

The South Carolina Court of Appeals

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, As Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, As Trustee of the Linda C. Vereen Residence Trust, Defendants.

And

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually, Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, Inc. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

Appellate Case No. 2016-001075

ORDER

This case was tried before the Honorable Cynthia Graham Howe over nine days, concluding on August 30, 2012. On March 23, 2015, over two and a half years after the last day of trial, a law clerk for Judge Howe emailed the parties the 42 page judgment. The email stated "Attached is a PDF copy of the clocked Order in the above referenced case executed today." Attached to the email was the filed judgment; however, the attachment inadvertently omitted page 37 of the 42 page order. On March 24, 2015, the law clerk sent another email to the parties, attaching a *nunc pro tunc* order and an amended Form 4 order, which increased the amount of the judgment due to a previous accounting error and added the name of a judgment defendant. On April 6, 2015, 13 days after Appellants received the March 24, 2015 email, Appellants contacted Judge Howe to request a copy of page 37 of her order. Appellants received a copy of the entire order on April 10, 2015, and filed their motion to reconsider on April 20, 2015. Over a year later, on April 25, 2016, Judge Howe denied the motion to reconsider. Appellants served their notice of appeal on May 19, 2016. Respondents have now filed a motion to dismiss based on untimely service of the notice of appeal.

"The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1)." Rule 203(b)(4), SCACR. Under Rule 203(b)(1), the "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." Only a *timely* motion to alter or amend a judgment tolls the time for service of the notice of appeal. *See* Rule 203(b)(1), SCACR; Rule 59(f), SCRCR. In order to be timely, the motion to alter or amend must "be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCACR.

In *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, this court held that an email notifying the parties that an order or judgment has been entered constitutes "written notice of entry of the order." 413 S.C. 642, 646–47, 776 S.E.2d 575, 577–78 (Ct. App. 2015).

In this case, Appellants received written notice of entry of the judgement through the emails from Judge Howe's law clerk on March 23, 2015 and March 24, 2015. Thus, starting the time for serving the motion to alter or amend on March 24, 2015, Appellants' motion should have been served no later than April 3, 2015. However, Appellants neither served their motion nor even requested a full copy of the order by that date.¹ Accordingly, because no timely motion to alter or amend was served, the time to serve the notice of appeal began to run on March 24, 2015. Appellants did not serve their notice of appeal until May 19, 2016, which is more than thirty days after receiving written notice the judgment had been entered. Therefore, this court lacks appellate jurisdiction, and Respondents' motion to dismiss is granted. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof."); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("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."). The remittitur will be sent as required by Rule 221(b), SCACR.

¹ This court notes Appellants argue the March 23, 2015 and March 24, 2015 emails should not constitute written notice of entry of the order because page 37 was omitted from the attached copy of the order. This court disagrees. The requirements of Rule 59(e), SCRCP and Rule 201(b)(1), SCACR do not require Appellants to receive a copy of the underlying order, but rather to merely receive *notice* the order had been entered. Appellants received notice through the email of Judge Howe's law clerk alerting the parties that the order had been entered.

Paul E. Short, Jr. J.

J. J.

Frank T. McDonald J.

Columbia, South Carolina

cc:
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FILED
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