

The South Carolina Court of Appeals

John Harbin, Appellant,

v.

April Blair and Tracy Dunn, Respondents.

Appellate Case No. 2017-000772

ORDER

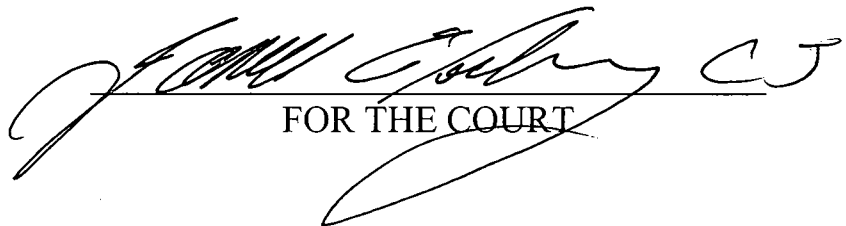
On November 20, 2016, an Anderson County jury reached a verdict and the circuit court discharged the jury following the reading of the verdict. On December 13, 2016, Appellant filed a post-trial motion. On February 23, 2017, the circuit court issued an order finding Appellant's post-trial motion was untimely and denying the motion. On March 27, 2017, Appellant served his notice of appeal, which only indicated he was appealing "the judgment of the Honorable R. Scott Sprouse dated November 30, 2016." On April 3, 2017, Appellant served an amended notice of appeal, which states he "appeals the judgments of the Honorable R. Scott Sprouse dated November 30, 2016 and March 1, 2017." The March 1 order is an order of the circuit court granted Respondent Blair's "Motion for Costs and Enforcing the Judgment Pursuant to Rule 68, SCRCR." Appellant never served or filed a notice of appeal from the February 23, 2017 order. Respondent has filed a motion to dismiss, contending Appellant failed to timely appeal.

After careful considering, the motion to dismiss is granted and Appellant's appeal from the November 30, 2016 judgment is dismissed. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("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 203(b)(1), 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. When a *timely* motion for judgment n.o.v. (Rule

50, SCRCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCRCP), or a motion for a new trial (Rule 59, SCRCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." (emphasis added)); Rule 59(b), SCACR ("The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter."); *Otten v. Otten*, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985) (holding a Rule 60 motion does not toll the running of the time for appeal).

Appellant's appeal of the March 1, 2017 order granting the motion for costs and enforcing judgment pursuant to Rule 68 shall continue. The issues on appeal may only relate to this March 1, 2017 order because the appeal from the November 30, 2016 judgment is dismissed and Appellant never timely served or filed a notice of appeal from the denial of the February 23, 2017 order.

Appellant's motion to order the transcript out of time is granted.


FOR THE COURT

Columbia, South Carolina

cc:
Donald Loren Smith, Esquire
Robert Daniel Corney, Esquire
Tracy Dunn, #SID-SC00745855

FILED
