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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley, Appellants,

v.

Church of the Harvest of Columbia, Inc., Respondent.

MOTION TO STAY APPEAL, TO DISMISS APPELLANTS' NOTICE OF APPEAL AS UNTIMELY OR TO LIMIT ISSUES ON APPEAL WITH SUPPORTING AUTHORITIES

The Respondent (the Church) hereby moves for an Order staying the appeal pending resolution of this Motion, dismissing as untimely the Appellants' Notice of Appeal filed on September 23, 2019 or limiting the issues which Ms. Farley, individually, may raise on appeal. The grounds for the motion and supporting authorities are set out below.[1]

I. MOTION TO STAY

The appeal should be stayed. This Motion, if granted, will either end the case or severely limit the issues on appeal. For that reason, the Respondent moves for the immediate entry of an Order staying this appeal pending resolution of this Motion. A stay will make it unnecessary for the parties to incur the costs incident to an appeal while the Motion is pending. Neither the

[1] Since no Appendix has been filed, an affidavit identifying the relevant documents is filed herewith.

Appellants nor the Respondent will be prejudiced by the stay. Under those circumstances, the appeal should be stayed pending resolution of this Motion.

II. PROCEDURAL BACKGROUND

The Appellants were the Plaintiffs in the underlying case. Mr. Moore represented only Rachel Farley individually and in her capacity as Trustee of the Trust. To the extent they participated in the case, the other Plaintiffs appeared Pro Se. Mr. Moore did not represent, and did not file a notice of appearance on behalf of, Drummond, Nancy or Carol Farley in the case below. Presumably, Mr. Moore has been authorized to file this appeal on their behalf.

The Plaintiffs asserted several causes of action in their Complaint. However, the only issues before this Court arise from the grant of a Rule 60(a) Motion filed by the Church and the Plaintiffs' assertions (1) that they held a valid easement over land of the Church (2) that the Church is obstructing the easement with a building and two parking lots and (3) that the Church should be required to remove the obstructions from the easement.

After the issues were fully joined and all necessary parties had been named and served, the matter came before the Court on cross motions for summary judgment. The Church conceded the validity and location of the Plaintiffs' easement and the existence of the three obstructions on the easement. Following a lengthy hearing, the Court issued an Order on May 9, 2019 (the May 9th Order)[2] denying the Plaintiffs' motion, granting the Church's motion and dismissing the case with prejudice. In the May 9th Order, the Court (1) found that the Plaintiffs held an easement over lands of the Church, Order at 4, 7, 9-10 and 11, and (2) found that the Church was obstructing the easement with a building and two parking lots, Order at 7-8. However, based on the uncontroverted facts of the case, the Court went on to hold as a matter of law that the Plaintiffs' claims against the Church arising from the obstruction of the easement

[2] All events relevant to this Motion occurred in 2019. Therefore, the year 2019 is omitted from the relevant dates.

were time barred by the applicable sections of S. C Code, Ann. §15-3-530, Order at 5-6, 8-9, 10 and 11.

Thus, the issues relating to (1) the validity, existence and location of the Plaintiffs' easement and the obstruction thereof by the Church and (2) the Plaintiffs' claim that the Church must remove the obstructions from the easement were fully raised below by the Plaintiffs and ruled upon by the Court in the May 9th Order. A copy of that Order was served on the Plaintiffs by mail on May 10th. Pursuant to Rule 203, SCACR, the time for filing a Notice of Appeal from the May 9th Order expired on June 14th unless the time to appeal was extended by the timely filing of a proper post trial motion.

Neither Rachel Farley as Trustee of the Trust nor Drummond B. Farley, Nancy E. Farley or Carol E. Farley, individually, filed a Rule 59(e) or other post trial motion. None of those Plaintiffs filed a Notice of Intent to Appeal on or before June 14th.

Only Rachel Farley, individually (Ms. Farley), timely filed a Rule 59(e) Motion. Her motion sought "an order altering or amending the Court's judgment [of May 9th] so as to recognize the validity of the Plaintiff Trust's easement, that the easement has been obstructed by the Defendant and that the Defendant must remove the obstructions to the easement."[3]

On May 23rd the Church filed a response to her motion and pointed out that the issues raised by Ms. Farley's 59(e) Motion had been raised and ruled upon by the Court in the May 9th Order. The Church also filed a motion pursuant to Rule 60(a), SCRCP, to correct three clerical errors in the May 9th Order: To Wit:

1. Changing the last word in Footnote 2 from "Defendants" to "Parties."

[3] If her 59(e) Motion was proper and necessary, it tolled her time for filing an appeal from the May 9th Order. On the other hand, if her 59(e) Motion was not proper or necessary, her time to appeal from that Order was not tolled, and June 14th remained the deadline for Ms. Farley to file an appeal.

