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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

OCT 03 2016

SC Court of Appeals

The Honorable Thomas A. Russo, Circuit Court Judge

Case No.: 2014-CP-40-5976
Appellate Case No.: 2016-000505

Tracy Fulmore Appellant,

v.

Julie Smith..... Respondent.

RESPONDENT'S REPLY TO APPELLANT'S RETURN

Respondent Julie Smith hereby replies to the Return of Appellant Tracy Fulmore in accordance with Rule 240(f).

Appellant acknowledges in his Return that Magistrate Judge Andy Surles announced his ruling in the presence of the parties at the trial on August 27, 2014. Moreover, the South Carolina Supreme Court has made clear that “[a] *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). Whether acting *pro se* or with counsel, Appellant was responsible for complying with South Carolina substantive and procedural law, including S.C. Code Ann. § 18-7-20 and South Carolina Magistrates Court Rule 18. Both Section 18-7-20 and Rule 18 govern when the thirty day deadline begins to run for a notice of appeal. Both

specifically proscribe a specific start date when the judgment is announced by the magistrate judge at trial in the presence of both parties, whether represented by counsel or acting *pro se*. See S.C. Code Ann. § 18-7-20 (2014); SC R MAG CT Rule 18(a). Rather than acknowledge this distinction, Appellant seemingly argues that two timelines may exist for a notice of appeal, depending on whether a judgment is announced and later reduced to writing. Based on Appellant's argument, the procedural and statutory directive regarding the deadline for a notice of appeal when a judgment is announced at trial is essentially meaningless. In fact, based on Appellant's argument, a party in the Appellant's position can easily resolve a potentially untimely notice of appeal by merely requesting that the oral judgment be reduced to writing, restarting the thirty day deadline. This was clearly not the intent of either the statute or rule. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."); *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004) (internal citations omitted) ("When interpreting a court rule, 'we apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule.' When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.").

Both the aforesaid statute and rule dictate that the thirty day deadline for Appellant's notice of appeal began to run from the oral announcement of judgment at trial on August 27, 2014. The time for Appellant to appeal ran on Friday, September 26,

2014. Therefore, Appellant's Notice of Civil Appeal, which was filed on September 29, 2014 and served on Respondent on October 2, 2014, was untimely.

Additionally, Appellant's Return is out of time. Pursuant to the Order of this Court dated August 23, 2016, Appellant's "time for serving and filing the return to the motion to dismiss . . . [was] extended until September 26, 2016." (Ex. A). According to his letter correspondence, Appellant's Return was mailed from Sumter, South Carolina on September 26, 2016, which was the deadline for serving and filing his Return. (Ex. B). Therefore, the Court could not have received the Return for filing until after September 26, 2016. Instead, the Court likely received Appellant's Return and filed it on or about September 28, 2016, which is the date Respondent received it. (Ex. B).

For the reasons stated, Respondent asks this Court to grant its motion to dismiss this appeal with prejudice.



Mariel D. Norton (SC Bar No. 100198)
Catharine Garbee Griffin (SC Bar No. 9821)
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
(803) 779-3423
Attorneys for Respondent

October 3, 2016

Other Counsel of Record:

Charles T. Brooks, III, Esquire
The Brooks Law Office, LLC
P.O. Box 3512
Sumter, SC 29151
(803) 418-5709
Attorney for Appellant

The South Carolina Court of Appeals

Tracy Fulmore, Appellant,

v.

Julie Smith, Respondent.

Appellate Case No. 2016-000505

The Honorable Thomas A. Russo
Richland County
Trial Court Case No. 2014CP4005976

ORDER

The time for serving and filing the return to the motion to dismiss is hereby extended until September 26, 2016.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

August 23, 2016 *gs*

cc:

Charles Thomas Brooks, III, Esquire
Mariel Denise Norton, Esquire
Catharine H. Garbee Griffin, Esquire

EXHIBIT A

RECEIVED
SEP 28 2016

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708
FAX: (803) 934-9618
Email: cbrooks@ctbrooks.com
brooksirbrooks@aol.com

BY:

September 26, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Fulmore vs. Smith
Case No.: 2016-000505

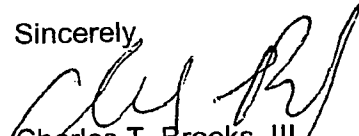
Dear Ms. Kitchings:

Enclosed, please find for filing the **Return to Motion to Dismiss the Appeal**, and a **Certificate of Counsel**, along with the appropriate copies, as well as the related Proof of Service.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



Charles T. Brooks, III
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC

Enclosures as stated above.

EXHIBIT B

cc: Mariel D. Norton
Attorney at Law
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Honorable Thomas A. Russo

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Appellate Case No: 2016-000505

Tracy Fulmore Appellant,

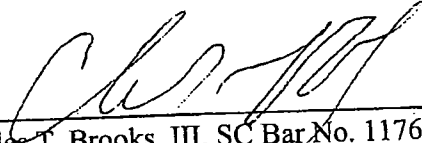
v.

Julie Smith Respondent.

