



The South Carolina Court of Appeals

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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 08, 2017

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Phyllis B. Thomas v. Barbara R. Merline
Lower Court Case No. 2016CP2303431
Appellate Case No. 2017-001637

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jay A. Kitchings".

CLERK

Enclosure

cc: D. Randle Moody, II, Esquire
Thomas L. Stephenson, Esquire
Jeffrey P. Dunlaevy, Esquire

The South Carolina Court of Appeals

Phyllis B. Thomas, Appellant,

v.

Barbara R. Merline, Diane P. Meacham, MHA's LLC,
TAXLAW, LLC, David A. Merline, Jr., Keith G.
Meacham and Merline & Meacham, P.A., Respondents.

Appellate Case No. 2017-001637

ORDER

On June 22, 2017, the circuit court granted summary judgment in Respondents' favor and filed the order through the South Carolina Electronic Filing System. On the same day, the parties all received the automatically generated Notice of Electronic Filing (NEF). On July 7, 2017, Appellant filed a Rule 59(e), SCRCP, motion for reconsideration, which was denied. On July 28, 2017, Appellant served her notice of appeal. Respondents have now filed a motion to dismiss. Respondents argue this court lacks jurisdiction to consider the appeal because Appellant's untimely motion for reconsideration did not toll the time for service of the notice of appeal. This court agrees, and the motion to dismiss is granted. *See* 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, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) 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)); *In re S.C. Elec. Filing Policies & Guidelines*, 415 S.C. 1, 10–11, 780 S.E.2d 600, 605 (2015) ("An Authorized E-Filer has receipt of written notice of the entry of a judgment or the filing of an order upon receipt of the emailed NEF. It shall be the responsibility of an Authorized E-Filer to review the content of the E-Filed order to determine its force and effect; however, any delay in accessing the E-Filing System to review

the order does not affect the time of receipt."); *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."). The remittitur will be sent as required by Rule 221(b), SCACR.

Because this appeal is dismissed based on lack of appellate jurisdiction, this court will take no action on Appellant's motion for stay or injunction.




FOR THE COURT

Columbia, South Carolina

cc:

D. Randle Moody, II, Esquire
Thomas L. Stephenson, Esquire
Jeffrey P. Dunlaevy, Esquire

FILED

October 18, 2017