2. Changing the reference in Footnote 7 from "See n.8, infra." to See n.10, infra."

3. Changing the reference in Footnote 14 from "See n.13, infra." to "See n.15, infra."

None of the requested clerical changes would have any effect on the rulings on the merits made by the Court in the May 9th Order. No one opposed the Rule 60(a) Motion.

On June 19th the Court issued an Order denying Ms. Farley's Rule 59(e) Motion in which it said:

> After careful consideration of the record in this case and the arguments raised by Plaintiffs (sic) this Court is unable to discover any new material fact or any principle of law that was overlooked or warrants reconsideration of the Order
>
> Plaintiffs' (sic) motion to alter/amend is hereby DENIED.

That Order was served electronically on June 19th and filed on June 20th. In that Order the Court also said: "This Court has reviewed the [May 9th] Order and amended several clerical errors as noted by the Defendant in its motion. A revised Order reflecting those amendments has been (sic) filed pursuant to Rule 60(a)."[4]

Despite the language in the June 19th Order indicating the contemporaneous filing of a revised order "reflecting those amendments . . . pursuant to Rule 60(a)," the Order doing that was not filed until July 23rd. It is important to note that the only amendment to the May 9th Order made by the July 23rd Order was the correction of the three (3) clerical errors. The July 23rd Order made no other change, substantive or otherwise, in or to the language of the May 9th Order. The July 23rd Order did not change the findings and ruling of the Court on the merits in the May 9th Order regarding either (1) the Plaintiffs' easement and the obstruction thereof by the

[4] If Ms. Farley's 59(e) Motion was necessary and proper and tolled the time for appeal from the May 9th Order, under the authorities cited herein, infra, the time for Ms. Farley to appeal from the May 9th Order then began to run on June 19th and expired on July 19th. Ms. Farley did not file a Notice of Appeal on or before July 19th.

Church or (2) the holding by the Court on the May 9th Order that the relevant claims of the Plaintiffs arising from the obstructions were time barred.

On August 2nd Ms. Farley filed a "Motion for Reconsideration" of the "Order of July 23rd."[5] In that Motion, she sought to have that Order modified by the inclusion of an "order that the easement location be cleared of the Defendant's building and parking lot."

The Motion for Reconsideration did not address either the May 9th Order or any of the three clerical corrections contained in the July 23rd Order. Instead, that motion addressed the same issue Ms. Farley raised in her earlier 59(e) Motion. In her 59(e) Motion, Ms. Farley asked the Court to hold "the Defendant must remove the obstructions to the easement." In her Motion for Reconsideration, Ms. Farley asked the Court to "order that the easement location be cleared of the Defendants' building and parking lot." Although the wording is not identical, the relief she sought in both motions is identical: The removal of obstructions from a valid easement.

On September 12th the Court entered its Order denying the Motion for Reconsideration, saying:

> This matter is before the Court on Plaintiff's Motion for Reconsideration filed on August 2, 2019 by Plaintiff. Defendant filed a response to the motion and Plaintiff sent letters providing additional information. The letters will be filed for the record. This Court has reviewed the documents filed as well as the Revised Order filed July 23, 2019. Based upon the information presented, the claims raised by the Plaintiff, including easement, trespass, and nuisance, were fully addressed in the Order. See pages 8-10 and various footnotes. This Court is unable to discover any new material fact or principle of law that was overlooked or warrants further reconsideration. The Motion for Reconsideration is DENIED. In the Court's discretion, oral argument is not necessary. Rule 59(f), SCRCP.

[5] This motion is tantamount to a Rule 59(e) motion. Elam v. South Carolina Dept. of Transp., 381 S.C. 9, 15, 602 S.E. 2d 772, (2004).

That Order was served on all parties on September 9th and was filed on September 12th. On September 23rd "Rachel Farley, et al.," filed a Notice of Appeal of "the order of the Honorable Allision Renee Lee dated September 12, 2019." The Notice of Appeal did not address either the May 9th Order, the June 19th Order or the July 23rd Order. Since the Notice of Appeal was signed by Mr. Moore on behalf of all Appellants, this Motion and the supporting affidavit have been served only on him.

