

The South Carolina Court of Appeals

John R. Rakowsky, Respondent,

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer,
Estate of Doris Holt, Nick Williamson on behalf of RSC,
Irene Santacroce, Rodney Keith Lail, Marguerite
Stephens, Ricky Stephens, Michael Hartness, Horry
County, SC, Eugene Chewing, and Glenn W. Harrison,
Defendants,

Of whom James Spencer, Irene Santacroce, Rodney
Keith Lail, and the Estate of Doris Holt are the
Appellants.

Appellate Case No. 2014-002029

ORDER

Respondent John R. Rakowsky has filed two motions to dismiss: (1) a motion to dismiss the appeal filed September 19, 2014, by appellants Irene Santacroce, Rodney Keith Lail, and the Estate of Doris Holt; and (2) a motion to dismiss the appeal filed February 2, 2015, by appellants James Spencer, Santacroce, Lail, and the Estate of Doris Holt. The appellants have filed returns to both motions, and Rakowsky has filed a reply.

I. Appeal Filed September 19, 2014

We grant Rakowsky's motion to dismiss the appeal filed September 19, 2014. The order on appeal was filed in the circuit court on June 27, 2014. The three appellants did not serve their notice of appeal on Rakowsky until September 17, 2014. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004) ("The notice of appeal in a case appealed from the Court of Common Pleas

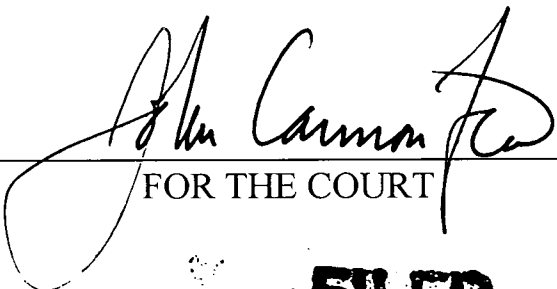
must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment." (citing Rule 203(b)(1), SCACR)). Rakowsky attached to his motion to dismiss a July 9, 2014 email from Michael Sribnick, counsel for the three appellants, to the circuit court judge. In that email, Sribnick wrote, "I respectfully ask for the third time that His Honor, Judge Doyet Early, answer my question as to who drafted the order regarding the litigation funds." Thus, Sribnick clearly had a copy of the order on July 9, 2014. Sribnick offered no explanation in his return as to how this did not constitute "written notice" under Rule 203(b)(1), SCACR.

The appellants had written notice of entry of the June 27, 2014 order no later than July 9, 2014. The appellants did not serve a timely post-judgment motion. Consequently, their September 17, 2014 notice of appeal was untimely, and this Court lacks jurisdiction to consider the appeal. *See id.* at 14-15, 602 S.E.2d at 775 ("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.").

II. Appeal Filed February 2, 2015

We reserve our ruling on Rakowsky's motion to dismiss the appeal filed February 2, 2015. Rakowsky moves to dismiss the appeal on several grounds, one of which is the appellants' failure to include a copy of the order challenged on appeal. On February 10, 2015, this Court sent the appellants a deficiency letter stating "this appeal will be dismissed" if the appellants did not submit a copy of the appealed order within ten days. This Court still has not received a copy of the appealed order.

We order the appellants to file a copy of the appealed circuit court order within ten days. At the conclusion of ten days, we will consider Rakowsky's motion to dismiss.

 C.J.
FOR THE COURT

Columbia, South Carolina

FILED
4/23/15

cc: Michael Gordon Sribnick, Esquire
James B. Spencer
Desa Ballard, Esquire
Andrew F. Lindemann, Esquire