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Feb 03 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM UNIONCOUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2025-000165
Circuit Court Case No. 2022-CP-44-00188

Curtis Dunbar, Individually and as former Co-Personal
Representative of the Estate of Theo(dosia) Dunbar.....Appellant

v.

Sally T. Atwater and Ashley Atwater,
as Trustees of the Sally D. Atwater Revocable Trust.....Respondents

RESPONDENTS’ MOTION TO DISMISS UNTIMELY APPEAL AND MOTION TO DENY
APPELLANT’S MOTION TO EXTEND TIME TO PERFECT APPEAL

Respondents were granted Summary Judgment by Order of the Honorable William A. McKinnon on October 29, 2024. Appellant then filed a Motion to Reconsider which was denied by Order received on December 30, 2024. Pursuant to SCACR 203, a notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order granting or denying the Motion to Reconsider. Appellant’s notice of appeal was due on January 29, 2025. Appellant did not serve or file the notice of appeal until January 30, 2025 and therefore Appellant’s appeal must be dismissed.

Further, Appellant’s motion to extend time to perfect appeal should be denied. “Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in the dismissal of the appeal.” USAA Property and Cas.

Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008) (quoting Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999)). “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Appellant admits that the appeal was not timely filed in Appellant’s Motion to Extend Time to Perfect Appeal and therefore Respondents respectfully request that Appellant’s appeal be dismissed.

Respectfully submitted,
**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH,
LLC**

s/ Jenna Hendricks McLeod
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Greenville, South Carolina
February 3, 2025

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as Trustees of the Sally D. Atwater Revocable Trust.....Respondents

PROOF OF SERVICE

I certify that I have served this Motion to Dismiss on William D. All by emailing a copy to wall@allandfrost.com, being William All's primary e-mail address listed in the Attorney Information System (AID) pursuant to Rule 262(a)(3), SCACR and South Carolina Supreme Court Order 2024-04-24-01, Section (d)(1).

s/ Jenna Hendricks McLeod
Jenna Hendricks McLeod
SC Bar No.: 101236
s/Tyler McLeod
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Attorneys for Respondents

February 3, 2025

From: Jenna McLeod

Sent: Monday, February 3, 2025 11:42 AM

To: Will All <wall@allandfrost.com>

Cc: Tyler McLeod <tmcleod@bmemhlaw.com>

Subject: 2025-000165; Curtis Dunbar v. Sally Atwater and Ashley Atwater, Appeal from Union County
Case: 2022-CP-44-00188

Will,

The motion to dismiss the appeal is attached. This email constitutes service on you pursuant to Rule 262(a)(3), SCACR and South Carolina Supreme Court Order 2024-04-24-01, Section (d)(1). Additionally, you will be copied on my filing to the Court of Appeals.

Thanks,

Jenna Hendricks McLeod, J.D.

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