

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Kristi Lea Harrington, Presiding Circuit Court Judge
Dennis Markley, Circuit Court Judge

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OCT 27 2017

SC Court of Appeals

Appellate Case No. 2016-002024

David Scot Lynd,

Appellant,

v.

Isle of Palms, Dawn Caldwell, Individually and in her capacity as an officer of the
Isle of Palms Police Department, and South Carolina Law Enforcement Division,

Respondents.

**MOTION TO DISMISS APPEAL AS TO THE SOUTH CAROLINA LAW
ENFORCEMENT DIVISION, OR IN THE ALTERNATIVE, MOTION FOR
EXTENSION OF TIME TO FILE RESPONDENT'S BRIEF**

Christopher T. Dorsel, Esq.
Senn Legal, LLC
Post Office Box 12279
Charleston, South Carolina 29422
(843) 556-4045
Attorneys for Respondent South
Carolina Law Enforcement Division



Comes now the Respondent, South Carolina Law Enforcement Division (hereinafter “SLED”), and hereby respectfully moves this Honorable Court for an Order dismissing this Appeal for the reasons stated below. In the alternative, SLED respectfully moves for an Order granting a thirty day extension of time to file Respondent’s Brief.

PROCEDURAL HISTORY (relevant to SLED)

Appellant filed his Complaint in the Charleston Court of Common Pleas on May 18, 2015, with allegations of conversion, negligence/gross negligence, and civil conspiracy. See Complaint, attached hereto as Exhibit A. SLED filed a Motion for Summary Judgment on March 4, 2016, and a hearing was held on April 26, 2016. The Circuit Court granted SLED’s Motion for Summary Judgment by way of Order filed on May 11, 2016. See Order Granting SLED’s Motion for Summary Judgment, attached hereto as Exhibit B. On June 21, 2016 (forty-two days later), Appellant filed a Notice of Motion and Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement Division and Dawn Caldwell pursuant to Rule 60(B)(3) (hereinafter, “Motion for Relief”) See Motion for Relief, attached hereto as Exhibit C. This Motion was denied by Order filed on August 3, 2016. See Order Denying Lynd’s Motion for Relief, attached hereto as Exhibit D. Appellant filed a Notice of Appeal on August 29, 2016.

ARGUMENT

Appellant did not timely appeal the entry of Summary Judgment. Under Rule 203(b), 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.” Appellant did not file a Notice of Appeal within thirty days of the date of the Order granting Summary Judgment. Appellant also did not file a Motion to Alter or Amend a Judgment, under Rule 59(e), SCRPC, within ten days

of the receipt of the Order. Rather, Appellant filed what he termed a Motion for Relief under Rule 60(b)(3), SCRCF. When Appellant's Motion for Relief was denied on August 4, 2016, Appellant filed a Notice of Appeal within thirty days of the entry of that Order. While the Notice of Appeal indicates that Appellant is appealing the Orders granting Summary Judgment, based on the above, the only order that was timely appealed was the Order denying Appellant's Motion for Relief.

A review of the Motion for Relief (See Exhibit D) in this case indicates that although Appellant labels the Motion for Relief as one filed under Rule 60(b)(3), SCRCF, in actuality, it is an untimely Rule 59(e) motion. This is apparent when the Motion for Relief is compared with Appellant's Notice of Motion and Motion to Reconsider filed October 13, 2015 (hereinafter, "Motion to Reconsider"). See Order Denying Lynd's Motion to Reconsider, attached hereto as Exhibit E. These two motions are nearly identical and provide the same basis for relief. Namely, Appellant argues in both motions that there was fraud and civil conspiracy that gave rise to Appellant's causes of action.

In the Motion to Reconsider, Appellant clearly states that the motion is filed pursuant to Rule 59(e). The subsequently filed Motion for Relief is nearly identical, but states that it is filed pursuant to Rule 60(b)(3) (presumably because it was filed well past the ten day time limit for a Rule 59(e) motion). Simply because the Motion for Relief asserts that it is made pursuant to Rule 60(b)(3) does not make it so. This is apparent in the Order denying the motion, in which the court found that the motion was not timely filed. For this reason, Appellant did not timely appeal the Order granting Summary Judgment and did not timely file a Rule 59(e) motion, and therefore, this appeal should be dismissed.