LAW/ANALYSIS

I.

This Court lacks jurisdiction to consider this appeal. The requirement of the timely filing of a Notice of Appeal is jurisdictional. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E. 2d 772 (2004). If a party misses the deadline for filing a notice of appeal, 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. Id. at 15, 775. If a party does not timely file a Notice of Appeal, this Court lacks jurisdiction, and an untimely appeal must be dismissed under the holding in Elam, supra. As shown below, this Court lacks jurisdiction to hear this appeal, and it should be dismissed.

II.

The Rule 60(a) motion did not toll the time to appeal. In the case of Otten v. Otten, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985), the Supreme Court distinguished a motion under Rule 59(e) from a motion under Rule 60(a). The former, if proper and timely, tolls the time for appeal. The latter does not. Therefore, the Rule 60(a) motion filed by the Church had no effect on the time to appeal from any final Order in this case.

III.

Each Order was final and immediately appealable when issued and served except the Order granting the Rule 60(a) Motion. Rule 203(b)(1), SCACR, is as follows:

> **(1) Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

Neither the May 9th Order nor either of the Orders denying Ms. Farley's post-trial motions indicated that a relevant "more full and complete order or judgment" would follow. Therefore, each of those Orders was final when issued and was immediately appealable. The May 9th Order was served on May 10th, the June 19th Order was served on June 19th and the July 23rd Order was served on July 23rd. The portion of the June 19th Order granting the Rule 60(a) Motion and amending the May 9th Order in that regard did indicate that a "more full and complete order" memorializing those amendments would follow. The Order doing that was filed and served on July 23rd. As shown below, no timely appeal was taken by any Appellant from any of those final Orders.

IV.
APPELLANTS OTHER THAN RACHEL FARLEY INDIVIDUALLY

The Notice of Appeal filed on behalf of Rachel Farley as Trustee of the Trust, and Drummond B. Farley, Nancy E. Farley and Carol E. Farley, Individually, should be dismissed as untimely. The Order dismissing the case with prejudice was entered on May 9th. It was served

on all Plaintiffs by mail on May 10th. Pursuant to Rule 203, SCACR, the deadline for filing an appeal from that Order expired on June 14th unless the deadline was extended by a timely and proper post trial motion. Neither Rachel Farley as Trustee of the Trust nor Drummond, Nancy or Carol Farley, individually, filed a post-trial motion. Therefore, their time to appeal from the May 9th Order was not extended, and the time within which they could file an appeal from the May 9th Order expired on June 14th. None of these parties filed a Notice of Appeal on or before June 14th. The May 19th Order became final as to these Appellants on June 14th. Therefore, their appeal filed on September 23rd to the extent it is applicable to the May 9th Order, is untimely, this Court lacks jurisdiction to consider their appeal and their appeal should be dismissed.

V.
RACHEL FARLEY, INDIVIDUALLY

A. To the extent Ms. Farley's Notice of Appeal filed on September 23rd applies to the May 9th Order (which on its face it does not), it should be dismissed as untimely. Her time to appeal expired on either June 14th or July 19th.

1. The time for Ms. Farley to appeal from the May 9th Order expired on June 14th. Ms. Farley's first Rule 59(e) Motion was not necessary or proper. Therefore, it did not toll her time for appeal, and her time to appeal expired on June 14th.

The Supreme Court in Elam, supra, said:

> If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he had already raised the issue and obtained a ruling.

Elam at 25, 781. The Supreme Court went on to say: "We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard

place." Id. However, in the footnote related to that sentence, the Court said: "An aggrieved party who is confident his issues and arguments were sufficiently raised to and ruled on by the trial court may wish to serve a timely Notice of Appeal." Id. at n. 5.

In the case at bar, if this Court determines that Ms. Farley's first Rule 59(e) motion was unnecessary because the issues raised by her in the 59(e) motion had been "raised to and ruled upon by the trial court," Ms. Farley's time to appeal from the May 9th Order was not tolled by the motion and expired on June 14th. That is the case here.

The Plaintiffs claimed an easement over lands of the Church. The Court found the Plaintiffs held such an easement. The Plaintiffs claimed the Church obstructed their easement with a building and two (2) parking lots. The Court found that to be true. The Plaintiffs claimed the Church must remove the obstructions. The Court discussed the relevant claims of the Plaintiffs in that regard and the law applicable to those claims. Then, based on the uncontroverted facts in the record, the Court ruled that all of the Plaintiffs' relevant causes of action were time barred.