PROOF OF SERVICE

I do hereby certify that I have this 26th day of September 2016, served a copy of the **RETURN TO THE MOTION TO DISMISS THE APPEAL**, and a **PROOF OF SERVICE**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

Mariel D. Norton
Attorney at Law
BAKER, RAVENEL & BENDER, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202



Charles T. Brooks, III, SC Bar No. 11762
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708
803-934-9618 [Facsimile]
cbrooks@ctbrooks.com

September 26, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Thomas A. Russo

Appellate Case No: 2016-000505

Tracy Fulmore Appellant,

v.

Julie Smith Respondent.

RETURN TO MOTION TO DISMISS THE APPEAL

This matter is before the Court by way of Respondent's Motion to Dismiss the Appeal with prejudice based on the Appellant's alleged failure to timely perfect the appeal. Appellant requests this honorable court to dismiss the Motion to Dismiss the Appeal and proceed with appellate review of this matter based on the merits.

The underlining case in this matter was filed by Appellant in Magistrate Court on July 3, 2014, for damages relating to a breach of a commercial lease agreement. Respondent filed an answer and counterclaim on July 15, 2014. Appellant responded to the counterclaim on July 28, 2014. A trial was held on the matter on August 27, 2014. At the conclusion of the trial, Magistrate Judge Andy Surlis announced that he was awarding Respondent her requested damages of \$7,500 (seven thousand five hundred dollars) minus \$2,200 (two thousand two hundred dollars) already paid by Appellant, plus cost of \$10 (ten dollars) for the filing of Respondent's counterclaim.

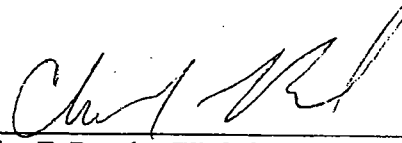
Appellant sought help with the appeal of this matter after the trial. Based on a request by the attorney for Appellant, the Magistrate Court reduced the ruling to writing and sent the judgment to Appellant's attorney's office on September 16, 2014. Based on the entry of the written order, the appeal was perfected for Appellant with a Notice of Civil Appeal filed on September 29, 2014. Respondent was served the Notice of Civil Appeal on October 2, 2014.

Respondent argues S.C. Code Ann. Sec. 18-7-20 provides that if the judgment is announced at the trial in the presence of the appellant or his attorney, then no written notice is necessary for the appeal. S.C. Code Ann. Sec. 18-7-20 (2014). Respondent further argues that Rule 18 of the South Carolina Magistrates Court Rules dictates the same. SC R MAG CT Rule 18(a).

The question here is whether the time to perfect the appeal runs from the written notice of judgment once the Magistrate Court also reduced the judgment to writing. Here, there was not just the oral recitation of the judgment. Rather the judgment was also reduced to writing. Appellant respectfully argues that the time for appeal runs from the time of delivery of the written judgment. Both S.C. Code Ann. Sec. 18-7-20 and Magistrate Court Rule 18 provide that within thirty days of the written notice of judgment, the notice of appeal should be filed.

Based on the date the written judgement was received from the Magistrate Court, the Appellant's appeal is timely.

Based on the argument set out above, Appellant respectfully requests this honorable court to dismiss Respondent's Motion to Dismiss the Appeal and proceed with the appellate review of the merits of this case.



Charles T. Brooks, III, S.C. Bar No. 11762
Attorney for Appellant
THE BROOKS LAW OFFICE, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708
803-934-9618 [Facsimile]
cbrooks@ctbrooks.com

September 26, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Case No.: 2014-CP-40-5976
Appellate Case No.: 2016-000505

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Tracy Fulmore Appellant,

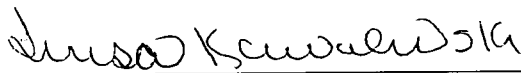
v.

Julie Smith..... Respondent.

PROOF OF SERVICE

I, Teresa Kowalewski, Legal Assistant to Mariel D. Norton, an employee of Baker, Ravenel & Bender, L.L.P., Attorneys for Julie Smith, Respondent, hereby certify that, on this 3rd day of October, 2016, I have served the following with the foregoing Respondent's Reply to Appellant's Return to Motion to Dismiss the Appeal and Proof of Service by mailing copies of same by United States Mail, postage prepaid, to counsel of record at the addresses shown below:

Charles T. Brooks, III, Esquire
The Brooks Law Office, LLC
P.O. Box 3512
Sumter, SC 29151



Teresa Kowalewski



BAKER RAVENEL BENDER

ATTORNEYS AT LAW

Mariel D. Norton
mnorton@brblegal.com
(803) 343-3860 – direct dial

October 3, 2016

HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

OCT 03 2016

SC Court of Appeals

Re: Tracy Fulmore v. Julie Smith
Case No. 2016-000505
File No. 10891.0

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter are an original and seven (7) copies of Respondent's Reply to Appellant's Return to Motion to Dismiss and Proof of Service thereof. It would be appreciated if you would return a clocked copy to me via the courier delivering same.

By copy hereof, I am serving same upon counsel for Appellant.

Thank you very much.

Sincerely yours,

Mariel D. Norton
MDN:tfk
Enclosures

cc: w/enclosure: Charles T. Brooks, III, Esquire