THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
In the Court of Common Pleas

Doyet A. Early, III, Presiding Judge

Case No. 2013-001909

William R. Ferrara ..... Appellant,

v.

Michael E. Hunt, Sheriff of Aiken County; Aiken County Sheriff's Department; Charles Cain in his individual capacity as Deputy Sheriff; and Aiken County Sheriff's Department ..... Respondents.

INITIAL BRIEF OF RESPONDENT CAIN

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STATEMENT OF THE CASE

This matter involves only Appellant's malicious prosecution claim against Respondent Cain, a deputy of the Sheriff of Aiken County. Contrary to Appellant's brief, this respondent is only Deputy Charles Cain. Appellant's references in his brief to the Aiken County Sheriff's Department as a respondent in this appeal are misplaced as the Order appealed from the Circuit Court only addresses Deputy Charles Cain's dismissal.

This matter was originally filed in the Aiken County Court of Common Pleas by Appellant alleging various causes of action against Respondent Cain, Sheriff Hunt, and other individuals and entities. The matter was removed to the United States District Court for the District of South Carolina by one or more defendants based upon the Court's federal question jurisdiction.

Subsequent to removal, several defendants were dismissed from the case leaving Respondent Cain and Sheriff Hunt. Both Respondent Cain and Sheriff Hunt filed motions for summary judgment in the United States District Court.

United States District Court Judge Richard M. Gergel issued an order addressing Respondent's motion for summary judgment. Judge Gergel found probable cause existed for the issuance of warrants charging Appellant with multiple criminal violations. As such, Judge Gergel dismissed the federal causes of action with prejudice and declined to exercise supplemental jurisdiction over the remaining State law claims. As such, Judge Gergel remanded two specific remaining causes of action back to the Aiken County Court of Common Pleas. These two claims consisted of a single claim of malicious prosecution against Respondent Cain

and a parallel claim against Sheriff Hunt for both malicious prosecution and defamation. Appellant did not file any motions or appeals in regard to Judge Gergel's order.

Both Respondent Cain and Sheriff Hunt filed similar motions for summary judgment in the Aiken County Court of Common Pleas. These motions were heard by The Honorable Doyet A. Early, III. In separate orders, Judge Early granted summary judgment to both Respondent Cain and Sheriff Hunt. Judge Early's order in regard to Respondent Cain was issued on May 16, 2013 and sent by the Clerk of Court on the same date to counsel for all parties. Additionally, Judge Early's clerk sent electronic notification of the issuance of the Order to both Respondent and Appellant's counsel on May 16, 2013. Judge Early's clerk again emailed notification to counsel on May 17, 2013.

Appellant did not file any Rule 59(e) motions but instead filed the instant appeal as well as a parallel appeal regarding the dismissal of the claims against Sheriff Hunt. *See* Ferrara v. Hunt, Case No. 2013-000826. No motion to consolidate these appeals has been filed.

STATEMENT OF FACTS

This matter arises as a result of the arrest and prosecution of Appellant for various sex crimes within Aiken County, South Carolina during 2006. On July 12, 2006, Kari Driggers contacted the Aiken County Sheriff's Office regarding her victimization at the hands of Appellant. Deputy Stuart Johnson responded to Driggers residence and took a report and written statement from her as the crime victim. In that original statement from July 12, 2006, Driggers described the way in which she had been victimized by Appellant. As a result of this initial report and written statement, Respondent Cain was assigned to conduct a follow-up interview of the victim.

On July 13, 2006, Respondent Cain interviewed Driggers and obtained a second statement from her regarding the acts she was subjected to by Appellant. Respondent Cain also obtained a statement from one of Driggers' neighbors, Billy Cook, who stated that Appellant was constantly asking whether he had seen Driggers. As a result of a report and statements filed by the victim, Kari Driggers, and after consultation with the Solicitor's office, Respondent Cain sought several arrest warrants and one search warrant related to Appellant's alleged conduct. Aiken County Magistrate Judge Patrick Sullivan was presented with Respondent Cain's investigation and information known to Respondent Cain at the time. Based on this information, Judge Sullivan found probable cause for Plaintiff's arrest and the requested search warrant. Judge Sullivan issued the warrants on July 13, 2006. Appellant was subsequently arrested the same day at his criminal defense attorney's office.

