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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2025-001317

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John Gallman.....Appellant

v.

Waccamaw Publishers, Inc.....Respondent

MOTION TO DISMISS APPEAL OF ORDERS FILED

DECEMBER 8, 2021, AND APRIL 3, 2023

ON GROUNDS THAT APPEAL OF THESE ORDERS

IS UNTIMELY

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TO: TUCKER S. PLAYER, ESQ., attorney for appellant,

PLEASE TAKE NOTICE that respondent hereby moves through the undersigned as follows:

FOR DISMISSAL OF THE NOTICE OF APPEAL for the orders filed December 8, 2021, and April 3, 2023, on grounds that the notice of appeal is untimely for these orders and this court lacks jurisdiction to take any action but to dismiss the appeal. This motion is supported by a memorandum filed contemporaneously herewith and the authorities cited therein.

Columbia, South Carolina

July 9, 2025

S/Jay Bender

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RESPONDENT’S MEMORANDUM IN SUPPORT OF MOTION

TO DISMISS APPEAL OF ORDERS FILED

FILED DECEMBER 8, 2021, AND APRIL 3, 2023

**BACKGROUND**

Appellant, an unsuccessful candidate for a state Senate nomination in the 2020 Republican primary, initiated a civil action against candidates against whom he had run in the primary and run-off elections, political consultants, some members of the South Carolina House of Representatives, Waccamaw Publishers, Inc., (Waccamaw) and its reporter Christian Boschult (Boschult). Boschult reported and wrote a profile of appellant in advance of the run-off election. The profile was published by Waccamaw in its newspaper, *Myrtle Beach Herald*, and online on its website. Appellant’s initial complaint included claims against Waccamaw and Boschult for invasion of privacy, defamation, civil conspiracy, intentional infliction of emotional distress, and

violation of campaign practices. Appellant filed an Amended Complaint adding parties and withdrawing the invasion of privacy claim.

Pursuant to a court order not a part of the appeal or this motion, appellant's claims against Waccamaw and Boschult were severed from the claims against the other defendants and the action against Waccamaw and Boschult proceeded independently of the action against the remaining defendants. Appellant has noticed an appeal from four orders which are discussed below.

Order filed December 8, 2021. Waccamaw and Boschult moved pursuant to Rule 12(b)(6), SCRCF to dismiss appellant's civil conspiracy claim contained in the Amended Complaint. Judge William Keesley denied the motion to dismiss but on August 3, 2021, ordered "plaintiff to re-plead his Complaint and have it filed and served within 30 days." Appellant failed to comply with Judge Keesley's order, and Waccamaw and Boschult moved to dismiss the civil conspiracy claim for appellant's failure to comply with the order of August 3, 2021. In an order filed on December 8, 2021, Judge Benjamin H. Culbertson dismissed the civil conspiracy claim pursuant to Rule 41(b), SCRCF based on appellant's failure to comply with the previous order.

Under the provisions of Rule 203, SCRCF and Section 14-3-330 of the South Carolina Code appellant had two options upon receipt of notice of the filing of the order of December 8, 2021, dismissing the civil conspiracy claim. Appellant could have filed a motion under Rule 59, SCRCF seeking relief from the order, or doing nothing until an appeal at the conclusion of the case where the dismissal of the civil conspiracy claim could be combined with any other ground for appeal that existed.

Order filed April 3, 2023. Following detailed discovery Waccamaw and Boschult moved for summary judgment in their favor. At the hearing on the motion for summary judgment counsel for appellant voluntarily dismissed the claim for intentional infliction of emotional distress and acknowledged that the campaign practices allegations did not concern Waccamaw and Boschult. The narrowing of issues left only the defamation claim before the court. The order of April 3, 2023, granted summary judgment in favor of Waccamaw and Boschult on grounds that appellant, a public figure as a consequence of his candidacy for public office, could not meet his elevated burden of proof imposed on public figure defamation plaintiffs by the decision of the United States Supreme Court in the case of *New York Times, Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), and by the Supreme Court of South Carolina in its opinion in *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

Appellant had four options available upon receipt of notice of the filing of the order of April 3, 2023, which granted summary judgment to Waccamaw and Boschult: 1. appellant could have filed motions under Rules 50, 52 or 59, SCRCF to seek reconsideration of the grant of summary judgment; 2. appellant could have filed an appeal combining in the appeal the order dismissing the civil conspiracy claim and the order granting summary judgment; 3. appellant could have filed an appeal challenging only the grant of summary judgment; or 4. appellant could have done nothing, allowing the order of April 3, 2023, to become final. Appellant chose the fourth option and did nothing. Appellant filed no motions pursuant to Rules 50, 52, 59, SCRCF following receipt of notice of the filing of the order of April 3, 2023, and more significantly failed to file a notice of appeal within thirty (30) days of receipt of notice of the filing of the April 3, 2023, order.