Ms. Farley's 59(e) Motion sought "an order altering or amending the court's judgment [of May 9th] so as to recognize the validity of the Plaintiff Trust's easement, that the easement has been obstructed by the Defendant and that the Defendant must remove the obstructions from the easement." Ms. Farley's first Rule 59(e) motion was not necessary or proper since it raised only issues which had been raised to and ruled upon by the Court in the May 9th Order. Therefore, her time to appeal from the May 9th Order was not extended by her 59(e) Motion, and the time within which she must file an appeal from the May 9th Order expired on June 14th. Ms. Farley did not timely file a Notice of Appeal. Under those circumstances, to the extent the Notice

of Appeal filed on September 23rd appeal applies to the May 9th Order, this Court lacks jurisdiction to consider her appeal, and her Notice of Appeal should be dismissed.

2. The time for Ms. Farley to appeal from the May 9th Order expired at the latest on July 19th. If Ms. Farley's 59(e) Motion was necessary and proper and tolled her time to appeal from the May 9th Order (which is denied), her time for appeal from the May 9th Order expired on July 19th. It is the law in South Carolina that (1) the timely filing of a proper Rule 59(e) motion stays the time for appeal, (2) the denial of such a motion restores the finality of the Order to which it was addressed and (3) the time for appeal begins to run from the day written notice of the Order denying the motion is received.

The Court of Appeals addressed the issue of the effect of the denial of a proper post-trial motion in Coward Hund Construction v. Ball Corp., 336 S.C. 1, 518 S.E. 2d 56 (Ct. App. 1999) (Rehearing Denied September 11, 1999). There, final orders granting summary judgment to the defendants were served on April 22, 1997. Coward Hund filed a motion for reconsideration on April 30, 1997. On June 20, 1997 the Circuit Court issued an Order denying the motion. Coward Hund received that Order on July 10, 1997. The finality of the April 22nd Order was restored on July 10, 1997; the time for Coward Hund to appeal began to run on July 10, 1997; and the time for Coward Hund to file an appeal expired on August 9th.

Coward Hund then filed a second motion for reconsideration in which it sought clarification of issues raised with regard to claims of indemnity against the Defendant. On July 28, 1997 the Circuit Court issued a supplemental Order saying:

> The court granted summary judgment to Defendants Carolina Glass and Ball Corp. without the court referencing any prejudice regarding Coward Hund's indemnity claims, if any.

Id. Coward Hund received this Order on August 4th or 5th and filed its Notice of Appeal on September 2, 1997. Following the prevailing rule in Federal Courts, in the absence of controlling case law in South Carolina, the Court of Appeals held:

> In the case before us the trial court denied Coward Hund's first motion for reconsideration. The finality of the summary judgment orders, then, was restored, and Coward Hund's time for filing its notice of appeal began to run upon its receipt of the Order denying the motion.

Because Coward Hund did not file a Notice of Appeal within thirty (30) days of July 10, 1997 [the date on which the finality of the earlier orders was restored], the Court of Appeals dismissed Coward Hund's appeal as untimely. Id. at 3-4, 58.

Under the holding of Coward Hund, the finality of the May 9th Order was restored on June 19th by the Order denying Ms. Farley's 59(e) Motion. The language of the Order of June 19th denying her motion was complete on its face. It was an absolute and final denial. It did not contemplate the entry of a "more full and complete order or judgment" relating to either the merits of the case or the denial of that Motion. See, Rule 203(b)(1), SCACR, supra. Therefore, the time for Ms. Farley to file a notice of appeal from the "restored" May 9th Order "began to run upon [her] receipt of the order denying the motion." Coward Hund, supra. Ms. Farley received the order denying her 59(e) Motion on June 19th. Her time to appeal from the "restored" May 9th Order began to run on June 19th and expired on July 19th. She did not file a Notice of Appeal on or before July 19th, and her Notice of Appeal filed on September 23rd, to the extent it is directed to the May 9th Order, should be dismissed.

3. Ms. Farley's second, written, post-trial motion did not further extend her time to appeal from the May 9th Order, and her Notice of Appeal filed on September 23rd should be dismissed. It is also the law in South Carolina that the time for filing an appeal from a restored

final Order is not tolled by the filing of a second, written post-trial motion under a different caption, (1) raising the same issues that were raised in the earlier, written post-trial motion which was ruled on and denied and (2) failing to address the changes made in the Order denying the first post-trial motion.

