

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

RECEIVED
NOV 08 2019
SC Court of Appeals

MB Hutson/MB Hudson,Appellant,

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, Respondents.

**RESPONDENTS PENN AMERICA INSURANCE COMPANY AND GLOBAL
INDEMNITY GROUP, INC.'S REPLY TO APPELLANT'S RESPONSE TO THE
MOTION TO DISMISS APPEAL**

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. (collectively "PAIC"), filed their motion to dismiss them as Respondents in the above-captioned appeal on October 25, 2019, arguing that Appellant failed to timely serve his Notice of Appeal from the Order granting PAIC's motion for summary judgment. On November 2, 2019, Appellant filed his written response in opposition to the motion. This reply to Appellant's response follows.

As discussed more fully in PAIC's motion to dismiss, an appealing party must serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment; otherwise, the appellate court lacks subject matter jurisdiction and the appeal must be

dismissed. Rule 203(b), SCACR; USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). Appellant's Notice of Appeal, served by mailing on September 3, 2019, referenced only a single Order and attached only the Order granting summary judgment in favor of Respondents Newton and Murphy. It was not until September 25, 2019, that Appellant filed what he titled "Notice of Appeal Attachment" with this Court, providing a copy of the Order granting summary judgment in favor of Respondents PAIC and requesting the Clerk "attach" it to the pending appellate case.

In Appellant's vague Response to the motion to dismiss, he argues that he did not receive a copy of the PAIC Order from the Clerk of Court, pursuant to Rule 77(d), SCRCP, until September 18, 2019. Appellant blames his "error and delay" on the Richland County Clerk's Office and avers that he "refrained from using any other copy of the Common Pleas order until the official copy was received from the Clerk of Court." (Appellant's Response, p. 4). Appellant's reliance upon Rule 77, SCRCP, is misplaced, as our Supreme Court specifically held that "an email sent from the court, an attorney of record, or a party that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1), SCACR." Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 422 S.C. 211, 219, 810 S.E.2d 856, 860 (2018) (emphasis in original).

In Wells Fargo, the appellant erroneously relied upon Rule 5, SCRCP, in support of its argument that the time to serve a notice of appeal is only triggered at the time the parties receive written notice of the entry of an order or judgment by mail or hand delivery. 422 S.C. at 215, 810 S.E.2d at 858. In rejecting this contention, the Wells Fargo Court wrote:

Unlike the notice of appeal, there is no requirement that *the written notice of entry of an order or judgment* be served upon the parties. All that is required to trigger the time to appeal is that the parties *receive* such notice. Moreover, there is nothing in our appellate court rules suggesting that the manner in which a party may receive notice is limited to the methods used to effectuate service, that is, by mail or hand delivery.

Id. at 215-16, 810 S.E.2d at 858 (emphasis in original). Although the appellant also received written notice by mail three days after receiving the email from the master's administrative assistant, the Court ruled that the time to serve the notice of appeal commenced at the time the parties *first* received written notice of entry of the order. Id. at 217, 810 S.E.2d at 859. Due to confusion based upon prior case law, overruled in Wells Fargo, the appeal was remanded and permitted to proceed. Id. However, the Court stated that its holding would be applied prospectively, i.e. to cases like the instant appeal. See id.

The Wells Fargo Court discussed, with approval, the Court of Appeals' decision in Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999). In Canal, the trial Court entered its Order granting summary judgment in favor of Canal on March 17, 1997. 338 S.C. at 4, 524 S.E.2d at 417. A form judgment, entered on March 19, 1997, indicated that copies were mailed to all attorneys of record. Id. On June 24, 1997, Parker's counsel, apparently not having received a copy of the judgment form, wrote counsel for Canal and inquired about the status of the final order. Id. Canal's attorney responded via fax and mail on July 8, stating that the order had been entered on March 19 as Judgment Roll Number 211763. Id. Parker's counsel waited until August 8 to write the Clerk and request a copy of the judgment, which he received on August 12. Id. He filed a motion to reconsider, which was heard and ruled upon over Canal's objection that the motion was untimely. Id. at 5, 524 S.E.2d at 417-18. A revised order was filed on February 3, 1998, from which Parker appealed. Id. at 5, 524 S.E.2d at 418.

