which is erroneously dismissed should be reinstated. 5 C.J.S. Appeal and Error § 660 (1993).

First, Appellants’ Notice of Appeal is undoubtedly untimely. The Appellants admit to having received Judge McFaddin’s Order on May 29, 2024, and failed to file and serve their Notice of Appeal within the 30 days allowed by Rule 203(b)(1), SCACR. (See Appellants’ Notice of Appeal). The 30-day deadline for Appellants to file their Notice of Appeal was June 28, 2024. The Appellants did not file and serve their Notice of Appeal until July 1, 2024. The Respondents were not served with the Notice of Appeal until July 11, 2024. (See Exhibit A). Accordingly, the Appellants were untimely and dismissal by the Court of the Notice of Appeal was proper for failure to timely serve the notice of appeal pursuant to Rule 203(b)(1), SCACR.

Second, Appellants have shown no evidence of good cause to reinstate the appeal. Appellants had the opportunity to demonstrate their explanation for being untimely on numerous occasions, including during the pendency of Circuit Court proceedings, and have failed to do so. Rather than setting forth good cause for their untimeliness or grounds to support their reinstatement, the Appellants state that their Notice of Appeal was timely filed and served because thirty days after May 29, 2024 is June 29, 2024, and such analysis is incorrect.

Lastly, Respondents respectfully submit that Appellants’ motion to reinstate their appeal is intended to further delay the ejectment without the requirement that they move for a stay or post the required bond. The relief which Respondents have been properly seeking is an ejectment so that they can regain possession of their property in Mount Pleasant, South Carolina which Appellants refuse to leave. Contained within Judge McFaddin’s May 29, 2024 Order was a Writ of Ejectment that the Court executed in order for the Respondents to properly schedule, serve,

and execute an ejectment, which was granted by the Court in Respondents' Motion for Summary Judgment. After the May 29, 2024 Order was entered and filed by Judge McFaddin, Respondents scheduled an ejectment with the Charleston County Sheriff's Office. On June 24, 2024, Appellants were served with the Writ of Ejectment by the Charleston County Sheriff's Office at Respondents' home in Mount Pleasant, South Carolina and were informed that they must vacate Respondent's home by July 15, 2024, or be ejected by the Sheriff's Office. During this time, the Appellants did not submit a bond required to stay the ejectment on appeal as required under S.C. Code § 27-37-130 (2023). Due to Appellants' filing of an untimely Notice of Appeal, the Charleston County Sheriff's Office postponed the scheduled ejectment until Appellants' Notice of Appeal was decided by the Court.

Once the Notice of Appeal was dismissed on July 22, 2024 by the Court, Respondents directed the Charleston County Sheriff's Office to reschedule the ejectment. On July 31, 2024, the Charleston County Sheriff's Office, once again, served the Writ of Ejectment to Appellants at Respondents' property in Mount Pleasant, South Carolina and rescheduled the ejectment for August 14, 2024. To date, Appellants have not moved for a stay of the ejectment or posted a bond.

Consequently, Respondents respectfully request that the ejectment currently scheduled for August 14, 2024 not be rescheduled due to this meritless motion to reinstate filed by the Appellants. The Respondents were forced to delay the first scheduled ejectment when Appellants filed their untimely Notice of Appeal and this new delay tactic should not prejudice the Respondents who have properly sought and been granted relief. During this appellate procedure, Appellants have had the opportunity to stay the ejectment by filing an appeal bond pursuant to

S.C. Code § 27-37-130 (2023) and have failed to request or initiate any effort to stay the ejection pending appeal.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request the Court deny Appellants' Motion to Reinstate their Appeal because Appellants' Notice of Appeal is untimely. Accordingly, Respondents respectfully request that the ejection scheduled for August 14, 2024 proceed and not be delayed as Appellants have shown no good cause nor have they posted an appeal bond to stay the ejection.

Respectfully submitted,

Dated: August 8, 2024

BARNWELL WHALEY PATTERSON & HELMS

s/M. Dawes Cooke, Jr.

M. Dawes Cooke, Jr. (S.C. Bar No. 1376)

G. Hudson Worthy (S.C. Bar No. 105637)

P.O. Drawer H

Charleston, SC 29402

Phone: (843) 577-7700

Fax: (843) 577-7708

mdc@barnwell-whaley.com

hworthy@barnwell-whaley.com

***Counsel for Respondents***

**From:** [Ryan Neville](#)  
**To:** [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)  
**Cc:** [Hudson Worthy; M. Dawes Cooke, Jr.](#)  
**Subject:** [EXT] Slomovitz v. Sperling, (2023-CP-10-03607)  
**Date:** Thursday, July 11, 2024 11:50:14 PM  
**Attachments:** [Notice of Appeal.pdf](#)  
[Certificate of Service Notice of Appeal.pdf](#)

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Ms. Kitchings: I am writing to file the attached Notice of Appel and Certificate of Service. By way of cc, I am serving the same on the lawyers for the Respondents. Please let me know if there are any questions or concerns.

