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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Frank R. Addy, Jr., Circuit Judge

Case No. 2013-CP-10-4560

Supreme Court No. 2014-002304

Norman Robert Knight,

Petitioner,

v.

Companion Property and Casualty Insurance Company of South Carolina; Robertson
Hollingsworth & Flynn Law Firm with Paul R. Rahn, as an individual & Partner,

Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

Norman Robert Knight
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Pro Se Petitioner

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This matter is before the Court on a Petition for Writ of Certiorari. Pursuant to Rule 242(f) SCACR, Respondents respectfully submit this Return to the Petition for Writ of Certiorari on the grounds that the opinion rendered by the Court of Appeals was well supported by the record and sound legal precedent, and hence, Petitioner has offered no special and important circumstances that would justify the Court's exercise of discretionary review.

STATEMENT OF THE CASE

Petitioner Norman Robert Knight ("Knight") is the principal member of a contracting company sued under the Miller Act for failure to pay one of its subcontractors. Respondents are the defendant surety company that issued the bond and its counsel. Knight filed this action *pro se* on August 5, 2013. He alleges, *inter alia*, that Respondents acted in bad faith by attempting to settle the bond claim during a recess in his deposition (a copy of the Complaint is attached as Exhibit A to Respondents' Motion to Dismiss filed June 11, 2014).

On August 30, 2013, Respondents filed a Motion to Dismiss on the grounds that Knight, as an individual, did not have standing to maintain the suit, that *res judicata* barred this action, and because South Carolina law does not permit a principal to sue his surety for bad faith. Masterclean, Inc. v. Star Ins. Co., 347 S.C. 405, 556 S.E.2d 371 (2001) (a copy of the Motion to Dismiss is attached as Exhibit B to Respondents' Motion to Dismiss filed June 11, 2014).

Following a hearing on October 16, 2013, the trial court granted Respondents' Motion to Dismiss on all three grounds and issued a Form 4 Order of Dismissal dated October 18, 2013 (a copy of the Form 4 Order is attached as Exhibit C to Respondents' Motion to Dismiss filed June 11, 2014). On October 23, 2013, the Court signed a formal Order submitted by counsel (the "Submitted Order") restating the grounds indicated in the Form 4 Order (a copy of the Submitted Order is attached as Exhibit D to Respondents' Motion to Dismiss filed June 11, 2014).

On October 28, 2013, Knight filed a Motion to Reconsider or Amend (“First Motion to Reconsider”). In his Motion, Knight acknowledged receipt of the Form 4 Order of Dismissal on October 25, 2013 (a copy of the First Motion to Reconsider is attached as Exhibit E to Respondents’ Motion to Dismiss filed June 11, 2014). The trial court denied Knight’s First Motion to Reconsider in a written Order dated November 13, 2013 (a copy of the Order is attached as Exhibit F to Respondents’ Motion to Dismiss filed June 11, 2014). On November 26, 2013, Knight filed another motion to reconsider (“Second Motion to Reconsider”) (a copy of the motion is attached as Exhibit G to Respondents’ Motion to Dismiss filed June 11, 2014). The trial court denied Knight’s Second Motion to Reconsider in a written order dated December 2, 2013 (a copy of the order is attached as Exhibit H to Respondents’ Motion to Dismiss filed June 11, 2014).

Knight served his notice of appeal on December 27, 2013 and contested the trial court’s denial of his Second Motion to Reconsider (a copy of the notice of appeal is attached as Exhibit I to Respondents’ Motion to Dismiss filed June 11, 2014).

On April 4, 2014 the Court of Appeal issued an Order dismissing the Appeal based on the *Pro Se* Petitioner’s failure to provide proof of Ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules. On April 14, 2014 *Pro Se* Petitioner filed a Motion to Correct Clerk’s Docket Order. On May 14, 2014 the Court of Appeals issued an Order reinstating the appeal.

