

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

Circuit Court Case No. 2018-CP-11-00838
Appellate Case No. 2019-001325

Charles E. Deal, Jr., _____, Appellant

v.

Angela Godfrey, _____ Respondent.

REPLY

RECEIVED

NOV 01 2019

SC Court of Appeals

I. **Respondent's Motion to Dismiss is Proper**

The Appellant asserts Respondent's motion to dismiss is not proper and the issues should be raised in a cross appeal. Respondent disagrees. The issue before the court on Respondent's motion to dismiss is one of appellate court jurisdiction. Issues of jurisdiction can be raised at any time and even *sua sponte* by the Court. Therefore, Respondent's motion to dismiss is proper.

The Appellant's assertion that this issue should be raised in a cross appeal is without merit. The order of the circuit court affirms the dismissal of the action by the probate court. The circuit court's order of May 9, 2019 was fully favorable to Respondent, so there are no issues subject to a cross appeal. The circuit court's order of July 8, 2019

denied Appellant's Rule 59(e) motion and, once again, the ruling was fully favorable to Respondent. Therefore, a cross appeal was not necessary. Even if Respondent had not filed the motion to dismiss, Respondent could still argue that Appellant's Rule 59(e) motion was untimely as an additional sustaining ground under Rule 208(b)(2), SCACR. This honorable court could also affirm the ruling of the circuit court on any ground appearing in the record. Rule 220(c), SCACR. The issue of appellate court jurisdiction is properly before the court on Respondent's motion to dismiss.

II. Respondent' Motion to Dismiss is Proper on the Merits

It is without dispute that the circuit court issued its order affirming the probate court on May 9, 2019 with said order being filed May 13, 2019. It is undisputed that appellant received notice of this order on May 13, 2019. It is undisputed that appellant filed and served his Rule 59(e) Motion on May 28, 2019, which is fifteen (15) days after Appellant received notice of the court's ruling. The Appellant argues he had fifteen (15) days and not ten (10) days to serve his Rule 59(e) Motion. This position is without merit.

It is clear that the e-file system does not and has not changed or modified any of the Rules of Civil Procedure. Under section 4 of the South Carolina Electronic Filing Policies and Guidelines, timeliness is addressed. Section 4(c) provides as follows, ".... Except as provided in Section 9, nothing in these Policies and Guidelines should be construed to reduce or extend any filing or service deadline set by statute, the South Carolina Rules of Civil Procedure or orders of the court." Section 9 deals with technical difficulties. There is no allegation by Appellant of any technical difficulties in this case.

In addition, the e-file system utilizes email as a means of notification. Therefore, on May 13, 2019, the e-file system generated an email to counsel with notice of the filing of

the order. In the case of *Wells Fargo Bank v. Fallon Properties South Carolina, LLC*, 422 SC 211, 810 SE 2d, 856 (SC 2018) the South Carolina Supreme Court dealt with the issue of the timeliness of an appeal. The court held that an email sent from the court, an attorney of record, or a party that provides written notice of entry of an order of judgment triggers the time for serving a notice of appeal. Therefore, it is axiomatic that the email sent to Appellant's counsel on May 13, 2019 triggers the running of the time for appeal and would likewise trigger the running of the time for serving a Rule 59(e) motion.

The Appellant appears to argue that Rule 6(e) SCRCP extends his time by five (5) days to serve his Rule 59(e) motion. The appellate courts of this state have never construed Rule 6(e), SCRCP as extending the deadline imposed by Rule 59(e). To the contrary, Rule 6(b) provides that, "... The time for taking any action under Rules 50(b), 52(b), 59 and 60(b) may not be extended except to the extent and under the conditions stated in them." Rule 59(e) does not provide for any enlargement of time. Therefore, Appellant's reliance upon the "mailbox" rule of Rule 6(e), SCRCP is misplaced. Appellant has not disputed that counsel received the order of the court affirming the probate court on May 13, 2019. As Respondent asserts in the memorandum in support of the motion to dismiss, *Overland Inc. v. Nance*, 423 SC 253, 815 SE 2d 431 (SC 2018) makes it clear that the ten (10) day deadline of Rule 59(e) is absolute.