The cases addressing the issue of the effect of (1) the denial of a proper post trial motion and (2) the effect of the filing and denial of successive post-trial motions began with the Court of Appeals' decision in Coward Hund, supra. The issue was next discussed in the case of Quality Trailer Products, Inc., v. CSL Equipment Company, Inc., 349 S.C. 216, 562 S.E. 2d 615 (2002) (Rehearing denied May 16, 2002). The issue in Quality Trailer was whether the time for serving a Notice of Appeal is tolled by the subsequent filing of the same motion under a different caption." Id. at n. 3.

In that case, following a jury verdict, I Corp., made timely motions for JNOV and for new trial. Those motions were denied by Order dated December 20, 1999 and filed on December 21, 1999. On December 31, 1999, I Corp. filed a motion to "Alter, Amend or Reconsider Judgment and Findings Denying Defendant's Motion for Judgment Notwithstanding the Verdict and Motion for New Trial." The second motion was made pursuant to Rules 52, 59 and 60 and was almost a duplicate of the first motion. Recognizing the second motion was, in substance, identical to the first motion, the Court denied the second motion by Order dated February 16, 2000 and filed on February 21, 2000. I Corp. filed its Notice of Appeal on March 17, 2000.

In its Opinion, the Supreme Court noted that:

> In its Order denying the second motion, the trial court remarked that 'the [second] motion is an exact compilation of the motion for judgment notwithstanding the verdict and motion for a new trial with a few procedural alterations. In sum, the motion seeks reversal of the Order, but provides no additional assertion of fact or

> argument of law.' We agree with the trial courts' interpretation of the second motion.

Id. at 220, 617. Based on the procedural history of the case and the nature of the second motion, the Supreme Court held:

> We agree with the rationale of Coward Hund and hold that successive motions for JNOV do not toll the time for serving notice of appeal. The time for filing appeal is not extended by submitting the same motion under a different caption.

Id. at 220, 617. The Court, went on to say:

> We find that I Corp's second motion literally recites the arguments previously raised and previously ruled upon by the trial court in I Corp's first motion. The second motion was not, despite its caption, an appropriate Rule 59(e) motion. It was simply a successive motion for JNOV and a new trial, and thus did not toll the time for serving the Notice of Appeal. I Corp. did not serve its Notice of Appeal within the time prescribed in Rule 203, SCACR. We therefore dismiss the Appeal as untimely.

Id. at 221, 618.

Later in 2002, the Court of Appeals again addressed the issue in Collins Music Company v. IGT, 353 S.C. 559, 579 S.E. 2d 524 (Ct. App. 2002). There, IGT timely filed motions pursuant to Rule 50(b) and 59 asking for either a new trial or new trial remittitur on twenty-eight grounds. The trial court "after carefully reviewing the matter" issued an Order denying the motion. A copy of that order was served on IGT on September 5, 2006. On September 12, 2001 IGT served a Rule 59(e) motion to alter or amend the judgment in which IGT simply restated the arguments made in its first post-trial motion. On October 29, 2001 the trial court issued an Order denying the Rule 59(e) motion specifically saying IGT had failed to raise any issue not already raised and considered. IGT received the order denying the Rule 59(e) Motion on November 5, 2001 and served its Notice of Appeal on November 21, 2001.

Citing Coward Hund and Quality Trailer as clearly standing "for the proposition that although a successive post-trial motion for relief is permissible, the subsequent motion must seek relief on issues coming to light as the result of the order following the initial post-trial motion that alters or amends the judgment," the Court of Appeals in Collins Music held:

> The successive motion cannot be a motion to alter or amend that merely recites arguments in a previous Rule 59(e) motion, as was the case in Coward Hund, or the recaptioning of previous Rule 50 or Rule 52 motions as a Rule 59(e) motion, as was done in Quality Trailer.

Id. at 564, 526. The Court of Appeals went on to say:

> The circuit judge denied IGT's motions for JNOV, new trial and new trial nisi remittitur in his first post-trial order. Accordingly, the underlying issues giving rise to these motions were preserved and ripe for appellate review.
>
> We rule IGT's Rule 59(e) motion was nothing but a recapitulation of the arguments raised and previously ruled upon by the circuit court and did not toll the time for serving the notice of appeal. We therefore dismiss the appeal as untimely.

Id. at 566, 527.