Thank you,

Ryan

Irish “Ryan” Neville  
Neville Law Firm, LLC  
496 Bramson Ct., Ste. 140  
Mt. Pleasant, SC 29464  
Office: 843-968-0635  
Direct: 843-414-8864  
Mobile: 843-518-1492  
[IRN@LawFirmNeville.com](mailto:IRN@LawFirmNeville.com)

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SHEILA SLOMOVITZ and  
MARYCO REALTY, LLC

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v.

ANDREW SPERLING and  
NINA SPERLING

Appellants.

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MOTION TO REINSTATE APPEAL

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Please take notice that Appellants Andrew Sperling and Nina Sperling, by and through their undersigned lawyer, respectfully request this court to reinstate their appeal per SCACR 260 on the grounds that it was timely filed and served. On May 29, 2024, Appellants received the order from which they are now appealing. Thirty days after the May 29, 2024 is Saturday June 29<sup>th</sup>, and the next business day was Monday July 1, 2024, which was the date Appellants timely filed/served their Notice of Appeal.

Furthermore, equity and the inherent equitable power of our courts support a decision to reinstate (and ultimately grant) the appeal so that this sad family dispute of a sister taking advantage of her brother during a time of despair can be decided on the merits. Appellants have

demonstrated that they have an explanation for the timeliness of their various filings, they put in a previous answer to the original complaint, they are timely filing this motion, they have meritorious defenses asserted in their timely answer as well as evidenced by the magistrate court previously dismissing the underlying eviction, Plaintiffs will not be prejudiced by the default being lifted as they continue to collect payments from Defendants (and already own the subject property as collateral under inequitable terms), and there is more than a mere scintilla of evidence as to a genuine issue of material fact regarding the foregoing issues that surround the dismissal of their appeal, the default, and/or summary judgment.

This motion is based upon the following: the South Carolina Rules of Civil Procedure, the South Carolina Appellate Court Rules, the South Carolina Code of Laws, the common law and equitable principles of South Carolina, any other controlling or persuasive law/equity, a memorandum of law that may be submitted before a hearing on this matter; argument of counsel at a hearing on this matter, and the Court's inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.

August 7, 2024

s/ Irish "Ryan" Neville  
Irish "Ryan" Neville (SC Bar I.D. 76513)  
Neville Law Firm, LLC  
496 Bramson Ct., Ste. 140  
Mt. Pleasant, SC 29464  
Office: 843-968-0635  
[IRN@LawFirmNeville.com](mailto:IRN@LawFirmNeville.com)  
Attorney for Appellants

G. Hudson Worthy, Esq.  
M. Dawes Cooke, Esquire  
Barnwell Whaley  
211 King Street, Suite 300  
Charleston, SC 29401  
Attorneys for Respondents

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SHEILA SLOMOVITZ and  
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CERTIFICATE OF SERVICE

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On behalf of Appellants Andrew Sperling and Nina Sperling, the undersigned hereby certifies that on August 7, 2024 Appellants' Motion to Reinstate filed herewith was served upon the Respondents *Sheila Slomovitz and Maryco Realty, LLC* by emailing a copy to their lawyers M. Dawes Cooke and G. Hudson Worthy when the same was filed with the Clerk of Court.

August 7, 2024

s/ Irish "Ryan" Neville  
Irish "Ryan" Neville (SC Bar I.D. 76513)  
Neville Law Firm, LLC  
496 Bramson Ct., Ste. 140  
Mt. Pleasant, SC 29464  
Office: 843-968-0635  
[IRN@LawFirmNeville.com](mailto:IRN@LawFirmNeville.com)  
Attorney for Appellants

G. Hudson Worthy, Esq.  
M. Dawes Cooke, Esquire  
Barnwell Whaley  
211 King Street, Suite 300  
Charleston, SC 29401

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PROOF OF SERVICE

I certify that I have served Respondent’s Response to Appellant’s Motion to Reinstate on Appellants Andrew Sperling and Nina Sperling via e-mail and by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2024, addressed to Appellant’s counsel of record, Irish Ryan Neville, 496 Bramson Court, Ste. 140, Mount Pleasant, South Carolina 29464.

August 8, 2024

s/M. Dawes Cooke, Jr.  
M. Dawes Cooke, Jr., Esq. (S.C. Bar No. 1376)  
G. Hudson Worthy, Esq. (S.C. Bar No. 105637)  
Barnwell Whaley Patterson & Helms, LLC  
P.O. Drawer H  
Charleston, SC 29402  
Phone: (843) 577-7700  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
[hworthy@barnwell-whaley.com](mailto:hworthy@barnwell-whaley.com)  
**Counsel for Respondents**

Irish “Ryan” Neville, Esq.  
Neville Law Firm, LLC  
496 Bramson Ct., Ste. 140  
Mt. Pleasant, SC 29464  
Phone: 843-968-0635  
[IRN@LawFirmNeville.com](mailto:IRN@LawFirmNeville.com)  
**Attorney for Appellants**