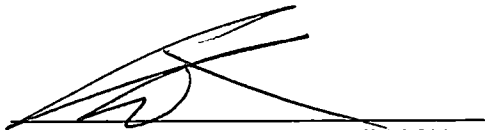
Appellant also asserts that Rule 221(a), SCACR somehow applies to the circuit court. Rule 101(a), SCACR sets forth the scope of the Appellate Court Rules. It is clear that Rule 221(a) would only apply to a Petition for Rehearing in the appellate court and not the circuit court.

Finally, it should be noted that on June 7, 2019, Respondent filed a Return to

Appellant's petition for re-hearing raising the untimeliness of the Rule 59(e) motion. At that time, the Appellant would have been able to withdraw its Rule 59(e) motion and file a timely appeal. However, Appellant chose not to do so.

CONCLUSION

For the reasons set forth in the Motion to Dismiss, the Memorandum and this Reply, the appeal should be dismissed.



William G. Rhoden, Bar #4697
WINTER & RHODEN
Attorneys at Law
221 E. Floyd Baker Blvd.
Gaffney, South Carolina 29340
TEL: (864) 489-8128
FAX: (864) 489-8806
Rhoden@Winter-Rhoden.com
Attorney for Respondent

Gaffney, South Carolina
Sept. 30, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE APPELLATE COURT
APPELLATE CASE NO.: 2019-001325

Charles E. Deal, Jr.,)
)
Appellant,)

vs.)

Angela Godfrey,)
)
Respondent.)

**CERTIFICATE OF SERVICE
BY MAIL**

This is to certify that a copy of the **Reply** in the above referenced case was mailed
to:

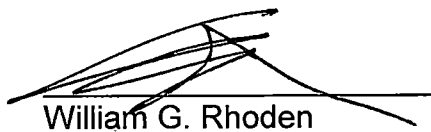
**James G. Carpenter
The Carpenter Law Firm, PC
819 E. North St.
Greenville, SC 29601**

RECEIVED

NOV 01 2019

SC Court of Appeals

by depositing same in the United States Mail, postage prepaid, on the 30th day of
October, 2019.


William G. Rhoden

Gaffney, South Carolina

LAW OFFICE OF
WINTER & RHODEN, LLC

WILLIAM G. RHODEN
ATTORNEY AT LAW
Rhoden@winter-rhoden.com
ANNA-KARINA PARKER*
ATTORNEY AT LAW
Parker@winter-rhoden.com

221 E. FLOYD BAKER BLVD.
GAFFNEY, SOUTH CAROLINA 29340
PHONE (864) 489-8128
FAX (864) 489-8806

WILLIAM E. WINTER, JR.
(1944 – 2008)

* Licensed in N.C. & S.C.

October 30, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Reply
Charles E. Deal, Jr. vs. Angela Godfrey
Appellate Case No. 2019-001325

RECEIVED
NOV 01 2019
SC Court of Appeals

Dear Ms. Kitchens:


Enclosed please find the following:

1. Original and seven (7) copies of Reply; and
2. Original and one (1) copy of Certificate of Service on Opposing Counsel.

I would be greatly appreciative if you would return a filed copy of the Reply and Certificate of Service in the enclosed self addressed, stamped envelope provided.

With best regards, I am,

Sincerely,


William G. Rhoden

WGR/lmc
cc: file
James G. Carpenter (w/ enclosures)
enclosures



First Class Mail

LAW OFFICE OF
WINTER & RHODEN, LLC

211 E. FLOYD BAKER BLVD.
CAFFNEY, SOUTH CAROLINA 29110

RECEIVED
NOV 01 2018
SC Court of Appeals
The Honorable Jenny Abbott Kitching
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

