

The South Carolina Court of Appeals

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.

Appellate Case No. 2016-002024

ORDER

In May 2015, Appellant filed this action against Respondents relating to the loss of his jet skis. On September 29, 2015, the circuit court granted summary judgment to Isle of Palms and Dawn Caldwell, in her official capacity, disposing of all claims against them. On May 11, 2016, the circuit court granted summary judgment to South Carolina Law Enforcement Division (SLED) and Dawn Caldwell, in her individual capacity, disposing of all claims against them. On June 23, 2016, Appellant filed a post-judgment motion for relief, which the circuit court denied. Appellant thereafter served and filed a notice of appeal from the September 2015 summary judgment order and the denial of his post-judgment motion.

Respondents SLED and Dawn Caldwell, in her individual capacity, have filed motions to dismiss, or alternatively, for extensions of time to file their initial briefs, arguing Appellant did not timely appeal the May 2016 order or file a Rule 59(e) motion requesting reconsideration of the order. They also argue Appellant either improperly filed his post-judgment motion instead of appealing or improperly captioned his motion as one under Rule 60(b) instead of one under Rule 59(e). Respondent Isle of Palms also filed a motion to be dismissed as a party to this appeal, arguing Appellant failed to properly appeal the September 2015 order. The motions to dismiss are granted in part.


Appellant's post-judgment motion, whether construed as an untimely motion to alter or amend under Rule 59(e), SCRCF, or a timely motion for relief from judgment under Rule 60(b), SCRCF, did not toll the time to appeal the circuit court's May 2016 order. *See* Rule 203(b)(1), SCACR (providing a *timely* motion to alter or amend under Rule 59 shall stay the time for appeal); Rule 59(e), SCRCF ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 5-6, 518 S.E.2d 56, 59 (Ct. App. 1999) (recognizing Rule 60 motions do not have any tolling effect on the right to appeal). As a result, the time to appeal the May 2016 order expired before Appellant served his notice of appeal. *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.").¹ Furthermore, Appellant's appeal of the denial of his post-judgment motion does not allow this court to review the merits of the May 2016 order. *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."); *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004) (stating a Rule 60(b) order is separate and distinct from the underlying judgment).

To the extent Appellant attempted to appeal the May 2016 order, that appeal is dismissed as untimely. Additionally, because Appellant did not timely appeal the May 2016 or September 2015 order, Isle of Palms's motion to dismiss is granted. *See* S.C. Code Ann. § 14-3-330(1) (2017) (providing this court may review an intermediate judgment involving the merits after final judgment is entered); *Lancaster v. Fielder*, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) ("[I]f there is a final judgment, *and the party timely files his notice of intent to appeal from that judgment*, under [s]ection 14-3-330(1) this [c]ourt can review any intermediate order or decree necessarily affecting the judgment not before appealed from." (emphasis added)). However, because Appellant timely appealed the circuit court's denial of his post-judgment motion, the motions to dismiss that appeal by SLED and Dawn Caldwell, in her individual capacity, are denied.

¹ Although Appellant was unable to inform this court when he received written notice of the May 2016 order, it must have been prior to his filing of the June 23, 2016 post-judgment motion, which was more than thirty days before Appellant served his notice of appeal.

The only order remaining before this court is the denial of Appellant's post-judgment motion, which relates only to SLED and Dawn Caldwell, in her individual capacity. Accordingly, Isle of Palms and Dawn Caldwell, in her official capacity, are dismissed as parties to this appeal. Additionally, because Appellant's initial brief raises arguments relating to the circuit court's summary judgment orders, the brief is stricken. Appellant shall serve and file an amended initial brief, addressing only the circuit court's denial of his post-judgment motion, within thirty days of this order. The remaining Respondents—SLED and Dawn Caldwell, in her individual capacity—shall serve and file their initial briefs within thirty days of receipt of Appellant's amended brief.

Finally, Appellant filed a motion requesting electronic notification of all filings in this case. This motion is denied.


FOR THE COURT

Columbia, South Carolina

cc: David Scot Lynd
James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
Christopher Thomas Dorsel, Esquire
David Leon Morrison, Esquire
Sandra J. Senn, Esquire
Julie J. Armstrong
The Honorable Kristi Lea Harrington

FILED

March 22, 2018