

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Isaac Smith, Jr.,

Appellant,

vs.

Estate of Carrie Muller Smith Lewis,

Appellee.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C.A. No. 2024-CP-32-00809

**ORDER GRANTING DENIAL OF
PLAINTIFF'S MOTION TO STAY
ACTION UNTIL COMPLETION OF
RICHLAND COUNTY MALPRACTICE
ACTION**

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SC Court of Appeals

This matter came before the Court on July 31, 2024, on Appellant's Motion to Stay Action, filed May 14, 2024, and Appellee's Motion to Dismiss made on the record on July 31, 2024. Appellant filed a Notice of Appeal from an order of the Lexington County Probate Court issued by letter dated February 7, 2024.¹

S.C. Code 62-1-308 governs an appeal from an order of a Probate Court. This section provides that "[t]he notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court."

The certificate of service attached to the Notice of Appeal does not indicate that the notice was sent to or filed in the Probate Court. Further, the certificate of service of the Notice does not show proper service on Appellee's counsel of record, as the certificate indicates the Notice was mailed to 270 Stoneridge Drive, while counsel's address is actually 220 Stoneridge

¹ The formal order was filed by the Court on March 1, 2024. The record shows that Appellant made no filings upon receipt of the formal order.

Drive, Suite 100. Appellant acknowledged the address error on the record. Timely service of the Notice of Appeal is jurisdictional; it may not be extended by the Appellate Court, and failure to comply with procedural requirements for an appeal divests the Appellate Court of appellate jurisdiction. State v. Devore, 416 S.C. 115 (S.C. App. 2015).

Similarly to service of the Notice of Appeal, the certificate of service of the Motion to Stay does not show proper service on Appellee's counsel of record, as the certificate indicates the Notice was mailed to 270 Stoneridge Drive, while counsel's address is actually 220 Stoneridge Drive, Suite 100. Again, Appellant acknowledged the address error on the record.

Upon careful consideration of each party's arguments, it appears to the Court that the underlying appeal must be dismissed as requested by Appellee in her oral Motion to Dismiss for Lack of Subject Matter Jurisdiction, as proper service is jurisdictional. The issue of subject matter jurisdiction may be raised at any time." Tatnall v. Gardner, 564 S.E.2d 377, 378 (S.C. App. 2002).

Further, Appellant's Motion to Stay is denied because the Motion is mooted by the dismissal of the underlying appeal and because of improper service. Accordingly, this Court dismisses the Appeal and denies the Motion to Stay.

AND IT IS SO ORDERED.

The Honorable William C. McMaster, III
Circuit Court Judge

September ____, 2024
Columbia, South Carolina



Lexington Common Pleas

Case Caption: Isaac Smith Jr VS Estate of Carrie Muller Smith Lewis
Case Number: 2024CP3200809
Type: Order/Dismissal

So Ordered

William C. McMaster, III

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