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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

John Gallman.....Appellant

v.

Waccamaw Publishers, Inc.....Respondent

RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO 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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STATEMENT

An order filed December 8, 2021, dismissed appellant's claim for civil conspiracy on grounds that appellant had failed to comply in a timely manner with an order to amend his complaint to allege properly the elements of the cause of action. The December 8, 2021, order was final in that it fixed appellant's rights regarding his civil conspiracy claim. The claim was dismissed. As a consequence of the dismissal, appellant could not recover damages on this claim. Nothing further was required of the court in the context of the civil conspiracy claim.

An order filed April 3, 2023, granted respondent's motion for summary judgment on appellant's sole remaining claim, to wit: libel. The claim was dismissed. As a consequence of the grant of summary judgment, appellant could not recover damages on this claim. This order was final in that it fixed appellant's rights regarding his libel claim. Nothing further was required of the court in the context of the libel claim.

Appellant filed no motions regarding the dismissal of the civil conspiracy claim or the grant of summary judgment in respondent's favor and did not file an appeal from either order until he attempted to appeal these orders on June 30, 2025. The attempt to appeal these orders is untimely. Respondent has moved to dismiss the attempted appeal on grounds that this court lacks subject matter jurisdiction due to the untimeliness of the attempted appeal.

Appellant seeks to excuse his failure to timely file an appeal by asserting without authority that respondent's motion for sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§15-36-10, *et seq.*, (SCFCPS) negated the jurisdictional appeal deadline established by Rule 203(b), SCACR. Appellant also argues without citation of authority that respondent's motion for sanctions under the SCFCPS should be

treated as a motion for sanctions under Rule 11, SCRCP. Respondent did not invoke Rule 11, and that rule is irrelevant to issues before this court.

Finally, and certainly frivolously, appellant argues on the fourth, but unnumbered page, of his response, that because his action continued against other defendants independently of his action against respondent following the severance of the claims against respondent from the claims against other defendants, the orders dismissing the civil conspiracy claim and granting summary judgment to respondent were not final orders.

QUESTIONS PRESENTED

1. Were the orders of December 8, 2021, and April 3, 2003, final in the sense that they left nothing further for determination by the court with respect to appellant's claims?
2. Was respondent's filing of a motion for costs and attorney fees as sanctions to be treated as a motion under Rule 59(e), SCRCP filed by appellant so as to toll the jurisdictional deadline established by Rule 203(b), SCACR?
3. Is appellant's argument that the orders of December 8, 2021, and April 3, 2003, were not final because his claims remain against other parties frivolous?
4. Should the appeal of the orders of December 8, 2021, and April 3, 2003, be dismissed as untimely?

ARGUMENT

1. An order is final if it fixes the rights of the parties leaving no further action by the court necessary.

Whether an order or judgment is final determines if a particular order is ripe for an appeal. This court held in its decision in *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194,

544 S.E.2d 38 (Ct. App. 2001) that a grant of summary judgment is a final order because it fixes the rights of the parties to the extent no further action is required by the court.

In the present matter a dismissal of the claim for civil conspiracy and the grant of summary judgment determined that appellant had no right to recover damages from respondent. Appellant's rights with respect to these claims were fixed. Nothing further was required by the court regarding appellant's rights. These orders were final thus commencing the limited period appellant had to move to amend the orders or file an appeal.

As the Supreme Court of South Carolina held in *Overland v. Nance,* 423 S.C. 253, 815 S.E.2d 431at 433 (2018), the failure of an aggrieved party to file a motion to alter or amend a judgment or order under Rule 59(e), SCRCP converts the order into a final judgment, "and the aggrieved party's only recourse is to file a notice of intent to appeal." Absent a motion pursuant to Rule 59(e), SCRCP, or under Rules 50 and 52, SCRCP, appellant's only recourse was to file an appeal within thirty (30) days of notice of the filing of the orders. Appellant made no effort to appeal either of these final orders until more than two years after he received notice of their entry.

2. **Having failed to file a motion that would toll the time for an appeal or timely filing a notice of appeal from the orders of December 8, 2021, and April 3, 2023, appellant seeks to excuse this failure by claiming that respondent's motion for sanctions tolled his time to file an appeal.**

Appellant commences his argument that respondent's motion for sanctions tolled the time for his filing an appeal by stating incorrectly that a motion for sanctions under the SCFCPS must be filed within thirty (30) days of notice of the filing of the grant of summary judgment. The act itself contains no deadline, and as this court held in *Pittman*

v. Republic Leasing Co., 351 S.C. 429, 570 S.E.2d 187 at 190 (Ct. App. 2002), "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."

