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THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM HORRY COUNTY

Cynthia Graham Howe, Master-in-Equity

Case No. 2002-CP-26-1706

RECEIVED

NOV 15 2013

SC Court of Appeals

Ned Gregory, Jr.,Plaintiff/Respondent,

v.

Howell Jackson Gregory.....Defendant/Appellant.

**MOTION TO DISMISS
WITH SUPPORTING AUTHORITIES**

H. Jackson Gregory
Post Office Box 7111
Myrtle Beach, South Carolina 29572-0006
(843) 222- 4800
Pro Se Appellant

Palmer Freeman
Post Office Box 8024
Columbia, South Carolina 29202
(803) 799-9400
Attorney for Ned Gregory Jr., Respondent

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUSTICES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

For reasons given below, Respondent moves to dismiss Appellant's appeal as untimely.

BACKGROUND:

Judgment was entered against Howell Jackson Gregory in favor of Ned Gregory by Horry County Master-in-Equity Stanton Cross on April 26, 2006. On September 12, 2012, Howell Jackson Gregory moved to amend the judgment. The current Horry County Master-in-Equity, Cynthia Howe, denied that motion on March 4, 2013. (A copy of the order was filed by Appellant.)

Appellant filed a Rule 59, SCRPC motion. On May 15, 2013, Judge Howe issued an order reducing the amount of the judgment against Appellant. (A copy of the order was filed by Appellant.) On July 1, 2013, Appellant filed a second Rule 59 motion with Judge Howe. In it, he sought a further reduction of the judgment against him. That motion was denied on October 17, 2013. (A copy of the order was filed by Appellant.) In early November, 2013, Howell Jackson Gregory filed this appeal.

ARGUMENT:

This Appeal was filed late and should be dismissed.

Rule 203 (b) (1), SCRAP, requires an appeal be filed within 30 days "after receipt of written notice of entry of the order or judgment." If a Rule 59 motion is filed, the 30 days begins after notice of entry of judgment, Rule 203 (b)(1), SCRAP.

A second Rule 59 motion however, does not stay the 30 day filing requirement. *Quality Trailer Products v. CSL Equipment Co.*, 349 S.C. 216, 562 S.E.2d 615 (2002), *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

An exception is made if the second Rule 59 motion challenges something new in the Court's last opinion. That is not the case here. Judge Howe's October 17, 2013 Order at pp. 2, 3 states it clearly:

Defendant's most recent Rule 59 motion does not challenge the change to the judgment made in the May 15, 2013 order. Indeed that change was in Defendant's favor. Instead Defendant's July 1, 2013 motion seeks for a third time, a reduction of the 2006 judgment. (Order of October 17, 2013, pp 2, 3. Copy attached to Appellant's Notice.)

Appellant's 30 days began to run when he received notice of entry of the May 15, 2013 judgment. It expired well before early November, 2013 when this Notice of Appeal was filed.

The Appellant's appeal should be dismissed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Palmer Freeman", written over a horizontal line.

Palmer Freeman
P. O. Box 8024
Columbia, South Carolina 29201
(803) 799-9400
Attorney for Respondent

November 15, 2013

THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM HORRY COUNTY

J. Stanton Cross, Jr., Master-In-Equity
Cynthia Graham Howe, Master-In-Equity

Case No. 2002-CP-26-1706

Ned Gregory, Jr.,Plaintiff/Respondent,

v.

Howell Jackson Gregory.....Defendant/Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss with Supporting Authorities on Howell Jackson Gregory by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2013, addressed to Howell Jackson Gregory, Post Office Box 7111, Myrtle Beach, South Carolina 29572-0006.

November 15, 2013



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HAND-DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Ned Gregory, Jr. vs. Howell Jackson Gregory
Horry County Case No. 2002-CP-26-1706

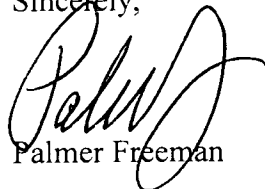
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's Motion to Dismiss with Supporting Authorities and Proof of Service in the above-captioned matter. Also enclosed is the \$25.00 filing fee. If time permits, I would appreciate your returning a file-stamped copy of the Motion to my runner. Otherwise, please return it to my office in the stamped, self-addressed envelope provided.

Thank you for your assistance in this matter. Should you have any questions or require anything further, please do not hesitate to contact me.

With highest regards, I am,

Sincerely,



Palmer Freeman

PF/cbd

Enclosures

cc H. Jackson Gregory
Ned Gregory, Jr.