On June 11, 2014, Respondents filed their Motion to Dismiss with the Court of Appeals. On July 28, 2014 the Court of Appeals issued its Order granting Respondents’ Motion to dismiss the Appeal on the grounds that because *Pro Se* Petitioner’s Motion was untimely, the Court of Appeals lacked appellate jurisdiction. On August 5, 2014 *Pro Se* Petitioner filed a Petition for Rehearing.

On October 3, 2014 the Court of Appeals denied *Pro Se* Petitioner's Petition for Rehearing. On October 31, 2014 *Pro Se* Petitioner filed his Petition for Writ of Certiorari to the Court of Appeals.

ARGUMENT

The petition for a Writ of Certiorari should be denied because Knight asserts no ground which would warrant a writ. It is undisputed that he failed to serve his Notice of Appeal within thirty days of the date he received notice of the trial court's order denying his first motion to reconsider and as such, neither the Court of Appeals or the Supreme Court have appellate jurisdiction.

I. A Writ of Certiorari Is Not Warranted.

A petition for a writ of certiorari is governed by Rule 242, SCACR. As this rule plainly states, a writ is granted only where there are special and important reasons, and in particular where:

- (a) there are novel questions of law;
- (b) there is a dissent in the decision of the Court of Appeals;
- (c) the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
- (d) substantial constitutional issues are directly involved; and
- (e) a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

Knight's petition does not present such circumstances. It does not assert that there is a novel question of law. There was no dissenting opinion; instead, the Court of Appeals dismissed the appeal based on lack of jurisdiction without oral argument. Knight did not identify a decision from this Court or the United States Supreme Court, which conflicts with the Court of Appeals ruling.

There are not constitutional issues directly involved, let alone substantial constitutional issues. The

Court of Appeals' decision does not include a federal question. The Court of Appeals applied existing law and dismissed Knight's appeal based on lack of jurisdiction.

While the elements enumerated in Rule 242(b) are not the exclusive parameters upon which this Court may decide whether to grant or deny certiorari, no other reason exists for this Court to grant *Pro Se* Petitioner's Petition. The ruling of the Court of Appeals does not present the significant or far reaching issues contemplated by Rule 242(b). Moreover, the Order of the Court of Appeals is straight forward and does not involve new or emerging legal doctrines or issues of general public importance sufficient to justify certiorari for review. Accordingly, the Respondents request that the Supreme Court decline to grant certiorari.

II.

- a. **The Court of Appeals Correctly Denied the Appeal Because Knight Failed to Preserve the Issue for Review by timely serving Notice of Appeal within thirty days after receipt of written notice of entry of the order or judgment.**

That Knight appeared *pro se* does not relieve him of the duty to preserve issues for appellate review. *Hill v. Dotts*, 345 S.c. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (the court will not hold a layman to any lesser standard than is applied to an attorney). By filing an appeal more than thirty days after receipt of written notice of entry of the Order dismissing the case and denying his Motion to Reconsider, Knight failed to do so in this case. Rule 203(b)(1), SCACR, requires that a notice of appeal be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. However, when a timely motion to alter or amend the judgment has been made under Rule 52 or 59, the time for appeal for all parties is stayed and runs from receipt of written notice of entry of the order granting or denying such motion. Rule 203(b)(1), SCACR; see also Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct.App.1999). "Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." Conner v. City of Forest

Acres, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002) (citing Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)).

In this case, it is undisputed that Knight received the Form 4 Order denying his First Motion to Reconsider on November 21, 2013. Exhibit F at 2; Exhibit G at 1. As such, the latest he could serve his Notice of Appeal would be 30 days later, on December 21, 2013. Knight did not mail his Notice of Appeal until December 27, 2013 and said Appeal was not received by Respondents or the trial court until December 30, 2013. Exhibit I. Because Knight failed to serve notice of intent to appeal within thirty days of November 21, 2013, both the Court of Appeals and this Court lack subject matter jurisdiction and the Supreme Court should decline to grant certiorari.

b. Knight's Second Motion to Reconsider did not toll the time for filing and service of his Notice of Appeal.