Next appellant asserts with no citation of authority that "the determination of whether sanctions are proper is inexorably tied to whether the grant of summary judgment was proper." (unnumbered page 2). This bald assertion is entirely inconsistent with both the standard for summary judgment and sanctions under the SCFCPS. As the Supreme Court of South Carolina explained in *Russell v. Wachovia bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722 (2006) at 727:

> Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.
> ***The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. [citation omitted].

The standard for granting summary judgment differs significantly from the statutory standard for imposing sanctions: S.C. Code Ann. § 15-36-10(C):

> (1) At the conclusion of the trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the courts finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:
>
> (a) A reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law:
>
> (b) A reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) A reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

The focus at the summary judgment stage in this case was on the existence or absence of undisputed facts appellant could prove to meet his burden of proof. In stark contrast a motion for sanctions shifts the focus away from the existence or absence of undisputed facts to the state of knowledge of the law or facts known to a reasonable attorney in the same circumstances. The grant of summary judgment in favor of respondent is relevant only as the threshold for the imposition of sanctions. Had appellant survived the summary judgment motion there would have been no motion for sanctions. *Hanahan v. Simpson,* 326 S.C. 140, 485 S.E.2d 903 (1997); *Pittman, supra.* The imposition of sanctions will be considered on the statutory standard independent of the propriety of the grant of summary judgment or the dismissal of the civil conspiracy claim.

3. **Appellant advances the frivolous argument that his failure to file a timely appeal of the orders of December 8, 2021, and April 3, 2023, should be excused because he has claims remaining against others under the case number assigned at the commencement of the litigation.**

Respondent moved to sever claims against it and its employee from claims against other defendants on grounds of misjoinder of parties. This motion was granted under Rule 21, SCRCP, which provides, " Any claim against a party may be severed and proceeded with separately." While it is true that no new file number was assigned following severance[1] that administrative issue had no bearing on appellant's claims against respondent and its employee. The claims

[1] Rule 79(b)(1), SCRCP, requires a civil action number to be assigned when the summons and complaint are filed. It makes no provision for a new number when a misjoinder of parties is cured by a severance order.

against respondent and its employee proceeded separately and completely independently of appellant's claims against other defendants.

On unnumbered page four of his response appellant makes the absurd and frivolous claim that because no new case number was assigned after the severance of the claims against respondent from the claims against others, the orders of December 8, 2021, and April 3, 2023 are not final, stating:

> "Waccamaw remained a Defendant under the same case number 2021CP26601096, Therefore, the notice of appeal for the two previous orders of dismissal was timely and this court has jurisdiction to hear the appeal."

A change in the case number, or the continued use of the originally assigned case number, has no bearing on the finality of the orders dismissing appellant's claims against respondent. The absence of authority supporting appellant's baseless argument paints the proposition as desperation.

4. **A motion for sanctions is collateral to any decision on the merits of a claim and cannot be considered a substitute for one of the motions specified in Rule 203(b)(1), SCACR that toll the time for the filing of an appeal. The attempt to appeal the orders of December 8, 2021, and April 3, 2023, is untimely. The appeal of these orders should be dismissed.**

A motion that does not involve a reconsideration of a decision of the merits of appellant's claims is deemed collateral to the disposition of the case on the merits and will not toll the time for appeal. The Supreme Court of South Carolina endorsed the analysis by the United States Supreme Court that collateral issues do not toll the time for appeal. The Supreme Court of South Carolina adopted the statement that "motions relating to attorney's fees and case costs are deemed collateral issues, thus such motions did not toll the time for appeal." *Elam v. S.C.*

D.O.T.,361 S.C. 9, 602 S.E.2d 772 (2004), quoting *Osterneck v. Ernst & Whinney,* 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989). Respondent's motion for sanctions was collateral to the decisions on the merits of appellant's claims against respondent and did not toll the time for the appeal from the orders of December 8, 2021, and April 3, 2023. Appellant's attempted appeal of these orders was untimely and the appeal should be dismissed as to those orders.

CONCLUSION

For the reasons and upon the authorities cited above and in respondent's memorandum previously filed, appellant's appeal of the orders of December 8, 2021, and April 3, 2023 should be dismissed.

Columbia, South Carolina

July 30, 2025

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PROOF OF SERVICE

I certify that I have served respondent's reply to appellant's response to motion dismiss the appeal of the orders of December 8, 2021, and April 3, 2023, on John Gallman by depositing a copy of each in the United States Mail, postage prepaid, on July 30, 2025, addressed to his attorney of record, Tucker S. Player, 512 Village Church Dr., Chapin, SC 29036, and by transmitting electronically a copy of the documents to appellant's attorney at Tucker@playerlawfirm.com.

July 30, 2025

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