

S.C. 211 (2018). Rule 18(a), SCRMC requires that the notice of appeal be served within thirty days after the final decision of the Magistrate.

In the instant matter, the parties agree the Magistrate executed a written order on December 4, 2024, which the parties received on that same date. Appellant did not file a motion for a new trial or a motion to reconsider, alter or amend the Magistrate's order. Thus, pursuant to Rule 18(a), SCRMC Appellant's thirty-day period began on December 4, 2024 and ended on January 3, 2025.

Appellant timely filed his "Notice of Appeal to the Circuit Court" with this Court on December 26, 2024. Respondent was served with the same on January 3, 2025. Appellant however, mailed his "Notice of Appeal to the Circuit Court" to the Magistrate. The Appellant provided documentation that his Notice of Appeal was sent to the Magistrate on December 30, 2024. Nevertheless, the Magistrate filed a Return indicating that the Magistrate was served on January 6, 2025, which was the date the Appellant's "Notice of Appeal to the Circuit Court" was received.

Respondent asserts the Magistrates' receipt of the Appellant's "Notice of Appeal to the Circuit Court" on January 6, 2025 renders it untimely and divests this Court of jurisdiction. Appellant on the other hand argues that the mailing of his "Notice of Appeal to the Circuit Court" within the prescribed timeframe renders it timely filed with the Magistrate.

In *State v. Funderburk* the Court established that service by mail of a notice of appeal from the Magistrates' Court to the Circuit Court is sufficient if it is actually received within the due time. *See State v. Funderburk*, 130 S.C. 352 (1925). However, subsequent cases have clarified that the receipt of the notice of appeal within the statutory period is crucial. In *Inabinet v. Housing Authority of City of Columbia*, the court held that evidence of mailing within the statutory period, absent evidence of receipt by the Magistrate, was insufficient to show substantial compliance with

the statute requiring service of notice of appeal within ten days after the magistrate's judgment. *See Inabinet v. Housing Authority of City of Columbia*, 270 S.C. 509 (1978). Similarly, in *State v. Gandy*, the court dismissed an appeal where the notice and grounds of appeal were mailed but not received by the magistrate until after the statutory period had expired. *See State v. Gandy*, 87 S.C. 523 (1911).

The requirement of timely service of the notice of appeal is jurisdictional. If the notice of appeal is not served within the prescribed timeframe, the appellate court lacks jurisdiction to consider the appeal. This principle was reinforced in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015), where the court dismissed an appeal because the notice of appeal was served more than thirty days after receipt of written notice of entry of the order. *See id.* The court emphasized that the requirement of service of the notice of appeal is jurisdictional and cannot be extended or ignored.

Based on this Court's review of the controlling caselaw, this Court must find that an appeal from Magistrates' Court to Circuit Court is not considered timely filed if the Notice of Appeal is received by the Magistrate after the thirty-day timeframe, even if it was timely mailed. Rule 18(a), SCRMC, requires that the Magistrate receive it within the due timeframe. The jurisdictional requirement of Rule 18(a), SCRMC, mandates that the notice must be received within the statutory period to be considered timely. *See Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015).

Respondent's motion is granted. Appellant's appeal is dismissed as untimely.

AND IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.



Greenville Common Pleas

Case Caption: Joshua Hawkins VS Delta Air Lines Inc

Case Number: 2024CP2307485

Type: Order/Other

So Ordered

Jessica A. Salvini