

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

ALISON RENEE LEE, Circuit Court Judge

Case No. 2016-CP-32-0387  
Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Rachel R. Farley.....Appellants,

v.

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

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

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, the Appellants Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; and Rachel R. Farley, individually, by and through their undersigned counsel, respectfully submits this Return to the Respondent's Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

**I. This Court Has Jurisdiction to Consider This Appeal.**

As a general rule, the time for service of a notice of appeal from the Court of Common Pleas is within thirty days following the receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. However, Rule 203(b)(1), SCACR, clearly states:

When a timely motion for judgement n.o.v. (Rule 50, SCRCPP), ***motion to alter or amend the judgment (Rules 52 and 59, SCRCPP)***, or a motion for a new trial (Rule 59, SCRCPP) 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.***

***(Emphasis added).***

The service requirement for a notice of appeal is jurisdictional. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)). Thus, if the notice of appeal is not filed by 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.” *Id.*

The Appellants here timely filed a Rule 59(e) Motion to Alter or Amend the Order Denying Plaintiff’s Motion for Summary Judgment, Granting, Defendant’s Motion for Summary Judgment and Dismissing the Case with Prejudice filed May 9, 2019. A Form 4 Order denying Plaintiff’s Rule 59(e) motion was issued and filed by the Honorable Alison R. Lee on June 20, 2019. In addition to denying the Rule 59(e) motion, the Form 4 Order noted that a revised order reflecting amendments to several clerical errors had been filed pursuant the Defendant’s Rule 60(a), SCRCPP motion. A Revised Order Denying Plaintiffs’ Motion for Summary Judgment, Granting Defendant’s Motion for Summary Judgment and Dismissing the Case with Prejudice was filed on July 23, 2019. Thereafter, the Appellants timely filed a Motion for Reconsideration, and a Form 4 Order denying the Motion for Reconsideration was filed on September 12, 2019.

Consequently, the time to file an appeal began to run once the parties received notice of the Form 4 Order denying the Motion for Reconsideration on September 12, 2019. The Appellants filed and served a Notice of Appeal on September 23, 2019. Therefore, the Appellants timely filed and served their appeal, and this Court has jurisdiction to consider this appeal. As such, the

Appellant respectfully requests the Court issue an order denying the Respondent's Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

**II. The Appellants' Rule 59(e) Motion to Alter or Amend Filed on May 9, 2019 Was Necessary and Proper.**

A party is usually permitted to seek reconsideration from the court of its decision, "even if it means rehashing all or part of an argument previously presented." *Id.* at 21-22, 602 S.E.2d at 778-79 (referencing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996)).

South Carolina case law highlights "the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration." Namely, issues and arguments shall be preserved for appellate review only if, and when they are raised to and ruled on by the lower court. *Id.* at 23-24, 602 S.E.2d at 779-80 (E.g., *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Long v. Dunlap*, 87 S.C. 8, 68 S.E. 801 (1910) (Supreme Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court); *Gaffney v. Peeler*, 21 S.C. 55 (1884) (question of law which was not presented to or passed upon by the trial court cannot be raised on appeal); Rule 210(c), SCACR (record on appeal shall not include matter which was not presented to lower court)).

In *Elam*, the South Carolina Supreme Court noted “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Id.* at 22, 602 S.E.2d at 779. Consequently, “if a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion” or the issue or argument may later be determined to not be preserved for appellate review. *Id.* at 25, 602 S.E.2d at 780.

In the present case, Appellants timely filed a Rule 59(e) Motion to Alter or Amend on May 9, 2019. The Appellants’ 59(e) motion specifically addressed issues that Appellants believed were not ruled on in the Order Denying Plaintiff’s Motion for Summary Judgment, Granting, Defendant’s Motion for Summary Judgment and Dismissing the Case with Prejudice filed on May 9, 2019, specifically that the Respondent admitted Appellant Trust had a valid easement and that Respondent was obstructing it and Appellant’s request that the Respondent be ordered to remove its obstructions from the easement. Therefore, Appellants Rule 59(e) motion was necessary and proper. As such, the Appellant respectfully requests the Court issue an order denying the Respondent’s Motion to Stay Appeal, to Dismiss Appellants’ Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

