

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Appellate Case Number 2018-001620

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SC Court of Appeals

Sally K. Favaloro, Appellant,

v.

Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, Michael Rose, and McLeod Regional Medical Center, Respondents.

APPELLANT'S RETURN OPPOSING RESPONDENTS' MOTION TO DISMISS

Memorandum.

1. On August 28, 2018, Appellant timely served a Notice of Appeal, challenging a June 26, 2018 order and a July 30, 2018 order. On September 18, 2018, Respondents served a Motion to Dismiss, "based on the untimeliness of the Notice". However, Respondents: (a) fail to claim that the Notice was untimely regarding the June 26 order; and (b) fail to claim that the Notice was untimely regarding the July 30 order. Therefore, Respondents: (a) fail to state a claim for untimeliness; and (b) fail to state a claim for dismissal based on untimeliness.

2. Respondents, having failed to state a claim for untimeliness of the Notice, claim that the June 26 and July 30 orders' contents render them unappealable. Again, Respondents' motion is "based on the untimeliness of the Notice". Obviously, the contents of an order are irrelevant to the timeliness of a Notice. After all, the purpose of a Notice is to begin the case showing that

those contents are erroneous. Therefore, the June 26 and July 30 orders' contents: (a) are irrelevant to Respondents' motion; and (b) are irrelevant to untimeliness; and (c) are irrelevant to dismissal. Again, Respondents: (a) fail to claim that the Notice was untimely regarding the June 26 order; and (b) fail to claim that the Notice was untimely regarding the July 30 order. Therefore, Respondents again: (a) fail to state a claim for untimeliness; and (b) fail to state a claim for dismissal based on untimeliness.

3. Respondents, having failed to state a claim for dismissal based on untimeliness, make a bizarre and irrelevant argument about another order, that of May 7, and its irrelevant contents. In that argument, Respondents: (a) concede that the May 7 order's contents are appealable, then (b) claim that the June 26 and July 30 orders "simply reiterated" the May 7 order's contents.

4. Respondents' argument is bizarre because Respondents ignore the simple logic that self-defeats their argument. Specifically: Either the June and July orders' contents are the same as the May orders' contents, or they are different. If the June and July orders' contents are the same as the May orders' contents, and the May orders' contents are appealable, then the June and July orders' contents are appealable. Respondents' self-defeating argument is irrelevant because, again, as explained above: The contents of an order are irrelevant to the timeliness of a Notice.

5. On the other hand, if the June and July orders' contents are different than the May order's contents, then, relative to the May order, the June and July orders present different and later errors to appeal and therefore different and later dates for the timeliness of any Notice of Appeal. Respondents' self-defeating argument is irrelevant because, again, as explained above: The contents of an order are irrelevant to the timeliness of a Notice.

6. Respondents' argument is also bizarre because it is so clearly false.

6.1. First, Respondents' claim that the June 26 order "simply reiterated" the May 7 order. Respondents' claim of "simply reiterated" is clearly false because the differences separating the May order from the June order, and/or the errors appearing for the first time in the June order, include: (a) dismissing, and striking from the record, Plaintiff's First Amended Complaint, including Claims 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, all filed for the first time, and including Claim 17, the facts of which arose after the Original Complaint was filed, and including Claim 21(5), the facts of which arose after the May order was filed; and (b) preventing Plaintiff from following Rule 15(a) "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served"; and (c) violating Rule 15(a) "leave [to amend a pleading] shall be freely given when justice so requires and does not prejudice any other party"; and (d) violating SCRCPC, Rule 12(b)(6) and Rule 12(f), by striking an entire pleading without any alleged Rule 12(b)(6) basis or Rule 12(f) basis, *see Motion to Dismiss, Exhibit 4, Plaintiff's Rule 59 Motion*; and (e) regarding Plaintiff's First Amended Complaint and Claims 12 - 21, violating Plaintiff's rights under: U.S. Constitution, U.S. Statutes, South Carolina Constitution, South Carolina Statutes, South Carolina Rules of Civil Procedure, and South Carolina Code of Judicial Conduct.

6.2. Respondents' argument is irrelevant because, again, as explained above: The contents of an order are irrelevant to the timeliness of a Notice.

6.3. Second, Respondents' claim that the July 30 order "simply reiterated" the May 7 order. Respondents' claim of "simply reiterated" is clearly false because the differences separating the May order from the July order, and/or the errors appearing for the first time in the July order, include: (a) Form 4 page 1 statement: "This order [X] ends ... the case"; and (b) Form

4 page 2 statement (unsigned): "... this Court hereby denies the Plaintiff's Rule 59 Motion"; and (c) denying each element of relief requested in Plaintiff's Rule 59 Motion, *see Respondents' Motion to Dismiss, Exhibit 4, Plaintiff's Rule 59 Motion*; and (d) denying Plaintiff's July 9 filed and fee-paid request for hearing on Plaintiff's Rule 59 Motion.

6.4. Respondents' argument is irrelevant because, again, as explained above: The contents of an order are irrelevant to the timeliness of a Notice.

7. Even if an order's contents are not irrelevant to the timeliness of a Notice, in this case: (a) the court did not claim that the May 7 order ended this case, *see May 7 order, Form 4, page 1*; (b) the court did not claim that the June 26 order ended this case, *see June 26 order, Form 4, page 1*; but instead (c) **the court stated that the July 30 order did end this case**, *see July 30 order, Form 4 page 1, stating "This order [X] ends ... the case"*. Therefore, even if an order's contents are not irrelevant to the timeliness of a Notice: In this case, the timeliness of the Notice follows from the court's expressly stated, signed and file-stamped end of this case: **July 30**.

8. However, again, as explained above: The contents of an order are irrelevant to the timeliness of a Notice.

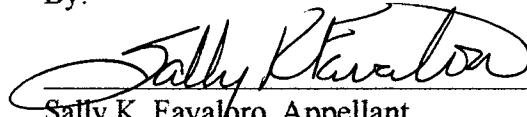
Relief

9. Respondents: (a) fail to state a claim for untimeliness; and (b) fail to state a claim for dismissal based on untimeliness. Respondents' argument on the May 7 order's contents is bizarre, self-defeating and irrelevant because: (a) Respondents' claim, that later orders "simply reiterated" the May 7 order, is clearly false; and (b) the contents of an order are irrelevant to the timeliness of a Notice. After all, the Notice begins the case showing that those contents are erroneous. Therefore, Appellant requests that Respondents' Motion to Dismiss be denied in its entirety.

Signature

Date: October 5, 2018

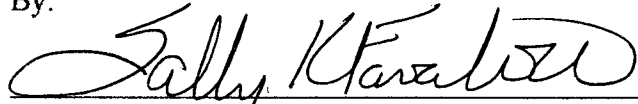
By:



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Service. I certify that on October 5, 2018, this document is being served, by regular mail, on counsel for Respondents, Michael M. Shetterly, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 300 North Main Street, Suite 500, Greenville SC 29601.

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