

THE STATE OF SOUTH CAROLINA
In the Court of Appeals.

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JUN 20 2017
SC Court of Appeals

DeAndrea G. Benjamin, Circuit Court Judge

Civil Action No. 2016-CP-40-07353
Appellate Case No. 2017-000134

Richardson Construction Company, Inc. Appellant,

v.

Richland County, a political subdivision, and
McClam & Associates, Inc. Respondents.

**APPELLANT’S RETURN TO RICHLAND COUNTY’S MOTION TO STRIKE
MATERIAL FROM APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Appellant Richardson Construction Company, Inc. (“RCC”) submits this Return in response to Respondent Richland County’s motion to strike material from RCC’s designation of matter to be included in the record on appeal. As to items 9, 10, and 11, RCC agrees to withdraw those items from its designation of matter to be included in the record on appeal. These two items were included for context only to help the Court understand the posture of the case and their withdrawal will not affect the substance of RCC’s argument on appeal.

Items 7 (RCC’s motion to alter or amend) and 8 (the trial court order ruling on that motion) are properly included in the record on appeal. Richland County contends that these items should not be included because RCC should not be permitted to appeal the trial court’s February 6, 2017

Order denying RCC's Rule 59(e) motion to alter or amend. Such contention is more in the nature of a motion to dismiss rather than to strike matter from the designation of matter to be included on appeal because it goes to the question of what are the proper trial court rulings before this Court. Richland County has filed one motion to dismiss RCC's appeal on the ground of alleged mootness, and that motion was denied. Richland County has not filed a motion to dismiss contending the trial court's February 6, 2017 Order is not properly before this Court.

Nevertheless, RCC has properly included the trial court's February 6, 2017 Order in this appeal. The timing of RCC's filing of its Rule 59(e) motion to alter or amend and this appeal, outlined below, is important to resolving this matter.

- December 22, 2016—The trial court issued its Order denying RCC's request for a temporary injunction. (Or., dated Dec. 22, 2016.)
- January 5, 2017—RCC filed a motion to alter or amend the December 22, 2016 Order. (Motion to Alter or Amend, filed Jan. 5, 2017.)
- January 23, 2017—RCC filed its Notice of Appeal.
- February 6, 2017—The trial court issued a Form 4 Order denying RCC's Motion to Alter or Amend. (Form 4 Order, filed Feb. 6, 2017.)

Richland County contends that the trial court was divested of jurisdiction to decide RCC's motion to alter or amend when RCC filed its Notice of Appeal. This is incorrect because the filing of a notice of appeal does not divest the trial court of jurisdiction to decide post-trial motions.

Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986); *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014). In *Hudson*, the Supreme Court held:

This Court has previously held that a Notice of Appeal filed on the same day as post-trial motions does not deprive the trial court of jurisdiction to hear the motions. *Wicker v. Anderson County*, 347 S.E.2d 96 (S.C.1986); *Otten v. Otten*, 287 S.C. 166, 337 S.E.2d 207 (1985). We now hold that the service and filing of a Notice of Appeal before the filing of

timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions.

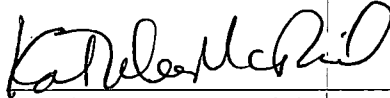
Hudson, 290 S.C. at 216, 349 S.E.2d at 341.

In *Holmes*, the appellant filed a post-trial motion on February 21, 2012, to reconsider a sanctions order. *Holmes*, 408 S.C. at 150, 758 S.E.2d at 489–90. The appellant then filed a notice of appeal on March 6, 2012, appealing the same sanctions order. *Id.* On March 7, 2012, the trial court denied the motion to reconsider. *Id.* Relying in part on *Hudson*, the Supreme Court again held that “the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion.” *Id.* at 161, 758 S.E.2d at 496.

RCC followed this same pattern of filing—motion to alter or amend followed by notice of appeal—as was followed in *Holmes*. The Supreme Court has determined that regardless of whether the notice of appeal is filed before, after, or at the same time as timely post-trial motions, the trial court retains jurisdiction to decide those post-trial motions. Accordingly, in the case of RCC, the trial court retained jurisdiction to decide RCC’s motion alter or amend, and RCC properly included the trial court’s Order denying its motion to alter or amend in this appeal. Thus, items 7 and 8 are properly maintained in RCC’s designation of matter to be included in the record on appeal and should not be stricken.

CONCLUSION

This Court should deny Richland County’s motion to strike items 7 and 8 from RCC’s designation of matter to be included in the record on appeal. RCC will voluntarily withdraw items 9, 10, and 11 and, with this Court’s permission, will voluntarily remove reference to those items when it files its Final Brief of Appellant.



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June 29, 2017

Columbia, South Carolina

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APPEAL FROM RICHLAND COUNTY
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DeAndrea G. Benjamin, Circuit Court Judge

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v.

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PROOF OF SERVICE

I certify that I have served Appellant's Return to Richland County's Motion to Strike Material From Appellant's Designation of Matter to be Included in the Record on Appeal on June 29, 2017, on the following by causing a copy to be delivered via the U.S. Postal Service to Counsel for the Respondents to addresses shown below:

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June 29, 2017

Columbia, South Carolina



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June 29, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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JUN 29 2017

SC Court of Appeals

Re: Richardson Construction Company, Inc. v. Richland County, a political subdivision, and McClam & Associates, Inc.
Appellate No: 2017-000134
Case No: 2016-CP-40-07353
Firm No: 6344.012

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Appellant's Return to Richland County's Motion to Strike Material from Appellant's Designation of Matter to be Included in the Record on Appeal along with the original and seven copies of the Proof of Service. Please file the originals and six copies and return the clocked-in copies to me via our office courier.

By copy of this letter, I am serving same upon all counsel of record.

With kind regards, I am

Sincerely yours,

Kathleen McDaniel

KMM/jrw

cc: Richard C. Detwiler, Esq.
Ned Nicholson, Esq.
M. Elizabeth Crum, Esq.
Alan Peace, Esq.



BURNETTE SHUTT MCDANIEL

Moving law forward.

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Via Hand-Delivery

The Honorable Jenny Abbott Kitchings
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