

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-001347

The City of Columbia,

Appellant,

v.

Edward Huffman,

Respondent.

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SC Court of Appeals

RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Counsel for Appellant City of Columbia submits this Response to Respondent's Motion to Dismiss, and asks the Respondent's Motion to Dismiss be denied.

1. Appellant Timely Filed the Notice of Appeal

Appellant timely filed the Notice of Appeal as required by South Carolina Appellate Court Rule (SCAR) 203, and South Carolina Rules of Civil Procedure (SCRCP) 59(e-f). Rule 59(e) provides that a "motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." Under Rule 59(f), when such a motion is made, the time for appeal from the judgement *begins* to run from the time of the order granting or denying the motion. (emphasis added) *See Otten v. Otten*, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985).

In the present case, the Appellant timely filed a motion to reconsider on June 8, 2018, exactly ten

days after notice of the circuit court affirmed the Municipal Court. The thirty days to file the notice of appeal therefore did not begin to run until June 27, 2018, when the Circuit Court denied the Appellant's Motion to Reconsider. The Appellant did file the appeal on July 20, 2018, twenty-three days after the motion to reconsider was denied, which is within the thirty-day limit. Therefore, the Appellant's Notice of Appeal was timely filed and the Respondent's Motion to Dismiss should be denied.

2. Appellant Timely Served the Appeal

Under SCAR 262(b), the Respondent may be served by mail. Additionally, "service is complete by mailing," not by the Respondent actually receiving the document. *Id.* In the present case, Appellant did mail the Notice of Appeal to the Respondent on July 20, 2018, within the prescribed thirty-day period. However, due to a scrivener error, the word "West" was omitted from the Respondent's address, resulting in the mail not being actually delivered to the Respondent, and was returned to the Appellant. Upon discovery of the error, the Appellant immediately mailed the Notice of Appeal to the correct address. Because "service is complete by mailing," service in the present case was complete when the Appellant initially attempted to mail the Notice of Appeal to the Respondent's address. Additionally, the Respondent has suffered no prejudice because he was aware of the Appeal, as he received a letter from the court on July 26, 2018 (also within the 30 day time frame for the Appellant to serve the notice of appeal), and was promptly mailed the Notice of Appeal after the scrivener error was corrected.

Therefore, the Appellant respectfully requests that the Respondent's Motion to Dismiss be DENIED.

[Signature page follows]

August 20, 2018



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the Response to Respondent's Motion to Dismiss upon the individual below by placing a copy in the United States Mail, sufficient postage pre-paid and return address clearly indicated, to him at his address shown below on this 20th day of August, 2018:

David K. Allen, Esquire
The Allen Law Firm, P.A.
P.O. Box 3241
West Columbia, SC 29171

Geraldine S. Pleasant
Geraldine S. Pleasant
Paralegal for the City of Columbia

August 20, 2018



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August 20, 2018

V. Claire Allen
Calhoun Bldg.
1220 Senate Street, Suite 200
Columbia, South Carolina 29201

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RE: City of Columbia v. Edward Huffman
Appellate Case No. 2018-001347

Dear Deputy Clerk:

Enclosed please find an original and six (6) copies of a Response to Motion to Dismiss in the above referenced matter, as well as a check for twenty-five dollars (\$25.00). I respectfully ask that you file this Motion and return the remaining clocked-copies.

By copy of this letter, I am serving the Counsel for Appellant with the same. A certificate of service is also attached.

Please let me know if you have any questions or concerns.

Sincerely,

Steven J. Luckie
Attorney for Appellant

SJL
Enclosure(s) as Stated

cc: David K. Allen, Esquire