The Canal Court found that “[e]ven if Parker’s counsel did not in fact receive the trial court’s original form order, there is no question that he received written notice of entry of the judgment, including the judgment roll number, from opposing counsel on July 8, 1997.” 338 at 5, 524 S.E.2d at 418. As a result, Parker’s motion to reconsider was untimely and did not stay the time for serving the notice of appeal, which was required on or before August 7, 1997. Id. at 6, 524 S.E.2d at 418. Parker’s service of the notice of appeal on March 17, 1998 was likewise untimely, such that the court did not have subject matter jurisdiction. Id.

In sum, Appellant’s implied argument that his deadline for service of the Notice of Appeal was not triggered until he received a copy of the PAIC Order from the Clerk of Court is not a new one. It has been considered and rejected by our Courts. Further, Appellant completely ignores PAIC’s argument and evidence that Appellant received written notice of the entry of the PAIC Order on August 5, 2019 from both PAIC’s counsel and from Judge Nettles law clerk. (See Exhibits A and B to Respondent’s original motion). There is also evidence that the Clerk mailed copies of both the Newton/Murphy Order and the PAIC Order to Appellant on August 6, 2019, though Appellant claims that the PAIC Order was not included in the mailing. (See Exhibit C to Respondent’s original motion). In light of the uncontroverted evidence of the e-mails to Appellant, service of Appellant’s Notice of Appeal from the PAIC Order was required on or before September 4, 2019. The only Notice of Appeal served by that date was from the Newton/Murphy Order.

Appellant’s suggestion that this jurisdictional defect should be overlooked because he is self-represented is unavailing. “[E]stablished rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer.” State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958), *overruled on other grounds* by Stevenson v. State, 335 S.C. 193, 516 S.E.2d. 434 (1999). Far from being ignorant, Appellant

cleverly attempted to avoid his failure to timely serve his Notice of Appeal from the PAIC Order by asking the Clerk to “attach” it to his prior Notice of Appeal, in an attempt to convert it into a notice of appeal from both orders. As discussed more fully in PAIC’s original motion, Appellant’s error was not clerical or an oversight, and it is fatal to his appeal. Accordingly, Penn America Insurance Company and Global Indemnity Group, Inc. should be dismissed as Respondents.

CONCLUSION

Based on the foregoing and the motion to dismiss, Respondents Penn America Insurance Company and Global Indemnity Group, Inc., respectfully request that this Honorable Court dismiss them from the above-captioned appeal.

Respectfully submitted,

COLLINS & LACY, P.C.



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**RESPONDENTS PENN AMERICA
INSURANCE COMPANY AND GLOBAL
INDEMNITY GROUP, INC.’S REPLY TO
APPELLANT’S RESPONSE TO THE MOTION
TO DISMISS APPEAL**

November 7, 2019

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing Reply to Appellant's Response to the Motion to Dismiss Appeal, dated November 7, 2019, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

MB Hutson/MB Hudson
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Dated: November 7, 2019.



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November 7, 2019

VIA UNITED STATES MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, and John Doe #2
Appellate Case No. 2019-001488
Claim No. 16011284
C&L File No. 000774-01021

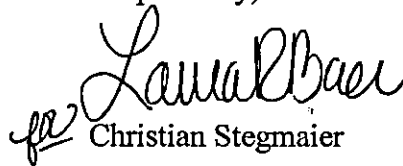
Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of Respondents Penn America Insurance Company and Global Indemnity Group, Inc.'s Reply to Appellant's Response to the Motion to Dismiss Appeal in the above referenced matter. Please file the original and return a clocked copy of same in the self-addressed envelope provided for your convenience.

By copy of this letter and enclosure, we are serving same on all parties.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,


Christian Stegmaier

CS/net
Enclosures

cc (via U.S. Mail and email):

M. B. Hutson, Appellant *pro Se*
John Robert Murphy, Esquire, Murphy & Grantland, P.A.
Tim Newton, Esquire, Murphy and Grantland, PA



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