**III. The Appellants’ Motion for Reconsideration Filed on August 2, 2019 Tolloed the Time to File and Serve Their Notice of Appeal.**

The South Carolina Supreme Court has previously articulated that the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules should not be interpreted so as to “create a trap for the unwary lawyer or party.” *Elam*, at 25, 602 S.E.2d at 780. A consideration of this issue lead the Court in *Elam* to conclude, “that is precisely the effect of an unwarranted expansion of *Quality Trailer. Cf. Gamble v. State*, 298 S.C. 176, 379 S.E.2d 118 (1989) (stating

rules applicable to post-conviction relief actions should not be construed in manner which operate as a trap for the unwary or deprive an applicant of the adjudication on the merits of his original petition); Rule 1, SCRCPP (civil procedure rules “shall be construed to secure the just, speedy, and inexpensive determination of every action”).” *Id.* As a result, South Carolina courts “strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.” *Id.* at 25, 602 S.E.2d at 780-81.

Moreover, South Carolina case law makes clear that following the denial of a Rule 59(e), SCRCPP motion, the filing of a second similar motion does not toll the time for appeal, where the court’s ruling on the first motion did not change or alter its ruling at trial. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 563, 579 S.E.2d 524, 525 (Ct. App. 2002) (referencing *Coward Hund Cost. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999)).

In *Coward Hund Cost. Co., Inc. v. Ball Corp.*, the trial court granted summary judgment to the defendants by written order. *Coward Hund*, at 2, 518 S.E.2d at 57. Appellant, Coward Hund, timely served a motion for reconsideration pursuant to Rule 59(e), SCRCPP, and following oral arguments, the trial court issued an order denying the 59(e) motion. *Id.* Thereafter, Coward Hund filed a successive motion for reconsideration pursuant to Rule 59(e), SCRCPP, seeking clarification of the court’s ruling on an issue on which the court had previously ruled. *Id.* The trial court issued a supplemental order denying the second 59(e) motion, and Coward Hund timely served its notice of appeal. *Id.* The South Carolina Court of Appeals held that the second Rule 59(e) motion did not stay the time for appeal and dismissed the appeal as untimely. *Id.* at 4, 518 S.E.2d at 58. In reaching its holding, the Court reasoned that there was nothing in the order denying Coward Hund’s first Rule 59(e) motion that altered anything in the summary judgment order. *Id.*

In *Quality Trailer Products, Inc. v. CSL Equipment Co., Inc.*, the South Carolina Supreme Court dismissed an appeal as untimely where the Appellant, I. Corp, filed a successive, virtually identical post-trial motion that did not identify a single issue raised but not ruled on, and instead, “literally recite[d] the arguments” made in I. Corp’s first post-trial motion. *Quality Trailer Products, Inc. v. CSL Equipment Co., Inc.*, 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002). The Court held that the time for filing a notice of appeal “is not extended by submitting the same motion under a different caption.” *Id.* at 220.

Similarly, the Court of Appeals in *Collins Music Co., Inc. v. IGT*, found that a second post-trial motion did not toll the time to serve the notice of appeal. *Collins Music Co.*, at 566, 579 S.E.2d at 527. In *Collins Music Co.*, the Appellant, IGT, filed initial post-trial motions seeking JNOV, a new trial, and in the alternative, a new trial *nisi remittitur*. *Id.* at 560, 579 S.E.2d at 524. The circuit court denied IGT’s motions and “made no alterations or amendments to the judgment.” *Id.* Subsequently, IGT filed a Rule 59(e), SCRCP motion, seeking to alter or amend the post-trial order, and supported its motion “by repeating verbatim the twenty-eight grounds found in the first motion and referencing analysis found in the first motion’s memorandum of law.” *Id.* at 566, 579 S.E.2d at 527. The Court thus dismissed the appeal as untimely. *Id.*