Orders of December 16, 2024, and June 4, 2025. The order of December 16, 2024, imposed sanctions on appellant and his attorney pursuant to Section 15-36-10 of the South Carolina Code of Laws. Appellant timely filed a motion for reconsideration of the December 16, 2024, order. Appellant's motion for reconsideration was denied by an order filed June 4, 2025. Appellant timely filed a notice of appeal regarding the orders of December 16, 2024, and June 4, 2025. Respondent's motion to dismiss addresses only the orders of December 8, 2021, and April 3, 2023, on grounds that appellant's failure to file any of the motions enumerated in Rule 203, SCACR or to file a notice of appeal within thirty (30) days of the receipt of notice of the filing of the April 3, 2023, order deprives this court of jurisdiction with respect to the orders of December 8, 2021, and April 3, 2023.

### **ARGUMENT**

Appellant's failure to file motions under Rules 50, 52 or 59, SCRCPP with respect to the orders of December 8, 2021, and April 3, 2023, renders his June 30, 2025, notice of appeal untimely as to those orders. The Supreme Court of South Carolina held in its decision in *Overland v. Nance*, 423 S.C. 253, 815 S.E.2d (2018) that a party failing to file a motion under Rule 59(e), SCRCPP has only the option of filing an appeal within the thirty (30) days allowed for an appeal following notice of entry of an order or judgment, stating, 815 S.E.2d at 433:

The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment and the aggrieved party's only recourse is to file a notice of intent to appeal.

The time established for filing an appeal from a circuit court order or judgment in the circumstance described by the South Carolina Supreme Court holding in *Overland, supra*, is "within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(b)(1), SCACR.

A motion filed under Rules 50 and 52, as well as under Rule 59 stays, or tolls, the running of the period for filing an appeal until receipt of written notice of the order granting or denying the motion. Rule 203(b)(1), SCACR. Appellant's failure to file any motion with respect to the orders of December 8, 2021, and April 3, 2023, meant that the time for filing an appeal from those orders expired thirty (30) days following receipt of written notice of the orders. In this case because notice of electronic filing of orders and judgments is sent contemporaneously by the clerk of court to counsel, appellant had only until May 3, 2023, to file an appeal of the order granting summary judgment. Under the provisions of S.C. Code Ann. (1976) §14-3-330(1) appellant could have combined an appeal of the December 8, 2021, order with a timely appeal of the April 3, 2023, order, but appellant filed no appeal from either of those orders until the attempted appeal on June 30, 2025, more than two years after the time for appeal had expired. The order which granted summary judgment on April 3, 2023, became final without an appeal having been taken. Appellant seeks to disguise his failure to appeal the decision disposing of the merits of his claim by attempting to combine an untimely appeal of the order granting summary judgment with an appeal of a collateral matter separate and distinct from the decision on the merits of the claims against Waccamaw and Boschult. The failure of appellant to file a timely appeal of the order granting summary judgment to Waccamaw and Boschult deprives the appellate court of jurisdiction. Binding precedent dictates that the attempted appeal of the grant of summary judgment, and along with it the attempted appeal of the dismissal of the civil conspiracy claim, must be dismissed for want of jurisdiction in this court. *First Carolina Nat. Bank v. A & S Enterprises, Inc.*, 272 S.C. 539, 251 S.E.2d 762 (1979); *Fisher v. Teachey*, 268 S.C. 451, 234 S.E.2d 655 (1977).

Order of December 16, 2024. Following the grant of summary judgment in favor of Waccamaw and Boschult Waccamaw moved pursuant to S.C. Code Ann. (1976) § 15-36-10(C), for sanctions to be imposed against appellant and his attorney for filing and maintaining a frivolous action. Waccamaw's motion was granted and sanctions were imposed on appellant and his attorney by an order filed December 16, 2024. Appellant filed a motion for reconsideration of the order awarding sanctions. That motion was timely filed. On June 4, 2025, appellant's motion for reconsideration of the award of sanctions was denied in an order filed that date.

