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JAN 26 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-002614
Case No. 2017-CP-40-3084

Lance and Victoria Woodley.....Respondents,

v.

City of Columbia.....Appellant.

**RETURN TO RESPONDENTS' MOTION
TO DISMISS APPEAL**

Appellant City of Columbia ("City") respectfully opposes Respondents' ("Woodley's") Motion to Dismiss. The City's Notice of Intent to Appeal was timely served under the South Carolina Rules of Civil Procedure, the South Carolina Rules of Appellate Practice, and existing case law. Therefore, Respondents' motion should be denied.

FACTS

This matter came before the circuit court on July 28, 2017, on appeal from the City of Columbia's Design/Development Review Commission. The Honorable Robert E. Hood heard the appeal on July 28, 2017. On August 28, 2017, he signed an order granting the Woodley's appeal. The City received written notice of the entry of judgment from the Richland County Clerk of Court's office on September 6, 2017 and timely filed a Rule 59(e) Motion to Alter or Amend Judgment on September 12, 2017.

On December 4, 2017, the City received a letter from the Woodleys indicating Judge Hood had denied the City's Rule 59(e) motion for failure to comply with Rule 59(g). The City then filed a second Rule 59(e) motion on December 13, 2017. Judge Hood denied the subsequent motion on December 18, 2017, and the City timely filed a Notice of Intent to Appeal with the Court of Appeals on December 27, 2017.

ARGUMENT

Motions to alter or amend judgments must be served with 10 days after receipt of written notice of entry of the order. Rule 59(b), SCRCF. Additionally, notices of intent to appeal from the Court of Common Pleas must be served on all respondents within 30 days after receipt of written notice of entry of the order or judgement. Rule 203(b)(1), SCACR. A timely Rule 59(e) motion stays a party's time to appeal. Rule 59(f), SCRCF. The time for appeal does not begin to toll until receipt of written notice granting or denying the party's Rule 59 motion. *Id.*

In this case, the City's initial Rule 59(e) motion was timely served and filed and there was no contrary finding made by the trial court. The City received notice of the order granting the Woodley's appeal on September 6, 2017 and promptly filed and served its Rule


59(e) motion six days later, on September 12, 2017. On November 27, 2017, Judge Hood signed a Form 4 order denying Appellant's Rule 59(e) motion. In that order, he did not find the City's motion to be untimely. Rather, he dismissed the motion under Rule 59(g), finding a copy of the clocked and served motion was not provided to the judge.

Respondents posit "if a party fails to follow the clear procedure set forth in ... Rule 59(g), then the party's motion is 'untimely' and does no (sic) stay the time for serving a notice of appeal. *Respondents' Motion*, pg. 4. However, this argument clearly misconstrues Rule 59 of the South Carolina Rules of Civil Procedure and Rule 203 of the South Carolina Appellate Court Rules. It also ignores well-established case law. In *Coon v Coon*, the husband asserted the wife's Notice of Intent to Appeal was untimely under similar circumstances. *Coon v. Coon*, 356 S.C. 342, 346, 588 S.E.2d 624, 626 (Ct. App. 2003), *aff'd as modified*, 364 S.C. 563, 614 S.E.2d 616 (2005). The husband argued that the wife's time to appeal under Rule 203(b)(1) had expired because of her failure to provide a copy of her Rule 59(e) motion to the trial judge within ten days of filing it with the clerk of court and serving it as required by Rule 59(g). *Id.* The Court of Appeals, however, disagreed and found the appeal to be timely. *Id.* Because the purpose of Rule 59(g) is simply to insure that a party notifies the judge when he files a Rule 59 motion, the failure to transmit a copy of the motion to the circuit court does not affect the tolling provision of Rule 203(b)(1). *Id.* Ultimately, The Court of Appeals held that a party is not required to file a notice of appeal until after the lower court issues its order denying the Rule 59(e) motion, even when such a motion is dismissed under Rule 59(g). *Id.* See also, *Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002) (holding timeliness of appeals for purposes of Rule 203, SCACR relates to the date the circuit court denies a Rule 59(e) motion, not the date a

motion is provided to the judge under Rule 59(g)).

In this case, the City received written notice of entry of the order denying its initial Rule 59(e) motion on December 4, 2017. The City filed a subsequent Rule 59(e) motion to address the findings of the first Rule 59(e) motion on December 13, 2017. The City then filed a Notice of Intent to Appeal with this court on December 27, 2017. Regardless of which Rule 59(e) motion triggers the time for appeal, the Notice of Intent to Appeal to the Court of Appeals was timely. Therefore, Respondent's motion to dismiss should be denied.

January 26, 2018



Jess R. Mangum
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
(803) 737-4242
Attorney for Appellant

Other Counsel of Record:
Gerald D. Jowers
Post Office Box 514
Columbia, South Carolina 29202
(803) 765-9620
Attorney for Respondents

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Lance and Victoria Woodley.....Respondents,

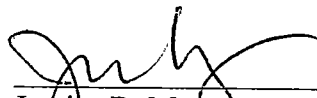
v.

City of Columbia.....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that she has served the *Return to Respondents' Motion to Dismiss Appeal* on the Attorney for Respondents by placing a copy in the United States mail, first class postage prepaid to him at his office as indicated below on this 26th day of January, 2018.

Gerald D. Jowers, Esquire
Post Office Box 514
Columbia, SC 29202



Jessica R. Mangum
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
Tel: (803) 737-4242

January 26, 2018
Columbia, South Carolina

Attorney for Appellant



We Are Columbia

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

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RECEIVED
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SC Court of Appeals

Via Hand-Delivery

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

RE: Lance E. Woodley and Victoria Alicia Woodley v. City of Columbia
Appellate File No.: 2017-002614
C/A File No.: 2017-CP-40-3084

Dear Ms. Kitchings:

Enclosed for filing, please find the original and eight (8) copies of the *Return to Respondent's Motion to Dismiss Appeal* along with the *Proof of Service* in the above referenced case. Please return the extra copies to the courier of this letter.

By copy of this letter, I am serving same on the attorney for the Respondents.

Sincerely,

Jess R. Mangum
Assistant City Attorney

JRM/jlh
Enclosure(s) as Stated

cc: Gerald D. Jowers, Esquire