Even assuming the Motion for Relief was actually a proper Rule 60(b)(3) motion, this appeal should still be dismissed. Appellant did not appeal the order granting summary judgment to SLED within the deadlines imposed by our appellate court rules. See Rule 203(b), SCACR. A Rule 60(b), SCRCRCP, motion does not toll the time to file a notice of appeal. Brown v. Harper, No. 2004-UP-368, 2004 WL 6331473, at *2 (Ct. App. June 10, 2004) (citing Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 5, 518 S.E.2d 56, 59 (Ct. App. 1999)).

Appellant cannot use a Rule 60(b), SCRCRCP, motion as a substitute for an appeal. See Tench v. S.C. Dept. of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) (reversing the trial court's grant of a Rule 60(b), SCRCRCP, motion because "[a] party may not invoke this rule where it could have pursued the issue on appeal") (citing Smith Companies of Greenville v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993) (finding relief from judgment is not a substitute for appeal from final judgment, particularly when it is clear that the party seeking relief could have litigated at trial and on appeal claims he now makes by motion)).


In this case, summary judgment was granted to SLED. Appellant did not file a Rule 59(e) motion (which he could have) and Appellant did not file a timely appeal (which he could have).¹ Rather, Appellant attempted to utilize a Rule 60(b) motion as a substitute for filing an appeal and is now appealing the denial of that 60(b) motion. Therefore, what we are left with essentially is an appeal of a denial of a Rule 60(b) motion that was improperly brought in the first place. This should not be allowed under our court rules and case law, and this appeal should be dismissed based on these ground.

For all of the reasons cited above, Respondent SLED respectfully requests that this Court grant its motion and dismiss this appeal. If this court denies SLED's Motion to Dismiss,

¹ There is no allegation (or evidence) that any actions by Respondents kept Appellant from timely making a Motion to Alter or Amend or from filing a timely appeal.

Respondent SLED respectfully requests a thirty day extension from the date of the Order on this motion to file its initial Respondent's brief and any Designation of Matter to be Included in the Record on Appeal.

Respectfully moved,

A handwritten signature in black ink, appearing to read "Christopher T. Dorsel". The signature is written in a cursive style and is positioned above a horizontal line.

Christopher T. Dorsel, Esq.
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October 25, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

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Kristi Lea Harrington, Presiding Circuit Court Judge
Dennis Markley, Circuit Court Judge

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Appellate Case No. 2016-002024

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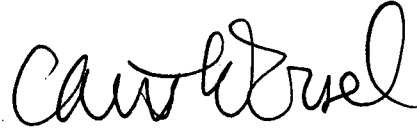
Isle of Palms, Dawn Caldwell, Individually and in her capacity as an officer of the
Isle of Palms Police Department, and South Carolina Law Enforcement Division,

Respondents.

PROOF OF SERVICE

I certify that I have served the *Motion to Dismiss Appeal as to the South Carolina Law Enforcement Division, or in the Alternative, Motion For Extension Of Time To File Respondent's Brief* on David Scot Lynd by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2017, addressed to 2605 Rustown Dr., Mesquite TX 75150 and to the Isle of Palms by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2017, addressed to its attorney of record Timothy Domin, Esquire, 126 Seven Farms Dr., Ste. 200, Charleston SC 29492, and Dawn Caldwell by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2017, addressed to her attorney of record, David Leon Morrison, Esquire, 7453 Irmo Drive, Ste. B, Columbia SC 29212

[signature on following page]



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October 25, 2017 **RECEIVED**

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SC Court of Appeals

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

RE: David Scot Lynd v. Isle of Palms, Dawn Caldwell, Individually and in her capacity as an officer of the Isle of Palms Police Department, and South Carolina Law Enforcement Division, Appellate Case No. 2016-002024

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of Appellee South Carolina Law Enforcement Division's *Motion to Dismiss Appeal as to the South Carolina Law Enforcement Division, or in the Alternative, Motion For Extension Of Time To File Respondent's Brief and Proof of Service*. I am also enclosing a check for the \$25.00 filing fee. If you would, please file the Motion and return the file-stamped seventh copy to me in the enclosed pre-paid self-addressed envelope.

Thank you and with kind regards, I am,

Sincerely,

Christopher T. Dorsel

:llc
Enclosure

cc: (via first class mail, with enclosures)
David S. Lynd
Timothy Domin, Esquire
David Leon Morrison, Esquire



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The Honorable Jenny Abbott Kitchings
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