The only orders for which a timely notice of appeal has been filed are the orders of December 16, 2024, and June 4, 2025, regarding the imposition of sanctions.

Appellant is proceeding under the mistaken notion that the action taken by respondent seeking to recover costs and attorney fees following the grant of summary judgment in some way obviates the requirements of Rule 203, SCACR that unless a motion is filed under Rules 50, 52 or 59, SCRCPC an appeal must be filed within thirty (30) days of receipt of written notice of the filing of the order or judgment from which an appeal is taken. Appellant's notion that respondent's motion for sanctions tolled the time for appellant to file an appeal from the grant of summary judgment against him is erroneous for two reasons. First, a motion for sanctions pursuant to Section 15-36-10(C) of the South Carolina Code is not in the class of motions enumerated in Rule 203(b)(1) which toll the running of the time for filing an appeal, and second, appellant was not an "aggrieved party" with respect to the imposition of sanctions until they were ordered on December 16, 2024. No action taken by respondent following the grant of summary judgment on April 3, 2023, enlarged the time for appellant to take steps to seek reconsideration of that order or file an appeal from that order. The grant of summary judgment was a decision on the merits of the claims against Waccamaw and Boschult, and without filing

one of the enumerated motions to toll the running of the time for an appeal the time for appeal lapsed without appellant filing an appeal. It is obvious from the plain language of Rule 203, SCACR that the only motions which toll the time for the filing of an appeal are those initiated by an appellant under Rules 50, 52 and 59, SCRCR. Rule 203(b), SCACR. Nothing in the language of Rule 203, SCACR even hints that respondent's filing of a collateral motion for sanctions extends the time by which an appellant must appeal from the decision on the merits of appellant's claim.

The Supreme Court of South Carolina in its opinion in *Elam v. S.C. Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), cited with approval the decision of the United States Supreme Court in *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 109 S.Ct. 987, 103 L.Ed. 2d 146 (1989), which established that motions relating to attorney fees and court costs are collateral to a decision on the merits and would not toll the time for initiating an appeal. In its opinion in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed. 2d 178 (1988), the United States Supreme Court explained that a claim for attorney fees is not part of the merits of the action to which the fees apply, noting that at common law attorney fees awarded to the prevailing party were treated as costs and not a part of the judgment on the merits in the case. This common law concept that the award of attorney fees and costs is collateral to the merits of a case is consistent with Section 15-36-10(G)(1) of the South Carolina Code which provides that sanctions may include "the reasonable costs and attorney's fees of the prevailing party."

Waccamaw sought, and was awarded, attorney fees and costs against appellant and his attorney under Section 15-36-10(C) of the South Carolina Code. That section by its very terms provides that it "...shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court rules." S.C. Code Ann. (1976) § 15-36-10(I). Nothing in the statute

suggests that a prevailing party's motion for sanctions in any way tolls the time for an appellant to file an appeal from a decision on the merits of the case. Appellant's appeal is timely only with respect to the imposition of sanctions, and untimely with respect to the orders disposing of appellant's claim on the merits.

### CONCLUSION

The time for the filing of an appeal from the grant of summary judgment to Waccamaw and Boschult expired on May 3, 2023. In the absence of a timely appeal of that final decision on the merits of the claim this court lacks jurisdiction to consider the appeal of the orders granting summary judgment and dismissing the civil conspiracy claim. Appellant's attempt to appeal the orders of December 8, 2021, and April 3, 2023, on June 30, 2025, is untimely and should be dismissed for the reasons and upon the authorities cited above.

Respectfully submitted,

Columbia, South Carolina

July 9, 2025

S/ Jay Bender

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PROOF OF SERVICE  
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I certify that I have served respondent’s motion dismiss the appeal of the orders of December 8, 2021, and April 3, 2023, and supporting memorandum on John Gallman by depositing a copy of each in the United States Mail, postage prepaid, on July 10, 2025, addressed to his attorney of record, Tucker S. Player, 512 Village Church Dr., Chapin, SC 29210, and by transmitting electronically a copy of the documents to appellant’s attorney at [Tucker@playerlawfirm.com](mailto:Tucker@playerlawfirm.com).

July 10, 2025

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