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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

MOTION TO DISMISS APPEAL

The Respondent Kershaw County hereby moves for the dismissal of the appeal filed by the Appellant Christine Jernigan. Pursuant to Rule 240(b), SCACR, the Respondent requests that the time limits for perfecting the appeal be deemed automatically stayed until this motion is decided.

BACKGROUND

This is an appeal from a Freedom of Information Act action. By Order filed October 17, 2024, the trial court granted a motion to dismiss for failure to prosecute when the Appellant failed to appear at trial scheduled on August 27, 2024. The trial court also granted the Respondent's motion for judgment on the pleadings in that same order. On October 28, 2024, the Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRCP. Thereafter, the trial court issued a Form

Order filed November 21, 2024, and ruled that "[t]he motion was not timely filed and is not meritorious." The Appellant then filed a notice of appeal on December 16, 2024.

LEGAL ANALYSIS

The Appellant failed to file a timely notice of appeal, and for that reason, this Court lacks appellate jurisdiction. In its Form Order filed November 21, 2024, the trial court ruled that the Appellant's motion to reconsider "was not timely filed." While the Appellant included that Form Order in her notice of appeal, when the Appellant filed her Appellant's Initial Brief which establishes the issues raised on appeal, the Appellant did not appeal or raise as an issue on appeal that the trial court's finding that her motion to reconsider "was not timely filed" was in error. That issue is not mentioned or addressed in the Statement of Issues on Appeal nor in the Argument section on that Initial Brief. In fact, there is no issue on appeal directed at the Form Order filed November 21, 2024, nor any substantive discussion of that Form Order in the Appellant's Initial Brief.

Therefore, given the current posture of this appeal and initial briefing, it is clear that the Appellant has not appealed the trial court's explicit ruling that her motion to reconsider "was not timely filed." It is well-settled that "an unappealed ruling, right or wrong, is the law of the case." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). Thus, the law of this case – whether correct or not – holds that the Appellant's motion to reconsider was not timely filed.

Rule 203(b)(1), SCACR, provides: "When a *timely* motion ... to alter or amend the judgment … has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." Rule 203(b)(1), SCACR. (Emphasis added). Likewise, Rule 59(f), SCRCP provides: "The time for appeal for all

parties shall be stayed by a *timely* motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." Rule 59(f), SCRCP. (Emphasis added). Thus, in order for a motion to reconsider brought pursuant to Rule 59(e) to stay the time for appeal, that motion must be "timely."

In the case at bar, however, the trial court issued an unappealed ruling that the motion to reconsider "was not timely filed," and as a result, the filing of that motion to reconsider did not stay the time for filing the notice of appeal. Instead, the Appellant had thirty days from the filing date of the October 17, 2024 Order in which to file her notice of appeal, but the notice of appeal was not filed until December 16, 2024. That was too late, and accordingly, this Court lacks appellate jurisdiction.

While it appears that the trial court may very well have been in error in ruling that the motion to reconsider "was not timely filed," that does not impact the analysis of appellate jurisdiction. As mentioned, under clear South Carolina precedent, the trial court's unappealed ruling that the motion to reconsider was untimely filed – whether right or wrong – constitutes the law of this case. In addition to not appealing that ruling in her Appellant's Initial Brief, the Appellant never preserved that issue by the filing a subsequent Rule 59(e) motion calling any error regarding the timeliness of the motion to reconsider to the trial court's attention and giving that court the opportunity to correct such error.[1]

As is well-settled, the law on issue preservation in South Carolina mandates that an error be first called to the trial court's attention in order to preserve an issue for appeal. That is also

[1] This rule of law is also consistent with the longstanding precedent that "South Carolina appellate courts do not recognize the 'plain error rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Thus, this Court cannot rectify or correct any timeliness issue that was not challenged in the court below and was not raised on appeal to this Court.

the case where an error is initially made in an order resolving a motion to reconsider. As this Court has held, "[w]hen a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal." *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920, 922 (Ct. App. 1998). The reason for that is clear: the trial court must have "the opportunity promptly to correct their own alleged errors." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 779 (2004).[2] *See also*, *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673, 675 (1993) (issue not preserved for appeal where the ruling is made first in a post-trial order and is not challenged by a subsequent Rule 59(e) motion); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859, 859 (Ct. App. 1993) (where a theory of relief was first raised in the lower court's order, appellant must challenge this theory with a Rule 59(e) motion); *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000) ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments").

Thus, in addition to failing to appeal the trial court's ruling that the motion to reconsider "was not timely filed," the Appellant also failed to raise any timeliness error to the trial court before filing her appeal. Moreover, as stated in Rule 6(b), SCRCP, "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." Rule 6(b), SCRCP. *See also*, *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206, 207 (1985) ("[s]ervice of the

[2] *See*, *Sweeney v. Sweeney*, 420 S.C. 69, 800 S.E.2d 148 (Ct. App. 2017) (finding "[b]ecause the family court did not have the opportunity to rule upon the issue or *correct any alleged mistakes in its final order*, we find it unpreserved for our review"). (Emphasis added).

notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served"). Thus, this Court lacks jurisdiction to take any corrective action even if it may wish to do so.

CONCLUSION

In sum, the law of this case establishes that the Appellant's motion to reconsider "was not timely filed," and as a result, the filing of the notice of appeal on December 16, 2024, was not timely, meaning that this Court lacks appellate jurisdiction. The Respondent respectfully requests that the Court dismiss this appeal for lack of appellate jurisdiction.

Respectfully submitted,

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June 2, 2025

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Respondent, does hereby certify that service of the **Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by email only this the 2nd day of June 2025, as follows:

Justin A. Jernigan, Esquire
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SC Court of Appeals

June 2, 2025

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Christine Jernigan v. Kershaw County South Carolina
Appellate Case Number: 2024-002127
Civil Action Number: 2023-CP-28-0538
Our File Number: 290.20826

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Motion to Dismiss Appeal** with regard to the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

My firm's check for the $50.00 filing fee will be sent to the Court via U.S. Mail. If you have any questions, please advise.

Thank you for your assistance.

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosure

cc: Justin A. Jernigan, Esquire *(w/ Enclosure, Via Email Only)*
David L. Morrison, Esquire *(w/ Enclosure, Via Email Only)*