

The South Carolina Court of Appeals

Deutsche Bank National Trust Company, as Indenture
Trustee for New Century Home Equity Loan Trust 2005-
1, Respondent,

v.

Phyllis L. Alls a/k/a Phyllis L. Allen; New Century
Mortgage Corporation; SC State Credit Union; Turtle
Creek Property Owners Association, Inc., Defendants,

Of whom Phyllis L. Alls a/k/a Phyllis L. Allen is the
Appellant

Appellate Case No. 2019-000356

ORDER

Appellant has filed a motion to stay the master-in-equity's February 13, 2019 writ of assistance ordering her ejection on April 1, 2019. Appellant argues the order should be stayed because she was not given ninety days to leave her home. However, Appellant has failed to cite, and this court was unable to find, any authority supporting her argument. Accordingly, after careful consideration, the motion is denied.

Along with the writ of assistance, Appellant appealed "the Wrongful Foreclosure" that preceded the writ of ejection. Although this court twice notified Appellant of deficiencies related to her notice of appeal, and Appellant has filed subsequent notices partially correcting the deficiencies, Appellant has failed to provide this court with a copy of the foreclosure order or notify this court of the date she received written notice of entry of the order.¹ See Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after

¹ According to the Richland County Public Index, the master-in-equity entered the most recent foreclosure order on August 1, 2018.

receipt of written notice of entry of the order or judgment."); Rule 203(d)(1)(B)(ii), SCACR (stating the notice of appeal "shall be accompanied by . . . [a] copy of the order(s) and judgment(s) to be challenged on appeal"). Because Appellant has not shown this court she timely served Respondent with a notice of appeal from the foreclosure order, this court lacks appellate jurisdiction over the 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."). As a result, any judgment by this court related to the writ of assistance would not offer Appellant practical relief, and this appeal is moot. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [a] reviewing [c]ourt to grant effectual relief."). Accordingly, the appeal is dismissed. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) ("Before any action can be maintained, there must exist a justiciable controversy."); *id.* at 431, 468 S.E.2d at 864 ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."). The remittitur will be sent as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc: Phyllis L. Allen
Jayme L Shy, Esquire
Damon Christian Wlodarczyk, Esquire

FILED

April 9, 2019