On October 11, 2006, Appellant received a preliminary hearing in the criminal matter. *See Respondent Cain's Motion for Summary Judgment, Preliminary Hearing Transcript.* At that hearing, the Aiken County Solicitor's Office presented the evidence to Aiken County Magistrate Judge Lynn. Appellant's criminal defense counsel was able to not only cross-examine the evidence but also made motions and arguments to Judge Lynn in an attempt to have the court find an absence of probable cause for the arrest. However, Judge Lynn found probable cause existed for several of the offenses and bound them over for presentment to the Grand Jury.

On November 28, 2007, Appellant received a second preliminary hearing in regard to the charges of solicitation of prostitution. *See Respondent Cain's Motion for Summary Judgment, Preliminary Hearing Transcript.* Again, Appellant was represented by his criminal defense counsel and allowed to cross-examine the State's evidence and move the Court to find an absence of probable cause. Again, the Court found probable cause existed and bound the charge over for presentment to the Grand Jury.

On or about October 17, 2008, the charges against Appellant were *nolle prosequied* by the outgoing Aiken County Solicitor. Appellant brought the instant suit in the South Carolina State Court of Common Pleas on July 1, 2009. The Complaint was removed to the United States Court for the District of South Carolina on August 9, 2009.

Through various motions, Appellant's Complaint and causes of action were reduced to the first cause of action for false arrest pursuant to 42 U.S.C. § 1983, the second cause of action for malicious prosecution pursuant to the South Carolina Tort Claims Act, the third cause of action for malicious prosecution pursuant to 42 U.S.C. § 1983, the eighth cause of action for false arrest pursuant to 42 U.S.C. § 1983, the ninth cause of action for a § 1983 conspiracy to

violate the Fourth Amendment, the tenth cause of action for obstruction of justice pursuant to § 1985(2), the twelfth cause of action for conspiracy pursuant to § 1985(3), and the nineteenth cause of action pursuant to 42 U.S.C. § 1983 for an unlawful search.

At the hearing before Judge Gergel, Appellant's counsel made the same arguments regarding the arrest warrants as were subsequently made before Judge Early and are now being presented to this Court. Judge Gergel rejected Appellant's arguments and found sufficient probable cause existed to justify Appellant's arrest. *See Ferrara v. Hunt, et al*, C/A # 0:09-2112, ECF Entry # 166 attached to Respondent's Motion for Summary Judgment. Judge Gergel dismissed all of the remaining federal causes of action including the third cause of action for malicious prosecution pursuant to 42 U.S.C. § 1983. Judge Gergel declined to exercise supplemental jurisdiction and remanded the two remaining state law causes of action to the Aiken County Court of Common Pleas.

Subsequent to the remand of the two remaining causes of action, Respondent Cain filed a motion for summary judgment in the Aiken County Court of Common Pleas. Judge Early held a thorough hearing on Respondent's motion for summary judgment and found, in a comprehensive order, that Appellant's claims against Respondent for malicious prosecution were barred by the parallel doctrines of collateral estoppel and *res judicata*. Judge Early also made an independent finding of probable cause for Appellant's arrest. Further, Judge Early found that Appellant failed to offer evidence in the record sufficient to prove the absence of probable cause as would be necessary to demonstrate the elements of malicious prosecution. Judge Early also found there was no evidence of actual fraud, actual malice, or an intent to harm necessary to remove Respondent Cain from the protections of the South Carolina Tort Claims Act. Judge Early issued

his order in regard to Respondent Cain on May 16, 2013. The Order was filed with the Aiken County Clerk of Court on the same date. Judge Early's law clerk, Adam C. Ness emailed counsel on both May 16 and May 17, 2013 notifying them of the execution and filing of the Order.

