

# The South Carolina Court of Appeals

William Scott Davis, Jr., Appellant,

v.

Dorothy Gaines Davis, Respondent.

Appellate Case No. 2015-002567

---

## ORDER

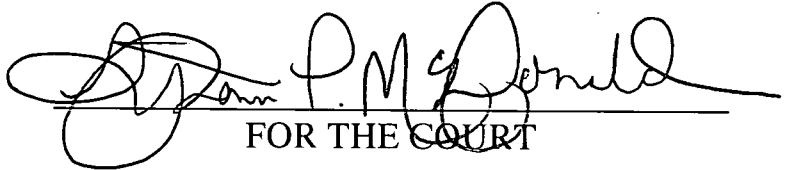
---

On December 14, 2015, this court received a pro se notice of appeal from Appellant indicating his wish to appeal the circuit court's order of April 24, 2015, and the probate court's orders of September 3, 2015, September 10, 2015, and September 17, 2015. This court then sent a letter to Appellant's counsel of record below requiring counsel to either file a motion to be relieved or to cure the deficiencies in the appeal. In response, Appellant's counsel filed a motion to be relieved. After careful review, we grant counsel's motion.

Additionally, because the Appellant failed to timely serve the notice of appeal, we dismiss the appeal for lack of jurisdiction. The circuit court's order was filed on April 24, 2015, but Appellant has not provided proof that he served Respondent within thirty days after receipt of written notice of entry of the order. *See* Rule 203(b), SCACR ("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."). Notably, the earliest possible service dates listed in Appellant's notice of appeal are September 20, 2015, and November 25, 2015. Additionally, there is no indication Appellant tolled the time for service by filing a timely post-trial motion. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCPP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."). Therefore, 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."); Rule 263(b), SCACR (providing an appellate court cannot extend the time for serving the notice of appeal under Rule 203).

Finally, to the extent Appellant has attempted to appeal the three September probate court orders, we note appeals from the probate court must be made to the circuit court. *See* S.C. Code Ann. § 62-1-308 (Supp. 2015) (providing "appeals from the probate court must be to the circuit court" unless the parties consent otherwise in writing or on the record). Accordingly, Appellant's appeal from those orders is also dismissed. The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc: William Scott Davis, Jr.  
H. Fred Kuhn, Jr., Esquire  
Richard Bryan Allen, Esquire

**FILED**

June 9, 2016