An appeal may be barred due to untimely service of the notice of appeal when a party--instead of serving a notice of appeal--files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).

We conclude Coward Hund correctly stated and applied the prevailing view among federal courts that a second Rule 59(e) motion which raises the same issues and arguments made in a previous Rule 59(e) motion does not toll the time to appeal. However, if the disposition of the first motion results in a judgment which is substantively altered, a subsequent motion will again postpone the appeal period.

Id. at 19 (internal citations omitted). In his First Motion to Reconsider, Knight apparently argued that he had standing to bring suit because he was the sole member of Construction Group, LLC and as such he was one and the same as the corporate entity and should therefore be able to file suit as an individual rather than as the corporation.

On November 13, 2013, the trial court filed an Order denying Knight's First Motion to Reconsider, finding "no reason to alter or amend its prior order. Accordingly, the order of October 16, 2013 stands." Exhibit F at 1.

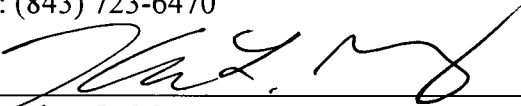
Here, as in Coward Hund, the trial court did not alter the original judgment, and therefore the original Order of Dismissal was confirmed on November 13, 2013 and received by Knight on November 21, 2013. Knight's Second Motion to Reconsider of November 26, 2013 did not challenge a new ruling, but rather (as he does here) continued to argue that Knight had standing to bring the case individually. Even if Knight made a new argument in his Second Motion to Reconsider, it would not have tolled the time in which to serve his Notice of Appeal. Under Elam, the key inquiry is whether the trial court "substantively altered" the judgment as a result of the First Motion to Reconsider. Because the Order denying the First Motion to Reconsider did not substantively alter the original judgment, the time for Knight to serve his notice of appeal was not tolled while he prepared his Second Motion to Reconsider and awaited the court's response. Thus, Knight's deadline to serve the Notice of Appeal was December 21, 2013 – 30 days after he received the denial of his first motion to reconsider, and his failure to timely serve the Notice of Appeal deprives this the Court of Appeals and this Court of jurisdiction.

III. CONCLUSION

This Court should deny Knight's Petition for Writ of Certiorari because Knight has failed to present any cognizable reason for the Court to grant Certiorari and because the Court of Appeals correctly decided that it lacks subject matter jurisdiction based upon Knight's failure to serve the Notice of Appeal within 30 days after receiving written notice of the trial court's Order Denying Knight's First Motion to Reconsider. For the above-stated reasons, the Supreme Court should deny Petitioner's Petition for Writ of Certiorari.

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Phone: (843) 723-6470

By: _____


Theodore L. Manos
Attorneys for the Respondents

December 2, 2014
Charleston, South Carolina

Certificate of Service

I, Sarah E. Los, an employee of Robertson Hollingsworth and Flynn, hereby certify that I have served all parties in this action with a copy of the foregoing pleading by mailing a copy of same by U.S. Mail, postage prepaid, on December 2, 2014, and properly addressed as follows:

Norman Robert Knight
3940 Hottinger Avenue
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Sarah E. Los

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S.C. SUPREME COURT

December 2, 2014

Linda Allen
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211


Re: Knight vs. Companion, et al. Case No. 2013-CP-10-04560

Dear Ms. Allen:

Per your instructions, please find enclosed for filing the original and six (6) copies of Respondents' Amended Return to Petitioner Norman Robert Knight's Petition for Writ of Certiorari in regards to the above-referenced case. Please file the original and return one file-stamped copy to our office in the self-addressed, stamped envelope I have enclosed.

Thank you very much for your assistance, and please do not hesitate to contact our office should you have any questions.

Sincerely,



Sarah E. Los
Legal Assistant to Theodore L. Manos

TLM/sel
Enclosures
cc w/ enc.: Norman Robert Knight