ARGUMENTS

I. The Circuit Court correctly dismissed Appellant's malicious prosecution claim against Respondent Cain where the record before the Court amply demonstrated facts sufficient to establish probable cause and Appellant failed to offer proof in the record of the absence of probable cause.

Circuit Court Judge Doyet A. Early, III granted summary judgment to Respondent Cain on the Appellant's malicious prosecution claim after concluding both that probable cause for Appellant's arrest existed as a matter of law and that Appellant had failed to establish evidence of the absence of probable cause in the record.

The standard to determine the lawfulness of an arrest is whether probable cause existed. *Park v. Shiflett*, 250 F.3d 843 (4th Cir. 2001).[1] When a court examines the existence of probable cause, it will "examine the totality of the circumstances known to the officer at the time of the arrest." *Taylor v. Waters*, 81 F.3d 429, 434 (4th Cir. 1996)(citations omitted). In order to show probable cause, there only needs to be "enough evidence to warrant the belief of a reasonable officer that an offense has been or is being committed." Id. "Probable cause requires more than bare suspicion but requires less than evidence necessary to convict." *Porterfield v. Lott*, 156 F.3d 563, 569 (4th Cir. 1998); *Jackson v. City of Abbeville*, 366 S.C. 662. 623 S.E.2d 656 (Ct.App. 2005).

"Probable cause to justify an arrest arises when 'facts and circumstances within the officer's knowledge ... are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing or is

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[1] It is important to note that Appellant bears the burden of proof and must demonstrate proof of the absence of probable cause in order to proceed on his claim against Respondent Cain.

about to commit an offense'" *Porterfield v. Lott*, 156 F.3d 563, 569 (4th Cir. 1998), quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979). Probable cause is something less than proof beyond a reasonable doubt necessary to support a conviction. *Porterfield, supra* citing *U.S. v. Gray*, 137 F.3d 765, 769 (4th Cir. 1998). Determination of the existence of probable cause is an objective standard which requires consideration "of all of the surrounding circumstances ...." *Id.*

In order to prove an absence of probable cause, the Plaintiff "must allege a set of facts which made it unjustifiable for a reasonable officer to conclude" the Plaintiff was involved in the charged offense. *Brown v. Gilmore*, 278 F.3d 362 (4th Cir. 2002). To make the probable cause determination, the Court should consider "the suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct." *Gantt v. Whitaker*, 57 Fed.Appx. 141 (4th Cir. 2003)(unpublished opinion) citing *Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992). "[T]he determination and existence of probable cause is a 'practical, nontechnical conception,' and it involves 'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.,'" *Brinegar v. United States,* 338 U.S. 160, 175-76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). "Furthermore, in determining whether probable cause exists, the evidence 'must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" *Illinois v. Gates,* 462 U.S. 213, 232, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *Gomez v. Atkins*, 296 F.3d 253 (4th Cir. 2002).

Where Plaintiff alleges a flaw in the warrant affidavit, he "must show that each officer 'deliberately or with a reckless disregard for the truth made material false statements in his

affidavit or omitted from that affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made the affidavit misleading.'" *Matthews v. Thomas*, 09-1932 (4th Cir. 2010) (unpublished) quoting *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007). According to the *Miller* court, the term "[r]eckless disregard requires a showing that an officer, in light of all of the evidence, had 'serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." *Id.* Insofar as a Appellant alleges the omission of information from the warrant affidavit, he "must establish that the officer failed to inform the magistrate of facts that the officer *knew* would negate a finding of probable cause." *Id.* Further, "the false statements or omissions must be material, that is, necessary to the neutral and disinterested magistrate's finding of probable cause." *Id.* at 628.

