

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi Curtis, Circuit Court Judge

Case No.: 2018-CP-43-01583
Appellate Case No. 2019-000873

RECEIVED

JUL 05 2019

SC Court of Appeals

M.B. Hutson.....Appellant,

v.

A. Paul Weissenstein.....Respondent.

REPLY TO RETURN ON MOTION TO DISMISS APPEAL

The facts supporting this motion are clear and unambiguous. The Circuit Court entered an order granting summary judgment in favor of Respondent on February 25, 2019. (Exhibit A to Motion to Dismiss, "Summary Judgment Order"). Thereafter, counsel for Respondent emailed Appellant the entered Summary Judgment Order. (Exhibit B to Motion to Dismiss). Appellant did not serve a Rule 59(e) motion within ten (10) days of entry of the Summary Judgment Order, nor did he serve a notice of appeal within thirty (30) days of entry of the Summary Judgment Order. As a matter of law, this appeal is therefore untimely.

In opposition to Respondent's Motion to Dismiss the Appeal, Appellant does not show that he served a timely Rule 59(e) motion or a timely notice of appeal after entry of the Summary

Judgment Order. Instead, Appellant suggests that he deserves an exception to the strict time requirements of Rule 59(e), SCRCP and Appellate Court Rule 203(b) because he is pro se. However, no such exception exists, pro se parties are not subject to separate rules, and the strict time limitations of the aforementioned rules cannot be extended or modified for any reason, whether by agreement of the parties or a Court. *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432-433 (2018). Accordingly, Appellant's failure to timely file a Rule 59(e) motion or notice of appeal is not excused by his pro se status.

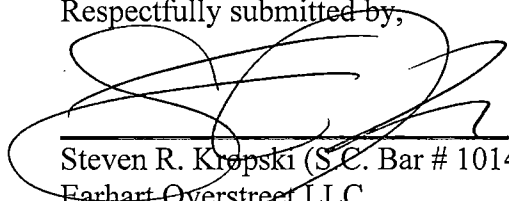
Likewise, unavailing is Appellant's argument that a purported "motion to reconsider" filed twelve days before entry of the Summary Judgment Order should qualify as a valid Rule 59(e) motion. Appellant filed the purported motion to reconsider, (Exhibit D to Motion to Dismiss), after receiving a letter from the Circuit Court Judge identifying that she was granting Respondent's motion for summary judgment and asking Respondent's counsel to prepare a proposed order. (Exhibit A to Appellant's Return to Motion to Dismiss.). This letter did not constitute entry of an order.

Appellant, however, suggests that due to his pro se status, he was unaware that he was required to wait until after an order from the Circuit Court was filed rather than serve a motion to reconsider after receipt of Judge Curtis' letter. Contrary to this assertion, though, Respondent's counsel did advise Appellant that filing of a motion to reconsider needed to wait until after the Circuit Court entered a formal order granting the motion for summary judgment. (Reply Exhibit 1, "Memo in Opp. To Mot. To Reconsider" at Exhibit B). Thus, Appellant was aware that he was required to serve a Rule 59(e) motion after entry of the Summary Judgment Order, but he did not do so.

As a matter of law, the Summary Judgment Order became a final order of the Circuit Court upon Appellant's failure to timely serve a Rule 59(e) motion within ten (10) days after entry of the Summary Judgment Order. Thereafter, Appellant's notice of appeal was not served until eighty days after entry of the Summary Judgment Order. (Exhibit C to Motion to Dismiss). Accordingly, this appeal is untimely and should be dismissed.

This 2nd day of July, 2019.

Respectfully submitted by,



Steven R. Kropski (S.C. Bar # 101441)

Earhart Overstreet LLC

P.O. Box 22528

Charleston, South Carolina 29413

(843) 972-9404

Attorney for Respondent

Reply Exhibit 1

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
MB HUTSON A/K/A MB HUTSON,

Plaintiff,

vs.

PAUL WEISSENSTEIN (Attorney)/
PAUL WEISSENSTEIN,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO.: 2018-CP-43-1583

**DEFENDANT PAUL WEISSENSTIEN'S
MEMORANDUM IN OPPOSITION TO
PURPORTED MOTION TO RECONSIDER**

Via order entered February 25, 2019, this Court granted summary judgment for the Defendant. On February 26, 2019, the undersigned emailed the entered order granting summary judgment to Plaintiff. (Exhibit A).

Prior to entry of the order granting summary judgment, on February 13, 2019, Plaintiff filed a document entitled "motion to reconsider." On April 12, 2019 the undersigned received a hearing notice related to the subject motion to reconsider, setting a hearing on the motion for April 22, 2019. Defendant respectfully requests that the motion be dismissed without oral argument as defective, as no proper or valid motion to reconsider pursuant to Rule 59(e) was filed.

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. "A motion under Rule 59(e) is timely if it is served not later than 10 days after receipt of written notice of the entry of the order." *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App. 1999)(emphasis added).

Here, no Rule 59(e) motion was filed within 10 days of the entry of the order granting summary judgment. Moreover, the undersigned expressly advised the Plaintiff that he need not

wait until entry of the order to file a motion to reconsider. (Exhibit B). Thus, there is no pending motion to reconsider.

Similar facts were recently discussed by the South Carolina Supreme Court in *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432-433 (2018). In *Overland*, the Supreme Court reiterated that the time limitations of Rule 59(e) cannot be altered by the trial court or agreement of the parties. *Id.*

Specifically, the Supreme Court identified that the Circuit Court loses jurisdiction over the matter after the time period for filing post-judgment motions lapses. *Id.*, (citing, *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) (“Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”); *Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (on appeal from an order entered just before the effective date of the Rules of Civil Procedure, holding the trial court lost the power to modify the final order after end of the term of court, and noted that under Rule 59(e) the trial court would have the power to alter or amend such an order for a ten-day period after entry of judgment)).

