

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

DEC 11 2019

SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

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.

REPLY TO RETURN TO MOTION TO DISMISS

The Respondent hereby replies to the Return of Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005 and Rachel R. Farley, Individually, to the Respondent's Motion to Stay Appeal, Dismiss Appellants' Notice of Appeal as Untimely or to Limit Issues on Appeal ("Motion to Dismiss").

1. The Motion to Dismiss was directed in part to the appeal of Drummond B. Farley, Carol E. Farley and Nancy E. Farley from the Order granting summary judgment in favor of the Respondent. None of those Plaintiffs filed a post-trial motion. Their time to appeal from the Order granting summary judgment expired on June 14, 2019. None of those Plaintiffs filed a response to the Motion to Dismiss. For those reasons, the appeal of Drummond B. Farley, Carol E. Farley and Nancy E. Farley should be dismissed.

2. The Return to the Motion to Dismiss was filed on behalf of "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, ..." The Return on Page 2 states that "the Appellants here timely filed a Rule 59(e) Motion to Alter or Amend the Order Denying Plaintiffs' Motion for Summary Judgment, Granting Defendants' Motion for Summary Judgment and dismissing the case with prejudice filed May 9, 2019." The Motion to Dismiss was directed in part to the appeal of Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005. That Motion was based upon the fact that Rachel Farley, in her capacity as Trustee, did not file a Rule 59(e) Motion or any other post-trial motion. Therefore, the time for Rachel Farley, as Trustee of the Trust, to file an appeal from the May 9, 2019 Order expired on

COPY

June 14, 2019. The assertion by the Respondent that Rachel Farley, as Trustee of the Trust, did not file a post-trial motion is based upon the signature block on the second page of the Rule 59(e) Motion to Alter or Amend attached as Exhibit B to the Affidavit filed in support of the Motion to Dismiss. The signature block on that Motion is as follows:

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF
RACHEL FARLEY

Mr. Moore signed the 59(e) Motion on behalf of "The Plaintiff Rachel Farley." Mr. Moore signed the Rule 59(e) Motion on behalf of one Plaintiff, to wit: Rachel Farley. He did not sign the motion on behalf of multiple Plaintiffs, and he did not sign the Motion on behalf of Rachel Farley as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005. Therefore, it is the position of the Respondent that "Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005" did not file a timely post-trial motion, and the time for the Trust to appeal from the May 9, 2019 Order expired on June 14, 2019. Since no timely notice of intent to appeal was filed by Rachel Farley, in her capacity as Trustee of the Trust, any appeal by her as Trustee of the Trust should be dismissed.

3. Mr. Moore subsequently filed a second Rule 59(e) motion under the caption of a "Motion for Reconsideration." A copy of that Motion was attached as Exhibit F to the Affidavit in Support of the Motion to Dismiss. In the Motion for Reconsideration, Mr. Moore stated "the undersigned, as counsel for the Plaintiff, Rachel Farley, will move before the Court for reconsideration of the Order dated July 23, 2019 and order the easement location be cleared of the Defendants' building and parking lot." The signature block on the Motion for Reconsideration is set out below:

MOORE TAYLOR LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF
RACHEL FARLEY

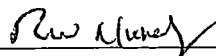
That Motion was filed by Mr. Moore on behalf of only "The Plaintiff, Rachel Farley, ..." That signature block is identical to the signature block on the first 59(e) motion filed by Mr. Moore. Therefore, it is the position of the Respondent that Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005 did not file the Motion for Reconsideration.

4. It is also the position of the Respondent that the second Rule 59(e) Motion was not necessary or proper. The Motion for Reconsideration sought an amendment to the July 23, 2019 Order to include "an Order that the easement location be cleared of the Defendant's building and parking lot." As noted above, the May 9, 2019 Order clearly held that the causes of action directed to the removal of the obstructions were time-barred by the applicable statutes of limitation. The July 23, 2019 Order made no change in the Court's findings in the May 9, 2019 Order relevant to the existence and validity of the Plaintiffs' easement and the obstruction thereof by the Defendant or any change to the Court's conclusion that the claims seeking removal of the obstructions from the easement location were time-barred. Therefore, the second Rule 59(e) Motion was not properly filed on behalf of Rachel Farley, her Notice of Appeal filed on September 23, 2019 was untimely, and her appeal should be dismissed.

5. The Appellants in their Return argue that the first Rule 59(e) Motion was proper because they "believed" certain issues were not ruled on in the May 9, 2019 Order. Those issues that the Appellant's "believed" were not ruled upon were (1) the Trust had a valid easement, (2) the Respondent was obstructing it, and (3) the Respondent should be ordered to remove the obstructions from the easement. In the May 9, 2019 Order, the Court found that the Plaintiffs held an easement over lands of the Church, Order at 4, 7, 9-10 and 11. The term "Plaintiffs" obviously includes the Trust. The Court also found that the Church was obstructing the easement with a building and two parking lots, Order at 7-8. Thus, the Court found that the Trust had a valid easement and that the Respondent was obstructing it. The Court did not order the Respondent to remove the obstructions because the causes of action relating to those obstructions were barred by the applicable statutes of limitations. Therefore, in the May 9, 2019 Order, the Court specifically ruled on each of the three issues raised in Ms. Farley's 59(e) Motion. There is no basis for a good faith "belief" that those issues had not been ruled upon by the Court. Therefore, the 59(e) Motion filed on behalf of only Ms. Farley was improper and did not extend the time to appeal from the May 9, 2019 Order.

5. The Respondent stands on its Brief with respect to the other issues raised in the Reply.

RESPECTFULLY SUBMITTED,



Robert W. Dibble, Jr., SC Bar #1675
Harrell, Martin & Peace, P.A.
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171
ATTORNEYS FOR RESPONDENT

December 11th, 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

DEC 11 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

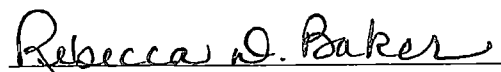
The undersigned hereby certifies that on December 11, 2019 she caused the *Reply to Return to Motion to Dismiss* to be sent via United States Postal Service, first class mail, with adequate postage prepaid, to the parties listed below:

S. Jahue Moore
William H. Edwards
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
Post Office Box 1570
Johns Island, SC 29457


Rebecca D. Baker, Paralegal
Harrell, Martin & Peace, P.A.

Chapin, South Carolina
December 11, 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

December 11, 2019

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

DEC 11 2019

SC Court of Appeals

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 Madam Clerk:

Attached for filing please find the original and seven copies of the Respondent's Reply to Return to Motion to Dismiss together with a Certificate of Service on counsel for the Appellants.

Yours very truly,

Robert W. Dibble, Jr.

RWDJR:rd
Attachments

cc: S. Jahue Moore, Esquire
William H. Edwards, Esquire
Mr. Drummond B. Farley
Ms. Carol E. Farley
Ms. Nancy E. Farley

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