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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Milton G. Kimpson, Administrative Law Judge

ALC Docket No. 22-ALJ-07-0010-CC
Appellate Case No. 2022-001792

T. Tree Farms RV Park (Blue Sky Associates, LLC),..... Respondents,

v.

South Carolina Department of Health and Environmental Control; Enclave at Fairview Homeowners' Association; Inc.; Golden Hills of Fairview Homeowner's Association, Inc.; Greenspace of Fairview, LLC; and North Pacolet Association, Inc

of which Enclave at Fairview Homeowners' Association, Inc.; Greenspace of Fairview, LLC, North Pacolet Association, Inc.; and Golden Hills of Fairview Homeowner's Association, Inc.; are the Appellants and South Carolina Department of Health and Environmental Control is a Respondent.

RETURN TO MOTION TO DISMISS

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Appellants Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc., (collectively, the Homeowners) submit this return to Respondent T. Tree Farms RV Park's (Blue Sky Associates, LLC) (“Blue Sky Associates”) motion to dismiss Appellants’ petition for rehearing.

At base, Respondent takes issue with the fact that this Court exercised its authority to accept the petition for rehearing and recall the remittitur – undertakings fully authorized under the court’s rules and which allow the Court to ensure substantial justice is achieved. The Administrative Law Court complied with this Court’s request, sending the remittitur back to this Court on July 30, 2024. This Court’s jurisdiction should be unquestioned, and nothing in the Respondent’s overly restrictive and narrow reading of one of the many court rules changes it.

SCACR Rule 221 is not rigid, instead the Appellate Court Rules and precedent provide flexibility.

The Respondent asserts that the fifteen-day filing period in Rule 221 is absolute and that it started on July 4, implying that this Court does not have jurisdiction to accept the petition for rehearing. Respondent’s punitive reading of SCACR Rule 221 fails to consider the court’s rules more broadly, and the distinction between jurisdictional and procedural rules.

The Appellate Court Rules expressly give courts latitude in all filing deadlines, except for notices of appeal governed by SCACR Rule 203 and Rule 243, which are the rules that impart jurisdiction on the appellate courts. The Appellate Court Rules clearly treat these notices of appeal differently than any other appellate filing in terms of absoluteness. While the Respondent cites to Rule 263(a), it neglects Rule 263(b), which states that the “time prescribed by these Rules for performing any act *except the time for serving the notice of appeal under*

Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.” SCACR Rule 263(b) (emphasis added).

While the appellate courts clearly cannot extend the time for filing a notice of appeal because it would be enlarging its jurisdiction, in the present matter the court already has jurisdiction and is well within both the letter and spirit of the rules in accepting the petition for rehearing. This is particularly so when read with the very broad and general rule found in the South Carolina Rules of Civil Procedure, Rule 1: “These rules govern the procedure *in all South Carolina courts* in all suits of a civil nature whether cognizable as cases at law in in equity, with the exceptions stated in Rule 81. *They shall be construed to secure the just, speedy, and inexpensive determination of every action.*” SCRCR Rule 1 (emphasis added). In interpreting this rule, this Court noted that “The Rules, however, are designed to be enforced, and we have repeatedly stated we allow trial judges the discretion in which to do so.” Matter of Estate of Smith, 419 S.C. 111, 122, 796 S.E.2d 158, 163 (Ct. App. 2016). Indeed, SCACR 263(b) specifically provides the discretion to the appellate courts to apply and enforce the procedural rules, as the Court did in this case by enlarging the time under SCACR Rule 221 when it accepted the petition for rehearing.

When read in conjunction with the appellate court rules, it becomes clear that Rule 221 is not a bright line rule. The Supreme Court does not view the rules with the rigidity advanced by the Respondent, and neither should this Court. See Eberly v. Advanced Flooring & Design Div of ISI, LLC, 442 S.C. 656, 901 S.E.2d 273 (2024) (giving broad reading to the rules of service under Rule 262).

A procedural defect that has been corrected is not grounds for dismissal.

The Respondent’s assertion that the failure to include a certificate of service is fatal and requires dismissal is similarly misplaced. The purpose of a proof of service in any court is to provide a statement by the filing attorney that the recipient attorney or party has been provided the document. Counsel for Appellant served the Respondent on July 22, 2024 via email, the same day it filed the petition with this Court. While the Appellant did not include the proof of electronic service contemporaneously with the filing, it corrected this technical deficiency on July 30. The Respondent is not claiming any prejudice, or that it was not served, only that the proof of service was not filed at the same time as the petition for rehearing. This is not a valid basis for dismissal, and other appellate decisions allow correction of scrivener’s errors similar to this. Moody v. Dickinson, 54 S.C. 526, 32 S.E. 563 (1899); Charlestown Lumber Co. Inc. v. Miller Housing Corp., 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995). Indeed, it is a long-standing practice of the South Carolina Supreme Court to allow such errors to be corrected. See Moody v. Dickinson, 54 S.C. 526, 32 S.E. 563 (1899); Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) (rules of civil procedure should be liberally construed to do substantial justice and lower court erred in denying motion to amend complaint where amendment would have stated alternative theory of recovery); Small v. Mungo, 254 S.C. 438, 442–44, 175 S.E.2d 802, 804 (1970) (affirming dismissal of complaint for failure to proceed, but finding it should have been dismissed without prejudice); Dockside Assn., Inc. v. Detyens, Simmons & Carlisle, 297 S.C. 91, 374 S.E.2d 907 (Ct.App.1988) (citing Rule 15(a), SCRCP, that plaintiff generally is allowed to amend a complaint to correct deficiencies which resulted in dismissal under provisions of Rule 12(b)).

“Civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 602 S.E.2d 772

(2004). That is a hallmark of the fairness that South Carolina Courts strive to follow so that justice is served. Yet, the Respondent asks for this Court to create a trap for a lawyer who properly served it, and dismissing for the corrected deficiency of an initial lack of proof of service would work an unnecessary unfairness.

The Wise case cited by Respondent is not relevant here. Wise involved a 59(e) motion to alter or amend a judgment, which the Court treated as a petition for certiorari. The Supreme Court held that it lacked jurisdiction to hear that motion based on the actions of the Court of Appeals in sending down the remittitur. The Supreme Court could not exert jurisdiction at that point. The Court based its ruling on the fact that the remittitur had been sent, ending the appellate court's jurisdiction. The Supreme Court *did not rule* on whether the Court of Appeals properly sent the remittitur to the lower court and rejected Appellant's motion for reinstatement pursuant to SCACR Rule 260 (formerly Rule 231). The Wise court did not discuss the basis for the dismissal of the appeal, nor whether the appellate court rejected the petition for reinstatement under Rule 260 based on timeliness.

Here, where this Court has recalled the remittitur, it retains jurisdiction and thus Wise is not relevant. What is relevant is the Court's historic construction and interpretation of the rules to provide the courts discretion in seeking to ensure substantial justice, as discussed above. The Respondent's reading of Wise ignores the Court's inherent authority to enlarge the time for filing under SCACR 263(a) when such filing is not jurisdictional, i.e., a notice of appeal, and to exercise its authority to apply the rules to effectuate substantial justice in recalling the remittitur. That is what this Court did and Appellant asks the Court to deny the motion to dismiss and grant rehearing for the reasons set forth in the petition.

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