Thereafter, in Matthews v. Richland County School Dist. One, 357 S.C. 594, 594 S.E. 2d 177 (Ct. App. 2004), and in an unpublished Order in Elam v. South Carolina Dept. of Transp., S.C. Ct. App. Order dated July 25, 2002, the Court of Appeals dismissed as untimely appeals filed following the denial of a Rule 59(e) motion which had been filed following the denial of ORAL motions for a new trial. In Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E. 2d 772 (2004), the Supreme Court reversed Matthews and the unpublished Order and reaffirmed the principles expressed in Coward Hund, Quality Trailer and Collins Music.

After reaffirming those decisions, the Court drew a bright line distinction between the timeliness of the filing of a notice of appeal following (1) the denial of a written post trial motion

filed after the denial of an earlier ORAL post-trial motion and (2) the denial of a written post trial motion filed after the denial of an earlier WRITTEN post-trial motion. In the first situation the appeal is timely. In the second situation – which is the case at bar – the appeal is untimely.

In this case, the Order dismissing the case with prejudice was entered on May 9th. Ms. Farley's Rule 59(e) motion was denied by Order dated, signed and served on June 19th and filed on June 20, 2019. That Order immediately restored the finality of the May 9th Order. Ms. Farley's time for filing her Notice of Appeal began to run on June 19th, the day she received the Order denying her motion, and her time to appeal from the May 9th Order expired on July 19th. Coward Hund, supra.

Ms. Farley did not file a Notice of Appeal of the May 9th Order on or before July 19th. On August 2nd, two weeks after that deadline passed, she filed a Motion to Reconsider the July 23rd Order. That motion is treated as a motion under Rule 59(e), Elam, supra.

Her second motion did not address the May 9th Order which had become final on July 19th. Her second motion was filed under a different caption but sought the same relief she had asked for in her first 59(e) Motion. Her second motion, in essence, sought reversal of the May 9th and the July 23rd Orders, but she provided no additional assertion of fact or argument of law. Quality Trailer, supra. Her second motion did not address any of the three (3) amendments that were made to the May 9th Order by the July 23rd Order. Collins Music, supra. Therefore, her second motion did not extend her time to appeal from the May 9th Order which became final on July 19th at the latest, and her Notice of Appeal filed on September 23, 2019 addressing only the Order of September 12th should be dismissed as untimely.

VI.

The July 23rd Order did not affect the finality of the May 9th Order on the merits. Rule 203(b)(1), SCACR, contains the following provision:

> When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

Rule 203(b)(1), SCACR.

The Order of June 19th granted the Rule 60(a) motion requesting the correction of three (3) clerical errors in the May 9th Order and amended the May 9th Order only in that regard. The June 19th Order contained language indicating that "a more full and complete order" reflecting those amendments would follow.

Consistent with that indication, the Court entered an Order on July 23, 2019 reflecting those amendments. The July 23rd Order did not amend or change the May 9th Order other than to correct those three clerical errors. It did not change or amend in any way the findings and rulings made in the May 9th Order relating to the merits of the case. The only change made to the May 9th Order by the July 23rd Order was the correction of clerical errors in three footnotes. None of those corrections had any impact or effect upon the Court's rulings on the merits in the May 9th Order.

The July 23rd Order was not a "more full and complete" order on the merits of the case. Therefore, the July 23rd Order had no effect on the time to appeal from the "restored" May 9th Order which became final on July 19, 2019. The Motion to Reconsider did not address any of the amendments to the May 9th Order making the clerical corrections. Instead, that motion raised the same issues which had been raised in the earlier Rule 59(e) motion. Those issues related to only the merits of the case, and those issues had been considered and ruled upon in the Order

denying the 59(e) motion. Therefore, the "full and complete" Order relating only to the clerical corrections had no effect on the restored May 9th Order which became final on July 19, 2019. Under these circumstances, the Motion to Reconsider the July 23rd was a nullity. Therefore, to the extent the Notice of Appeal filed on September 23rd relates to either the May 9th Order, the restored May 9th Order or the July 23rd Order, it is untimely and should be dismissed.

VII.

The Motion for Reconsideration of the July 23rd Order did not toll the time to appeal from that Order. The Motion to Reconsider raised only issues which had been "raised to and ruled upon" by the Court in the May 9th Order. Those findings and rulings were not changed or impacted by the July 23rd Order. Thus, under Elam, supra, the Motion to Reconsider was not proper or necessary, and it did not extend the time for appeal from the July 23rd Order. Therefore, the July 23rd Order became final on August 22, 2019. Ms. Farley did not timely file an appeal, and her appeal filed on September 23rd to the extent it is directed to the July 23rd Order should be dismissed.