Critically, the mere *nolle prosequi* by the solicitor does not infer or establish a want of probable cause. *White v. Coleman*, 277 F.Supp. 292, 299 (D.S.C.1967).

In this appeal, Appellant contends, just as he has done throughout the course of the criminal charges and this civil litigation, that the victim, Kari Driggers, was not a reliable **informant** and cites to *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983), as authority to require corroborative evidence prior to an arrest. (emphasis added). Appellant's consistent use of this case as authority for his contention there is some requirement of corroborative facts prior to

the existence of probable cause is at the very least misguided.[2] A plain reading of the *Gates* case shows that it involves anonymous reporting of suspicious criminal activity through an unknown **informant**, not a first-person victim of a crime. In fact, Appellant's brief and his pleadings throughout this case refer to the victim as an informant. As the prior Courts that have addressed this matter in the criminal prosecution, the Federal civil case, and the instant decision from the Circuit Court have noted, the statements used to establish probable cause were made by the victim, not an anonymous informant. Therefore, the Gates case is wholly inapplicable to the instant litigation.

In fact, Appellant fails to cite to any case that requires a crime victim's statements to be corroborated prior to meeting the threshold of probable cause. This failure is axiomatic given that the best evidence in criminal prosecutions typically comes from the victim of the crime. *See* Note 2, *supra*. Further, the South Carolina legislature has recognized that victims of sexual crimes need not have corroborative physical evidence in order to form sufficient probable cause for an arrest. *See* S.C. Code Ann. § 16-3-657.

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[2] Appellant made the same exact arguments before the Federal Court. Judge Gergel's order of March 28, 2012, and Judge Gossett's preceding Report and Recommendation, correctly notes that the use of *Gates* is misplaced and cites to extensive case law establishing that the crime victim's statements are sufficient to establish probable cause. *McKinney v. Richland County Sheriff's Dept.*, 431 F.3d 415, 418 (4th Cir. 2005); *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991); *Beauchamp v. City of Noblesville, Inc.*, 320 F.3d 733, 743 (7th Cir. 2005); *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 439 (7th Cir. 1986); *Singer v. Fulton County Sheriff*, 63 F.3d 110, 119 (2d Cir. 1995); *Maron v. County of Albany*, 166 Fed. Appx. 540, 542 (2d Cir. 2006); *Koester v. Lanfranchi*, 288 Fed. Appx. 764, 766 (2d Cir. 2008).

II. The Circuit Court correctly held that Appellant's claim of malicious prosecution were precluded by the prior judicial findings that probable cause existed for Appellant's arrest.

Circuit Court Judge Doyet A. Early, III, granted Respondent Cain's motion for summary judgment on multiple grounds. In addition to making an independent finding of probable cause for Appellant's arrest, Judge Early correctly found that multiple prior judicial determinations of the probable cause issue acted as a bar to the current litigation.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal Inc., v. S.C. Dept. of Transportation*, 684 S.E.2d 779, 782 385 S.C. 550 (Ct. App. 2009), *citing Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal*, *supra* citing *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189-90 n. 1 (Ct.App.1984).

As discussed herein, the record in this matter demonstrates that probable cause was established as a matter of law when Aiken County Magistrate Judge Sullivan issued the arrest warrants and search warrant. Probable cause was again determined during Appellant's contested preliminary hearing before Magistrate Judge Lynn on October 11, 2006. This issue was again decided when Appellant requested and received a second preliminary hearing on November 28, 2007 wherein his criminal defense counsel again moved to dismiss the charges based on a lack of

probable cause. Judge Lynn again denied the motion and found sufficient probable cause to bind the case over for the Grand Jury.

