

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2017-CP-21-2331

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FEB 06 2019
SC Court of Appeals

Sally K. Favaloro, Plaintiff/Appellant,

v.

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

**RETURN IN OPPOSITION OF APPELLANT'S
PETITION FOR REHEARING**

Respondents submit this Return in Opposition of Appellant's Petition for Rehearing filed by Appellant Sally K. Favaloro ("Favaloro").

Favaloro's Petition should be denied because it wholly ignores the crux of this Court's January 5, 2019 Order that dismissed her appeal. Nowhere in Favaloro's Petition does she in any way contradict the fact that she filed her Notice of Appeal on August 28, 2018—113 days after the May 7, 2018 Order of Dismissal in the lower court, and 83 days after her deadline to appeal the Order of Dismissal had passed. This fact alone mandated dismissal of Favaloro's appeal, as "timely service of the notice of intent to appeal is a jurisdictional requirement, and th[e appellate] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Quality Trailer Prods., Inc. v. CSL Equip. Co.*, 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)); see also *Camp v.*

Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (same) (quoting *Mears*, 287 S.C. at 169, 337 S.E.2d at 207); *Oliver v. Lawrence*, Case No. 2013-002587, 2016 WL 6777563 (S.C. Ct. App. Nov. 16, 2016) (same) (quoting *Camp*, 386 S.C. at 574-75, 689 S.E.2d at 636).

Rather than address this dispositive issue, Favaloro references a number of Rules of Civil Procedure that have no bearing on the outcome and an inapplicable 1986 decision from the Ninth Circuit Court of Appeals. Frankly, other than her disagreement with the outcome, Respondents are unable to determine the specific “points supposed to have been overlooked or misapprehended by the court,” let alone with any degree of particularity. SCACR 221(a).

The only conclusion in the Court’s January 5, 2019 Order with which Favaloro appears to disagree is the Court’s conclusion that “[t]he circuit court’s June 26, 20[1]8 order and July 30, 2018 order merely reiterated that the case had previously been finally decided on May 9, 2018.” (Order at p. 2, Jan. 5, 2019.) She does not disagree with the finding that she did not timely appeal or seek reconsideration of the May 7, 2018 Order of Dismissal—she simply believes that she was able to unilaterally amend her complaint after that Order of Dismissal (which was with prejudice) and thereby render moot the Court’s Order of Dismissal (and her obligation to timely appeal or otherwise challenge that Order). There is no support for such a conclusion, and certainly no legal authority.

Favaloro could have challenged the May 7, 2018 Order of Dismissal through a timely Rule 59 motion and/or a timely notice of appeal. Favaloro did neither, rendering the May 7, 2018 Order of Dismissal the binding and non-challengeable law of the case. Thus, even if Favaloro could appeal the Orders that followed the May 7, 2018 Order of Dismissal (though they are not independently appealable), and if she prevailed in such an appeal (though she cannot, as the underlying arguments are plainly baseless), the result would be to remand this matter to an

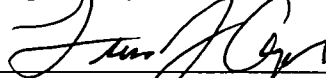
action that has been dismissed in its entirety with prejudice. Accordingly, this Court correctly concluded that Favaloro's appeal as to those Orders must also be dismissed due to her untimely appeal of the May 7, 2018 Order of Dismissal.

Conclusion

Favaloro's Notice of Appeal was clearly untimely with respect to the May 7, 2018 Order of Dismissal. She did not serve her Notice of Appeal until 83 days after her deadline to appeal the Order had passed. Favaloro's appeal was thus jurisdictionally barred and was properly dismissed. She does not contest these facts, but focuses instead on her attempt to appeal the orders that followed the May 7, 2018 Order of Dismissal. However, because the appeal of the May 7, 2018 Order of Dismissal cannot proceed, neither can the appeal of the Orders that followed the May 7, 2018 Order of Dismissal—both of which simply reiterated that the case had already been dismissed with prejudice and closed.

Respondents request that Favoloro's Petition be denied promptly to avoid further wasting the parties' and the Court's time and resources on this matter.

Respectfully submitted,



Michael M. Shetterly

Lucas J. Asper

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Attorneys for Respondents

February 5, 2019

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PROOF OF SERVICE

I certify that I have served Return in Opposition to Appellant's Petition for Rehearing on Appellant Sally K. Favaloro by sending her a copy of the same via first class mail, properly addressed, postage prepaid, at the following address: Sally K. Favaloro, 2002 Chickadee Court, Florence, SC 29501.

February 5, 2019



Lucas J. Asper

Ogletree Deakins

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February 5, 2019

VIA FEDEX

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

RE: Sally Favaloro v. Robert Colones, et al.
Appellate Case No. 2018-001620

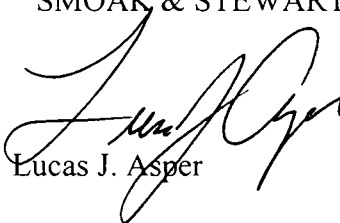
Dear Ms. Kitchings

Please find enclosed for filing an original and seven (7) copies of Respondents' Response to Appellant's Petition for Rehearing. Please return a stamped filed copy to us in the enclosed self-addressed, stamped envelope.

Please contact us with any questions or concerns.

Sincerely,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



Lucas J. Asper

LJA:lah

Enclosures

cc: Sally K. Favaloro

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