

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE NO.: 2019-000358
ADMINISTRATIVE LAW COURT CASE NO.: 16-ALJ-07-0386-CC

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APR 01 2019
SC Court of Appeals

Trident Medical Center, LLC, d/b/a Trident Medical Center,.....Respondent,

v.

South Carolina Department of Health and Environmental Control,
and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.
Francis Hospital – Berkeley County,.....Respondents below,

Of Which Roper St. Francis Hospital – Berkeley, Inc., d/b/a
Roper St. Francis Hospital – Berkeley County is the.....Appellant.

**APPELLANT’S REPLY TO RESPONDENT’S RETURN TO MOTION TO ASCERTAIN
ORDER FOR APPEAL, EXTEND TIME FOR INITIAL FILINGS AND CORRECT
CAPTION**

Appellant Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley (“Appellant” or “Roper Berkeley”), respectfully submits this Reply to Respondent Trident Medical Center, LLC, d/b/a Trident Medical Center’s (“Trident”) Return to the Motion to Ascertain Order for Appeal, Extend Time for Initial Filings. As reflected in the Return, Trident has no objection to Appellant’s request to correct the case caption and to extend the time for Initial Briefs following a decision of this Court on the Motion, but argues that the Amended Final Order issued by the Administrative Law Court (“ALC”) is the final order for purposes of appeal, despite the ALC’s failure to comply with the requirement of Rule 29D of the Rules of

Procedure for the Administrative Law Court (“RPALC”). Roper St. Francis respectfully submits that Trident’s position is contrary to the law as explained herein.

1. With all due respect to the ALC, the parties to a proceeding cannot overlook or cure a procedural defect that has the effect of invalidating an action of the court. Trident’s suggested interpretation of Rule 29D(2), RPALC, renders the “deemed denied” provision meaningless. “A court does not have discretion to extend the time limits set by statute. Thus, the trial court’s authority to modify, amend, or vacate an order or final judgment after rendition of the final judgment is limited to the time and manner provided by rule or statute.” 47 Am. Jur. 2d *Judgments* § 643.

2. In interpreting Rules of Procedure, this Court applies the same rules of statutory construction as are used in interpreting statutes. “Where the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.” *Stark Truss Co., Inc. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004). In *Stark Truss*, the Court rejected the argument that a late answer was sufficient to provide relief from default under Rule 55(c), SCRCF, where the Rules require that a defendant must serve his responsive pleading within thirty days of service of a complaint. *See id.* at 508-09, 602 S.E.2d at 101-02. “A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCF, meaningless.” *Id.* at 509, 602 S.E.2d at 102.

3. The intended operation of Rule 29D(2), RPALC, is clear on its face: “The administrative law judge **shall act** on the motion for reconsideration . . . **within thirty (30) days** after an opposing party files a response. If no action is taken by the administrative law judge within the applicable period, **the inaction shall be deemed a denial** of the relief sought in the

motion.” Rule 29D(2), RPALC (emphasis added). The Rule specifically further provides for the timing for appeal if a motion is deemed denied under Section D(2). *See* Rule 29D(4), RPALC.

4. The Motion to Alter or Amend was filed on December 13, 2018. Trident as the opposing party filed a response on January 7, 2019. By the plain language of Rule 21D(2), the Motion was **deemed denied** on February 6, 2019,¹ after which time no motion was pending before the ALC for decision. “If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). Trident challenges the precedent cited in the Motion to Ascertain Final Order, failing to recognize that the procedural posture of those cases are nearly identical to that at issue below. The ALC’s Amended Final Order issued February 21, 2019, intended to substitute the Final Order dated December 3, 2018, operated as a *sua sponte* order of reconsideration, given that no motion was pending for ruling.

5. Trident argues that Rule 29D does not speak to jurisdiction, but only to timeliness. Resp.’s Ret. 2. It is unclear how Trident conceives of a difference as applied to the question before this Court. It is axiomatic that an administrative tribunal, like a trial court, must have authority to issue amended orders. *See e.g. S.C. Dept. of Motor Vehicles v. Vera*, Docket No. 06-ALJ-21-0325-AP, 2007 WL 1365849, *4 (S.C. Admin. L.J. Div. Apr. 9, 2007) (citing *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001) as support for the proposition that a hearing officer must have authority to issue an order amending a Final Order and Decision).

¹ As noted in the Motion, after Trident filed its written opposition, Roper St. Francis filed a written reply on January 14, 2019, and Trident filed a document titled “sur-reply” on January 18, 2019. Although a written reply is provided for in Rule 19A, RPALC, Rule 29D does not contemplate that filing in the timing calculations of Rule 29D(2), RPALC. Neither Rule of the ALC allows for a “sur-reply.” Regardless of which filing may have been viewed as the “last” filing in response to the Motion, the deadline to act could extend no later than February 19, 2019 (as February 18 was a Sunday and February 19 a State Holiday).