Distinguishable from the facts in *Coward Hund*, here, the Order denying the Appellants’ Rule 59(e) Motion to Alter or Amend specifically referenced amendments made to the Order Denying Plaintiff’s Motion for Summary Judgment, Granting, Defendant’s Motion for Summary Judgment and Dismissing the Case with Prejudice, and stated that a revised order would be filed as a result. Subsequently, a revised order was issued incorporating the amendments. Further, this case is also different from *Quality Trailer* and *Collins Music Co.* because the Appellants here identified an issue raised but not ruled on in their Motion for Reconsideration. In addition, the

Motion for Reconsideration did not repeat verbatim the grounds and analysis found in Appellants' Rule 59(e) motion. Therefore, the Appellants' Motion for Reconsideration tolled the time to file and serve an appeal. As a result, the Appellants respectfully request the Court issue an order denying the Respondent's Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities.

**IV. This Appeal Should Not be Limited to Issues Arising From the Clerical Changes Made to the Form 4 Order filed on May 9, 2019.**

Rule 203(d)(1)(B), SCACR, requires that a Notice of Appeal from the Circuit Court be filed with the clerk of the lower court and the clerk of the appellate court, and be accompanied by "(ii) a copy of the order(s) and judgment(s) challenged on appeal if they have been reduced to writing."

The Appellants' Notice of Appeal sets forth that it is appealing the Order dated September 12, 2019, of which it received notice of entry of the Order on September 22, 2019. The Order referenced by the Appellant is the Order from the Motion for Reconsideration, wherein the Court denied the Motion for Reconsideration.

In the Motion for Reconsideration, the Appellants sought the Court to reconsider: "its Order dated July 23, 2019 and order the easement location be cleared of the Defendant's building and parking lot." The Order referenced in the Motion for Reconsideration is the Revised Order Denying Plaintiffs' Motion for Summary Judgment, Granting Defendant's Motion for Summary Judgment and Dismissing the Case with Prejudice. Consequently, because the Appellant appealed the Order denying the Motion for Reconsideration, the Appellant is limited to the issues raised in the Motion to Reconsider.

The Respondent alleges that if the appeal is allowed to proceed, it should be limited to issues arising from the three clerical changes made to the May 9, 2019 Order by the July 23, 2019

Order. However, the Respondent fails to provide any authority for its assertion. Therefore, this appeal should not be limited to issues arising from the three clerical changes made to the May 9, 2019 Order by the July 23, 2019 Order. As a result, the Appellant respectfully requests the Court issue an order denying the Respondent's Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities, and allow the appeal to proceed with the issues limited to those raised in the Motion to Reconsider.

**CONCLUSION**

For the foregoing reasons, this Court should deny Respondent's Motion.

Respectfully submitted,

**MOORE TAYLOR LAW FIRM, P.A.**

By: \_\_\_\_\_

S. Jahue Moore

William H. Edwards

1700 Sunset Boulevard

P.O. Box 5709

West Columbia, SC 29171

Telephone: (803) 796-9160

Facsimile: (803) 791-8410

*Attorneys for Appellants Rachel Farley, as  
Trustee of the Louise Farley Revocable  
Trust; and Rachel R. Farley, individually*

West Columbia, South Carolina.

December 5, 2019.

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**PROOF OF SERVICE**

I certify that I have served the Appellants' Return to Respondent's Motion to Stay Appeal, to Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal with Supporting Authorities by placing the same in the United States Postal Service, first class mail, with sufficient postage, to the following addresses:

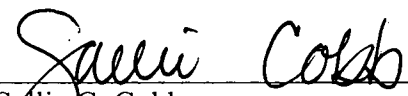
Robert W. Dibble, Jr.  
Harrell, Martin & Peace, P.A.  
P.O. Box 1000  
Chapin, South Carolina 29108

Drummond B. Farley  
742 C. Avenue  
West Columbia, South Carolina 29169

Carole E. Farley  
P.O. Box 1570  
Johns Island, South Carolina 29457

Nancy E. Farley  
P.O. Box 1570  
Johns Island, South Carolina 29457

West Columbia, South Carolina  
December 5, 2019.

  
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Sallie C. Cobb