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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE APR 24 2017
CASE NO. 2014 CP-46-2809 SC Court of Appeals

Thomas F. McDow d/b/a Law Office of Thomas F.
McDow

Joann A. Wright

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BRIAN S. McCOY

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other Appeal dismissed as untimely. Court lacks jurisdiction.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Thomas F. McDow d/b/a law Office of Thomas F. McDow	Joann A. Wright	STK \$18,523.50 APPEAL DISMISSED
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

M. Kimbell
Spec Circuit Court Judge

3063
Judge Code

2/23/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the 24th day of Feb, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 24th day of Feb, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

was attached

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Danial Jamil
CLERK OF COURT

Court Reporter:

Brian Scott McCoy 378 E. Main St. Rock Hill, SC 29730

Joann A Wright 239 147Th Street NE Bradenton, FL 34212

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Thomas F. McDow d/b/a Law Office
of Thomas F. McDow,

Case No.: 2014-CP-46-2809

Plaintiff,

vs.

Joann A. Wright,

Defendant.

ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS APPEAL

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APR 24 2017

SC Court of Appeals

DAVID J. WILSON
CLERK
YORK COUNTY, SC

2017 FEB 24 AM 9:17

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This matter came before the Court on February 16, 2017, upon Plaintiff's Motion to Dismiss Appeal, and on Defendant's Motion to Dismiss plaintiff's Motion. Plaintiff was represented by Brian S. McCoy. The Defendant was *pro se*, but did not appear at the hearing.

Prior to the hearing, Defendant provided the Court her Motion, Defendant's Brief in Opposition to Plaintiff's Motion to Dismiss Appeal, and an Affidavit of Joann A. Wright. I considered these without objection.

The appeal was from a Decision of the South Carolina Bar Resolution of Fee Disputes Board ("FDB"). The FDB ruled for Plaintiff. Paul W. Dillingham, Circuit Chair of the FDB, mailed the Decision to the parties on August 15, 2016. Plaintiff attached Mr. Dillingham's cover letter to Defendant as an Exhibit to his Motion to Dismiss Appeal. According to Defendant's Proof of Service of her Notice of Appeal, she mailed her Notice of Appeal for filing and service on September 19, 2016. The affidavit of Defendant and her Brief in Opposition confirm that September 19, 2016, is the date she filed and served her Notice of Appeal.

Rules of Procedure South Carolina Bar Resolution of Fee Disputes Board, under Rule 416, SCACR, govern proceedings before the FDB. Rule 20(b) provides: "To confer jurisdiction of an appeal on the circuit court, the appealing party must commence the appeal within thirty (30) days after the final decision *is mailed* to the appealing party . . ." (emphasis added). The exceptions to this time requirement are not relevant here.

Plaintiff contends that under Rule 20, this Court does not have jurisdiction because the appeal was not commenced within 30 days of the mailing of the FDB decision. The date of its mailing was August 15, 2016. According to Rule 263, SCACR, the day of the act, August 15, is not included, so

mk
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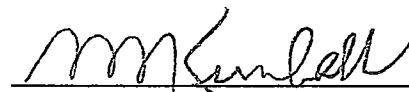
the 30 days began to run on August 16. The last day of the period computed was September 14, 2016, which was a Wednesday. Rule 263, SCACR, provides that "no additional time shall be allowed by reason of service by mail . . ." Therefore, the Notice of Appeal had to be mailed on or before September 14, 2016, to confer jurisdiction on this Court. It is undisputed that defendant mailed her appeal on September 19, 2016. Thus, under the plain language of the Rule, this Court lacks jurisdiction of the appeal pursuant to Rule 20.

Defendant's "Motion for Dismissal" is really an opposition to Plaintiff's Motion to Dismiss Appeal. In it, and in her Brief in Opposition, Defendant contends that she did not receive the plaintiff's Motion to Dismiss Appeal. However, the Certificate of Service shows that it was sent to the address that Defendant provides in her recent filings. She also contends that she received the decision of the FDB on August 22, 2016, and therefore her notice of appeal was timely. However, Rule 20 provides the starting point for the required time as the date the "decision is mailed." Defendant has produced no evidence that Mr. Dillingham mailed the decision after August 15, 2016.

Therefore, based on the foregoing discussion, this Court lacks jurisdiction over Defendant's appeal of the FDB decision, and Plaintiff's Motion to Dismiss Appeal is granted. Further, Defendant's motion to dismiss is denied.

AND IT IS SO ORDERED.

February 22, 2017



S. Jackson Kimball
Special Circuit Court Judge
York County

#2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4602809

Law Office Of Thomas F McDow	Thomas F McDow	Joann A Wright	
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on March 14, 2017, upon Defendant's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed February 24, 2017. This matter was ruled upon without a hearing, as Defendant's motion adequately addresses the issue presented.

The purpose of Rule 59(e), SCRPC, to alter or amend the judgment, is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. See *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Defendant's Motion pursuant to Rule 59(e), SCRPC, be denied.
AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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RECEIVED
2017 MAR 15 AM 11:15
CLERK OF COURT
YORK COUNTY, SC

RECEIVED

APR 24 2017

SC Court of Appeals

Don
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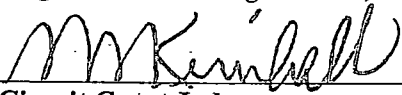
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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Spec. Circuit Court Judge 

3063
Judge Code

3/14/2017
Date

For Clerk of Court Office Use Only

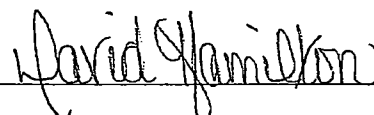
3/15/17 This judgment was entered on 3/15/17, and a copy mailed first class or placed in the appropriate attorney's box on 3/15/17, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



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