VIII.

The Notice of Appeal does not address the May 9th Order. The June 19th Order or the July 23, 2019 Order and should be dismissed. In the case of Bogart v. Chapell, 396 F, 3d 548 (4th Cir. 2002), the Fourth Circuit entertained an appeal from the denial of a Rule 59(e) motion where the appeal was timely and addressed both the Order denying the motion and the underlying final Order. For good reason, no case has been found in which a court entertained an appeal from only the Order denying a second post-trial motion as is the case here. If such an appeal is allowed after the underlying Order becomes final, a party could extend indefinitely the time for appeal by simply filing successive post-trial motions raising the same issue and then, at a whim,

decide to appeal the Order denying the last motion. To avoid that absurd result, the Notice of Appeal must be timely filed after the underlying Order becomes final, and the Notice of Appeal must address either the underlying Order or both the underlying Order and the Order denying the post-trial motion. In this case, since a Notice of Appeal from the May 9th Order, the June 19th Order or the July 23rd Order was not timely filed, the Notice of Appeal filed on September 23rd addressed only the September 12th Order, it should be dismissed.

XI.

Under these circumstances, Ms. Farley's appeal, if it is allowed to proceed, should be limited to issues arising from the three clerical changes made to the May 9th Order by the July 23rd Order. The July 23rd Order simply amended the May 9th Order by memorializing the amendments made by the earlier grant of the Rule 60(a) motion. The only change made to the May 9th Order by the July 23rd Order was the correction of three clerical errors. The correction of those clerical errors had absolutely no bearing or impact on the substantive content of the Order. The relevant findings and rulings on the merits made by the Court in the May 9th Order remained the same. Beyond that, Ms. Farley's second motion did not address any of the clerical changes made to the May 9th Order by the July 23rd Order. Therefore, neither the Rule 60(a) motion, the Order granting that motion and amending the May 9th Order nor the Order reflecting those amendments had any effect on the deadline for filing an appeal from the "restored" May 9th Order which became ripe for appeal on June 19, 2019. Ms. Farley did not file a timely appeal from any of those Orders.

Ms. Farley's Notice of Appeal addresses only the September 12, 2019 Order which denied her second motion. The only new language in the "restored" May 9th Order relates to the correction of the three clerical errors. Therefore, if this Court allows Ms. Farley's appeal to

proceed at all, the issues to be addressed by her appeal should be limited to that portion of the Revised May 9th Order pertaining to only the correction of the three clerical errors.

X.
CONCLUSION

Based on the foregoing facts and the applicable law (1) the appeal should be stayed pending resolution of this Motion and (2) either (a) the Appellants' Notice of Appeal filed on September 23, 2019 should be dismissed as untimely or (b) if an appeal by Ms. Farley is allowed to proceed, the issues on her appeal should be limited to those issues arising from the correction of the three clerical errors by the Revised May 9th Order.

RESPECTFULLY SUBMITTED,

Robert W. Dibble, Jr., SC Bar #1675
Attorneys for the Defendant
Harrell, Martin & Peace, P.A.
Post Office Box 1000
Chapin, South Carolina 29108
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October 15, 2019
Chapin, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

RECEIVED
OCT 16 2019
SC Court of Appeals

Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley, Appellants,

v.

Church of the Harvest of Columbia, Inc., Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 15, 2019 she caused the ***Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities*** to be sent via United States Postal Service, first class mail, with adequate postage prepaid to the parties listed below:

S. Jahue Moore
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, SC 29171

Drummond B. Farley
742 C. Avenue
West Columbia, SC 29169

Carol E. Farley
Post Office Box 1570
Johns Island, SC 29457

Nancy E. Farley
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Rebecca D. Baker
Rebecca D. Baker

Chapin, South Carolina
October 15, 2019

HARRELL, MARTIN & PEACE, P.A.
ATTORNEYS AT LAW

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Taylor A. Peace
Andrea "Andi" Cornelison

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III *

*Of Counsel
**Certified Mediator/Arbitrator

October 15, 2019

RECEIVED
OCT 16 2019
SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Drummond B. Farley; Carol E. Farley; and Nancy E. Farley v. Church of the Harvest of Columbia, Inc.
Appellate Case No. 2019-001609
Our File No. 3303.28245

Dear Ms. Kitchings:

Enclosed you will find the original and seven copies of the following documents in the above-referenced matter:

1. Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities; and

2. Affidavit in Support of Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

I respectfully ask that you please file/retain the original and six copies of each document, returning clocked-in copies to my attention in the envelope provided. I have enclosed our check in the amount of $50.00 in payment of the motion filing fee.