The probable cause issue was again decided against Appellant in this civil suit in the Federal Court. After extensive discovery and submission of memoranda and exhibits by both Respondent Cain and Appellant, United States District Court Magistrate Judge Paige J. Gossett found sufficient probable cause for Appellant's arrest. United States District Court Judge Gergel then held a hearing on the pending summary judgment motions. At that hearing, after extensive oral argument by counsel for both Appellant and Respondent, Judge Gergel again made a judicial determination that probable cause existed as a matter of law for Appellant's arrest and granted summary judgment dismissing all of Appellant's federal claims, including § 1983 claims for malicious prosecution. Review of the Order shows that Judge Gergel found "that [Respondent] Cain had probable cause for the arrest of [Appellant] based upon the multiple consistent written and oral statements of the alleged victim and the corroborating statement of the neighbor." *See Ferrara v. Hunt, et al.*, C/A # 0:09-cv-02112-RMG, Entry No. 165. In sum, there were five judicial determinations of probable cause for Appellant's arrest by four different judicial officers. Importantly, four of these five judicial determinations were in contested proceedings where Appellant's counsel argued against the existence of probable cause and lost.

It is clear from the record in this case that not only did probable cause exist for Appellant's arrest, but he has repeatedly litigated this specific issue in multiple courts and has lost each time. As discussed *supra*, the probable cause issue is critical to Appellant's sole claim of malicious prosecution against Respondent Cain. Without proof of the absence of probable cause, Appellant's claim fails as a matter of law. Because Judge Early correctly held this specific

element was previously actually litigated, directly determined, and necessary to support the prior decisions he was correct in granting summary judgment to Respondent Cain on the malicious prosecution claim.

III. Appellant's argument that Judge Gergel's order was in any way inconsistent is patently misplaced and must be rejected by this Court.

Judge Early correctly held that Judge Gergel's prior order in Federal Court found probable cause as a matter of law. There are no inconsistencies in the Order and Appellant's arguments to the contrary are both misplaced and illogical and should be rejected by this Court.

Appellant's brief attempts to argue Judge Gergel's Order was inconsistent in its findings. The argument appears to be based upon the Federal Court's discretionary decision regarding its exercise of supplemental jurisdiction. As noted by Judge Gergel within the Order, Federal Courts are granted wide discretion in exercising supplemental jurisdiction over State law claims. After finding probable cause and dismissing all of the Federal causes of action against both Respondent Cain and Sheriff Hunt, Judge Gergel opted to not address the State law claims and remanded them back to the Aiken County Court of Common Pleas. There is nothing inconsistent about the Order. Judge Gergel addressed all of the Federal causes of action, including Appellant's claim of malicious prosecution pursuant to 42 U.S.C. § 1983, and found that probable cause existed for Appellant's arrest. The probable cause standard is the same in both State and Federal jurisprudence. The difference is that Judge Gergel, sitting as a United States District Court judge, is not required to address the claims arising under State law.

Nor is this an issue of first impression for this Court to address. As discussed herein, there is no inconsistency in Judge Gergel's Order and arguments to the contrary are at the least misleading. Appellant's comparison to the law of contracts is at the least misguided. There is no comparison to the procedural issues at bar and the law of contracts, or the Uniform Commercial Code. Judge Gergel's Order granting summary judgment clearly and unequivocally found probable cause for Appellant's arrest. Judge Gergel's Order also clearly and unequivocally dismissed all of Appellant's federal causes of action. Judge Gergel then exercised his discretion to not address or comment on the State law claim of malicious prosecution against Respondent Cain. There is nothing inconsistent about Judge Gergel's decision. Furthermore, Appellant did not either move the Federal Court to reconsider its Order or file an appeal.

IV. The Circuit Court correctly held that Appellant's malicious prosecution claim against Respondent Cain was barred by the provisions of the South Carolina Tort Claims Act where he was a governmental employee acting within the course and scope of his employment and no evidence of malice existed in the record.

An additional ground for Judge Early's grant of summary judgment to Respondent Cain was the provision of the South Carolina Tort Claims Act providing immunity to a governmental employee acting within the course and scope of his employment. S.C. Code Ann., § 15-78-70. Judge Early correctly found that Respondent Cain was acting within the course and scope of his employment and that there was no evidence to show that he was acting with actual fraud, actual malice, intent to harm, or a crime involving moral turpitude such as to remove this individual cloak of immunity.

