

Feb 18 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Case No. 2022-CP-40-01415

Appellate Case Nos. 2024-001626, 2025-000164

Rhonda Meisner, Appellant,

v.

Grant Meisner; Grant Meisner, MD, LLC; Shelia Robinson; Erwin Mangubat, MD; Moore, Taylor, & Thomas, P.A.; Moore Taylor Law Firm, P.A.; Moore Bradley Myers Law Firm, PA; Tricia L. Flowers; Flowers Consulting, LLC; Richard G. Whiting, Esquire; Law Offices of Richard G. Whiting, P.A.; John Doe (1-10), Respondents.

**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS
AND RETURN TO MOTION TO CONSOLIDATE**

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondent Erwin Mangubat, MD (“Dr. Mangubat”), by and through the undersigned counsel, files this Reply in further support of his Motion to Dismiss. Dr. Mangubat should be dismissed from these appeals.

In her Return, Appellant argues her appeal is proper because she alleges there was a successive motion to reconsider pending at the time she filed her first appeal. First, her suggestion that her first appeal was dismissed because of a pending motion in the circuit court is incorrect. It is clear from the Order of this Court that the first appeal was dismissed as untimely because she did not file the notice of appeal within thirty days. *See Order*, Appellate Case No. 2023-000232 (June 6, 2023).

Second, the motion she references does not give her another opportunity to appeal the dismissal of Dr. Mangubat, which became the law of the case when this Court dismissed Appellant's first appeal as untimely on June 6, 2023. As discussed in the Motion to Dismiss, the circuit court dismissed Dr. Mangubat from the case on December 15, 2022. Appellant filed a motion to reconsider which was denied by the circuit court on January 10, 2023. Appellant thereafter attempted to appeal, but her appeal was untimely. The January 11, 2022 motion that she references as pending at the time she filed her first appeal does not involve Dr. Mangubat. Specifically, that motion, attached to Appellant's Return, states:

The Defendants respectfully reiterates her arguments advanced in the initial motion to alter and amend filed with the Court and further argues that the law firm defendants either employ or contract with Defendants Sheila Robinson, Tricia L. Flowers, and Flowers Consulting, LLC. Additionally, Shelia Robinson, and/or the Law Firm Defendants, upon information and belief, hired Tricia L. Flowers and Flowers Consulting, LLC and is responsible for her acts and omissions. Upon information and belief, Tricia L. Flowers was acting based on the instructions given her which were outside of her rights as a process server. Tricia L. Flowers and Flowers Consulting, LLC failed to answer the complaint or the amended complaint and as such are in default. The plaintiff points to the complaint, the amended complaint, her response to all defendant's motions to dismiss and the previous motion to alter and amend along with the arguments advanced in the hearing on the Defendant's motion to Dismiss and requests this Court to reconsider its dismissal of the Law Firm Defendants . . . and respectfully requests the Court to enter an Order required the Defendants to participate in discovery proceedings and Order a mediator be appointed.

Appellant filed this motion after the circuit court issued a Form 4 order on December 20, 2022, ruling on Defendant Moore Bradley Myers Rule 59(e), SCRCP motion and reiterating that the law firm was dismissed at the hearing but inadvertently left off the December 15, 2022 order granting the motions to dismiss. Dr. Mangubat is not mentioned in the January 11, 2023 motion. That motion is related to other defendants. Thus, the January 11, 2023 motion did not extend Appellant's deadline to appeal the circuit court's dismissal of Dr. Mangubat.

To the extent that Court construes Appellant's reference in the motion to the "arguments advanced in the initial motion to alter or amend" as transforming the January 2023 motion into a motion related to the dismissal of Dr. Mangubat, that does not make this appeal proper. The January 11, 2023 motion reincorporating the arguments made in the first motion to reconsider would be a successive motion, which does not stay appellate deadlines. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) (explaining an initial motion to reconsider stays the deadline for filing a notice of appeal, but a successive motion does not); *Quality Trailer Prods., Inc. v. CSL Equip. Co.*, 349 S.C. 216, 220, 562 S.E.2d 615, 618 (2002) ("The time for filing appeal is not extended by submitting the same motion under a different caption."). Therefore, the deadline to appeal the dismissal of Dr. Mangubat was thirty days after Appellant received written notice of the entry of the January 10, 2023 order denying her motion to reconsider. Appellant attempted to appeal, and that appeal was dismissed as untimely.

Appellant's arguments related to whether Dr. Mangubat was dismissed from the case with prejudice are immaterial to whether this appeal is proper. Even if Dr. Mangubat was not dismissed with prejudice, there has been no amended complaint filed related to Dr. Mangubat following his dismissal. Appellant cannot unilaterally add a dismissed party back into the case by filing rejected motions to reconsider orders that are not relevant to Dr. Mangubat's dismissal.

Finally, Appellant has filed a motion seeking to consolidate Appellate Case Nos. 2024-001626 and 2025-000164, reasserting the arguments made in the return to Dr. Mangubat's motion to dismiss. For the reasons contained herein, Appellant's arguments fail, and the Court should dismiss Dr. Mangubat from these appeals.

(Signature page follows)

Respectfully submitted,

s/ Shanon N. Peake

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February 17, 2025.

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PROOF OF SERVICE

I certify that a true copy of the Respondent Erwin Mangubat, MD's Reply in Further Support of Motion to Dismiss and Return to Motion to Consolidate in this case has been served on the following, this 17th day of February, 2025, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System and depositing a copy in the United States Mail, postage pre-paid to the below addresses of *pro se* parties pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

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Respectfully submitted,

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