By copy of this letter, I am serving a copy of these documents upon all parties of record.

Mailing Address: Post Office Box 1000, Chapin, South Carolina 29036
Physical Address: 135 Columbia Avenue, Chapin, South Carolina 29036
Telephone: 803-345-3353 • Fax: 803-345-9171
harrellmartinpeace.com

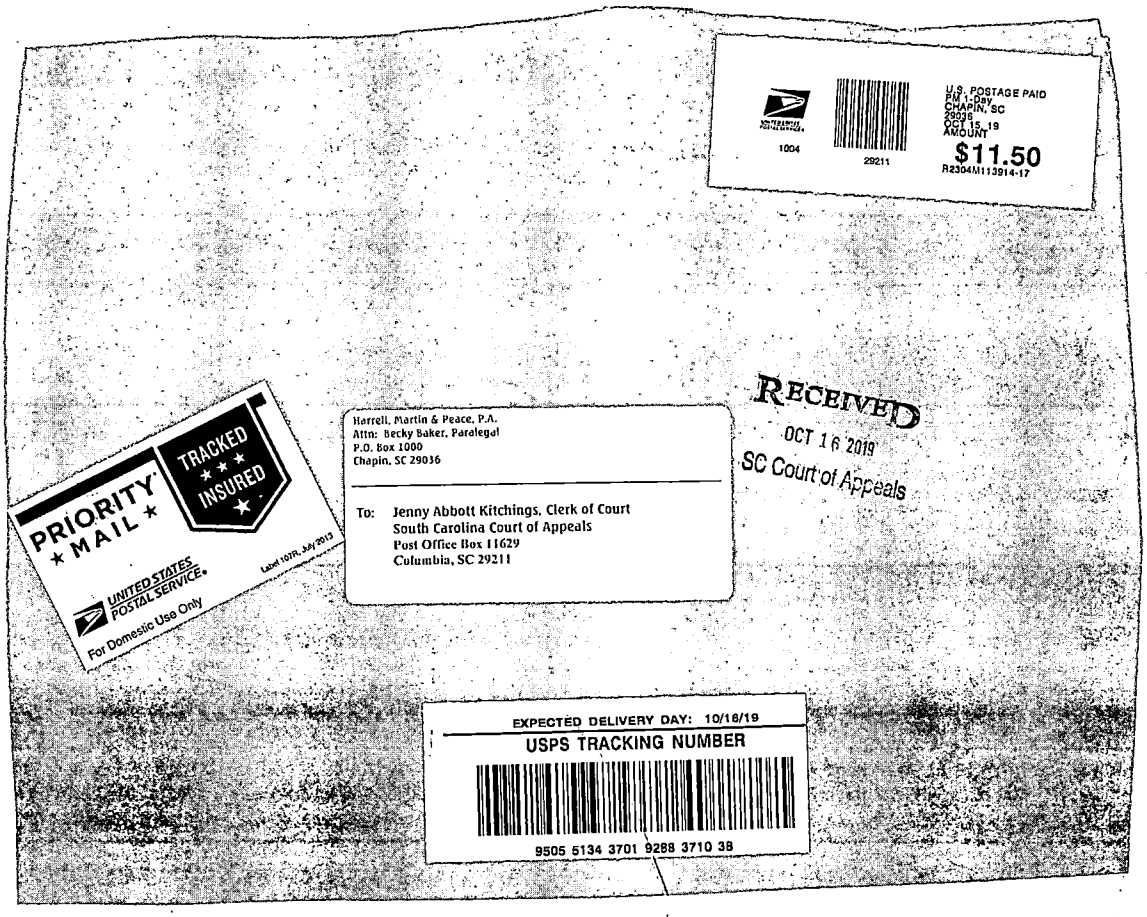
Thank you in advance for your time and attention to this matter. If you have any questions or need anything further in order to have these documents filed, please do not hesitate to contact me directly at 803-298-2105.

Very truly yours,

Rebecca D. Baker

Rebecca D. Baker
Paralegal to Robert W. Dibble, Jr.

/rdb
Enclosures
cc: S. Jahue Moore, Esquire
Mr. Drummond B. Farley
Ms. Carol E. Farley
Ms. Nancy E. Farley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