Appellant's brief argues in very conclusory manner that there are "ample facts in the record that support a finding of actual malice on the part of Respondent Cain." However, Respondent fails to identify any of these alleged facts or show how they somehow demonstrate actual malice. Instead, the record shows that Appellant's claims of malice are unsupported by anything but his own personal supposition, conjecture and speculation. Appellant's deposition testimony failed to produce any actual evidence of malice other than his supposition based upon his arrest.

V. The Appellant's appeal is not timely where the record demonstrates the Order was provided to Appellant's counsel more than thirty days prior to the filing of this appeal.

Rule 203(b)(1), SCACR, provides "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Without a timely notice of appeal, this Court lacks jurisdiction and may not hear the appeal. "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. South Carolina Dept. of Transp.*, 602 S.E.2d 772, 361 S.C. 9 (S.C. 2004).

> Any notice in writing which would convey to a losing party that judgment has been entered [i]s sufficient. A person who knows of a thing has notice thereof. Stated differently, [n]o one needs notice of what he already knows. Actual notice is synonymous with knowledge. Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him.

Upchurch v. Upchurch, 597 S.E.2d 819, 359 S.C. 254 (S.C.App. 2004), (internal quotations removed) quoting *Rosen, Rosen & Hagood v. Hiller*, 307 S.C. 331, 335, 415 S.E.2d 117, 119 (Ct.App.1992); *Hannah v. United Refrigerated Servs.*, 312 S.C. 42, 47, 430 S.E.2d 539, 541 (Ct.App.1993); *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 63 n. 6, 504 S.E. 2d 117, 122 n. 6 (1998).

In this case, the Order granting Respondent Cain's motion for summary judgment was entered by the Court on May 16, 2013. The record demonstrates that the Aiken County Clerk of Court mailed a copy of that Order to all counsel of record on May 16, 2013. Further, Judge Early's law clerk, Adam C. Ness, emailed all counsel of record on May 16, 2013 notifying counsel of the execution of the Order and its pending transmittal to the Clerk of Court on the same date. Judge Early's law clerk again emailed all counsel of record on May 17, 2013 advising that "[a]n order regarding Defendant Cain was filed yesterday with the Aiken County Clerk's office, for the above-referenced case. Please let me know if anyone has any questions." Appellant's counsel did not file the notice of appeal with this Court until August 26, 2013. Appellant's notice claims that he did not receive written notice of the entry of the order until August 20, 2013.

Appellant's notice is untimely. The record in this case demonstrates that Appellant's counsel was served by the Aiken County Clerk of Court with the Order on May 16, 2013 by transmitting the Order via U.S. Mail. It is also clear that Judge Early's law clerk emailed all counsel of record at their respective email addresses and notified them of the actual execution of the Order, the pending entry of the Order, and the actual entry of the Order in two separate emails. Clearly, Appellant's counsel had actual notice of the execution and entry of the Order.

Even if Appellant's counsel claims that he did not receive the actual paper order until August 20, 2013, he was on notice of the execution and entry of the Order on May 16 and May 17,, 2013. Appellant has not offered any justification, excuse, or affidavit to explain how ninety-six (96) days elapsed from the time counsel was notified of the execution and entry of the Order until he received the Order. Appellant also did not file a Rule 59 motion, or any other motion, in the Circuit Court to stay the running of the time for his notice of appeal. Since Appellant's notice of appeal is clearly untimely, this Court lacks jurisdiction to hear it and must dismiss the case as untimely.

CONCLUSION

Based on the foregoing discussion and analysis, Respondent Charles Cain respectfully requests that this Court affirm the order of Circuit Court Judge Doyet A. Early, III granting summary judgment to Respondent Cain on the malicious prosecution claim.

Respectfully submitted,

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