6. Trident dismisses the importance of *Heins* yet fails to appreciate the relevant procedural history and resulting significance. In *Heins*, wife sought reconsideration of a Family Court's contempt order filed January 29, 1999. *Heins*, 344 S.C. at 157, 543 S.E.2d at 229-30. The Family Court entered an order in response to her motion on June 3, 1999, and in doing so addressed matters not raised in her motion. *See id.* Despite arguably being in response to a reconsideration motion, this Court evaluated the timeliness of the amended ruling in light of the 10-day limitation found in Rule 59(e), SCRPC, and held that "a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old." *Id.* Roper St. Francis submits that *Heins* is actually quite instructive, as although the lower court purported to act on a reconsideration motion, the authority to issue the revised ruling has lapsed and such ruling was therefore void. *See also, Ness v. Eckerd Corp.*, 350 S.C. 399, 402-03, 566 S.E.2d 193, 195 (Ct. App. 2002) (finding there was no jurisdiction for trial judge's modification of an order not as requested in a Rule 59(e) motion, but rather on his own initiative and after more than ten days had passed).

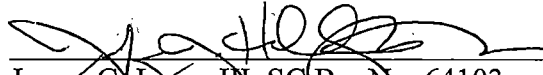
7. Trident's argument that the Amended Order "merely augments and expands" the Final Order attempts to minimize the very substantial revisions made by the ALC, which far exceed the scope of the issues raised for reconsideration. These very substantial revisions span five (5) additional pages of findings and conclusions, eight (8) additional footnotes of references, and complete revisions and reordering of several sections. Moreover, the substituted order has upwards of 20 or more references to witness testimony it asserts to support the rulings therein not previously referenced by the ALC. Clearly, a significant amount of newly stated findings and conclusions appear for the first time in the substituted order and are "not as requested in a Rule 59(e) motion." *See Ness* at 403, 566 S.E.2d at 195.

8. Trident's dismissal of Appellant's concerns on the grounds that Appellant had "ample notice" of the substituted order because it "was issued well in advance" of the Notice of Appeal filing well misses the point of concern. Had Appellant assumed the Amended Final Order was the appealable order and not met the 30-day time to appeal the Final Order under Rule 29(D)(4), RPALC, Appellant may have been subject to a dismissal for untimeliness. *See* Rule 203(d)(3), SCACR. "Service of the notice of intent to appeal is a jurisdictional requirement, and th[e] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985). Moreover, the limitations on successive Rule 59(e) filings may have jeopardized this appeal had Appellant assumed the substituted order was the final order and the additional findings and conclusions therein subject to reconsideration, yet a reviewing court disagreeing and finding the alterations were not substantial. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("An appeal may be barred due to untimely service of the notice of appeal when a party—instead of serving a notice of appeal—files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment.") "Civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party." *James v. S.C. Dept. of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) (internal quotation omitted).

9. For the foregoing reasons and as further raised in the underlying Motion to Ascertain Order for Appeal, Appellant respectfully requests an Order of this Court identifying which of two final orders issued by the ALC is the order for appeal, which Appellant respectfully submits is the Final Order dated December 3, 2018. Appellant further requests that the Court

enter its Order setting the time to file the Initial Brief and Designation of Matter at least thirty (30) days after notice of the Order on this Motion.

Respectfully submitted,



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April 1, 2019
Columbia, South Carolina

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Francis Hospital – Berkeley County,.....Respondents below,

Of Which Roper St. Francis Hospital – Berkeley, Inc., d/b/a
Roper St. Francis Hospital – Berkeley County is the.....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on April 1, 2019, she caused a copy of the *Reply to Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption* to be served on all parties of record by hand delivering a copy of the same, addressed as follows:

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Admitted in SC

April 1, 2019

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Trident Medical Center, LLC, d/b/a Trident Medical Center vs. South Carolina Department of Health and Environmental Control, and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County*
Appellate Case No.: 2019-000358

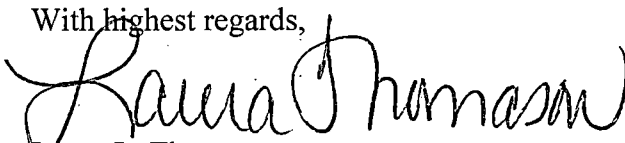
Dear Ms. Kitchings:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Enclosed please find an original and seven (7) copies of *Appellant's Reply to Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings, and Correct Case Caption* to be clocked and filed in the above captioned matter, together with an original and one (1) copy of a Proof of Service. Please file the originals and return the filed-stamped copies to me via our courier.

By copy of this letter, I am hereby serving a copy of the same on opposing counsel.

With highest regards,



Laura L. Thomason
Legal Assistant to Jennifer J. Hollingsworth

/llt

Enclosures

cc: William R. Thomas, Esquire (w/enclosure – via Hand Delivery)
Ashley C. Biggers, Esquire (w/enclosure – via Hand Delivery)