In summarizing their clarification of the rule, the Supreme Court held “the failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal.” *Overland*, 423 S.C. at 257, 815 S.E.2d 431, 433 (emphasis added).

Here, when Plaintiff filed the current motion purporting to be a motion to reconsider, there were no orders entered that could be reconsidered. On February 25, 2019, the order granting summary judgment was entered. Thereafter, Plaintiff did not file a Rule 59(e) motion. Accordingly, there is no valid motion to reconsider pending.

Furthermore, as no Rule 59(e) motion was filed within 10 days of entry of the order granting summary judgment, the order granting summary judgment is a final order and the Court lacks jurisdiction to alter or amend the subject order. Thus, the purported motion to reconsider should be dismissed without oral argument.

To the extent that the Court decides to hear the purported motion to reconsider on the merits, the motion fails to identify any grounds for reconsideration.

A party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004). As the purported motion to reconsider was filed prior to entry of the order, it necessarily does not identify any specific error of law or material argument or issue. Moreover, the purported motion to reconsider simply reiterates the same arguments made at the hearing on the motion for summary judgment.

Thus, to the extent that the Court decides to hear Plaintiff's motion to reconsider on the merits, the motion should be denied.

CONCLUSION

For the reasons stated herein, the purported motion to reconsider should be dismissed as the order granting summary judgment has become final, and the Court lacks jurisdiction to alter or amend the subject order. Defendant respectfully requests an order dismissing the purported motion to reconsider without a hearing.

Further, to the extent the Court decides to hear the motion on its merits, Plaintiff identifies no grounds for reconsideration and the motion should be denied.

[SIGNATURE PAGE TO FOLLOW]

This 12 day of April, 2019.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski

STEVEN R. KROPSKI
State Bar No.:101441

Attorneys for Defendant Paul Weissenstein

PO Box 22528
Charleston, SC 29413
843-972-9400

Steve Kropski

From: Steve Kropski
Sent: Tuesday, February 26, 2019 12:19 PM
To: 'H Hutson'
Subject: Hutson v. Weissenstein
Attachments: Order Granting Summary Judgment (signed).pdf

Good afternoon Mr. Hutson:

I told you I would email you the signed order when it was filed. Please find attached the filed order granting summary judgment in favor of Weissenstein. I believe the Court likely mailed a copy to you as well, however, please let me know if you are unable to open the attachment.



Steven R. Kropski
Attorney
Direct 843 972 9404
PO Box 22528, Charleston, SC 29413



Steve Kropski

From: Steve Kropski
Sent: Monday, February 11, 2019 1:10 PM
To: 'H Hutson'
Subject: RE: evidence

Good afternoon Mr. Hutson:

I received your email from this weekend and this email. I will have a proposed order completed soon. As far as a motion to reconsider, I am not providing you legal advice but generally that would need to wait until Judge Curtis signs the summary judgment order.



Steven R. Kropski
Attorney
Direct 843 972 9404
PO Box 22528, Charleston, SC 29413

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, February 11, 2019 12:50 PM
To: Steve Kropski <steve.kropski@earhartoverstreet.com>
Subject: evidence

Good morning Steve. I was reading a letter this morning that Paul (your client) wrote to Wells Fargo Mortgage Department confirming WFM would make construction and permanent loans on the BWR property.

This will be used in front of a Jury. Paul is so guilty. I don't understand why Paul's insurance company would put so much work in trying to avoid responsibility against me knowing full well I was extremely damaged by Paul's malpractice.

Respectfully,

MB Hutson



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Kristi Curtis, Circuit Court Judge

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Case No.: 2018-CP-43-01583
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M.B. Hutson.....Appellant,

v.

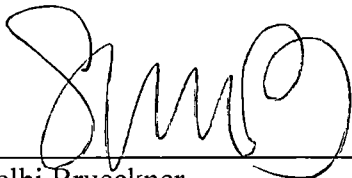
A. Paul Weissenstein.....Respondent.

Respondent.

PROOF OF SERVICE

I, Shelbi Brueckner, an employee of Earhart Overstreet LLC, paralegal for the attorney for Respondent A. Paul Weissenstein certify that I served a copy of the attached *Reply to Return to Motion to Dismiss Appeal* by depositing a copy of it in the United States Postal Service, postage prepaid, on July 2, 2019, addressed to Pro Se Appellant M.B. Hutson at P.O. Box 2755, Orangeburg, SC 29116.

This 2th day of July, 2019.



Shelbi Brueckner



Earhart Overstreet
ATTORNEYS AT LAW

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Steve@earhartoverstreet.com
Direct: 843.972.9404

July 2, 2019

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JUL 05 2019
SC Court of Appeals

VIA MAIL

Jenny Abbott Kitchings, Clerk
V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: M.B. Hutson, Appellant v. A. Paul Weissenstein, Respondent
Appellate Case No.: 2019-000873
EO File No.: 120-0452

Dear Ms. Kitchings and Ms. Allen:

Enclosed please find *Respondent A. Paul Weissenstein's Reply to Return on Motion to Dismiss Appeal* pursuant to SCACR 240(f). Please do not hesitate to contact me with any questions or concerns.

Sincerely,



STEVEN R. KROPSKI

SRK/shb
Enclosures



NEOPOST
PRIORITY MAIL
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07/02/2019 ZIP 29464
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Jenny Abbott Kitchings, Clerk
V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
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Columbia, South Carolina 29211

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