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**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Robin B. Stilwell, Circuit Court Judge

**RECEIVED**  
MAY 20 2020  
SC Court of Appeals

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Civil Action No. 2019-23-00269  
Appellate Case No.: 2020-000438

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Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc.

Appellant,

v.

Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc.,

Respondents.

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**MOTION TO DISMISS APPEAL  
BY RESPONDENTS**

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*Attorney for Respondents*

COME NOW Respondents, by and through their undersigned counsel, and file this Motion to Dismiss for Lack of Jurisdiction pursuant to Rule 240 of the South Carolina Appellate Court Rules. This Motion is based on the following errors: Appellant failed to file a timely notice of appeal; Appellant failed to file a timely post-trial motion to stay the deadline for the appeal; and Appellant's stated issues on appeal and relief sought related solely to the order that Appellant failed to timely appeal.

### PROCEDURAL HISTORY

The procedural history of this case is as follows:

- On January 17, 2019, Appellant Wedlake commenced this action filing his Complaint in the Court of Common Pleas for the Thirteenth Judicial Circuit, County of Greenville (Civil Action No. 2019-23-00269).
- On September 27, 2019, Defendants filed a Motion for Summary Judgment ("MSJ").
- A hearing was held on the MSJ in front of The Honorable Robin B. Stilwell on October 28, 2019. All parties were present at the hearing, and Mr. Wedlake was accompanied by attorney Grant Gibson. At the hearing, Judge Stilwell indicated that he would rule in favor of Defendants and grant the MSJ.
- On November 18, 2019, Mr. Wedlake filed a Motion for New Hearing regarding the MSJ. **This is not a proper motion under the rules, and it was not a Rule 59(e) motion in disguise because the judge had not yet entered an MSJ order to be reconsidered.)**
- On November 25, 2019, Judge Stilwell issued an order granting Defendants' MSJ ("MSJ Order") and effectively denying Mr. Wedlake's Motion for New Hearing. **The deadline to file a motion to reconsider the MSJ Order was December 5, 2019. The deadline to appeal the MSJ Order was December 26, 2019.**

- On December 26, 2019, Mr. Wedlake filed a Motion to Reconsider (“MTR”) the MSJ Order. **The MTR was 21 days late, and as such was *not* a timely motion that could have tolled the December 26, 2019 deadline to appeal the MSJ Order.**
- On February 20, 2020, the Court denied the MTR as untimely (“MTR Order”).
- Mr. Wedlake placed his notice of appeal in the mail on March 9, 2020 (“NOA”). The Notice of Appeal purports to appeal the “‘Order Form 4’ (Exhibit 1) of the Honorable Robin B. Stilwell, filed in the Public Index on February 20, 2020, which denied Appellant’s request for a New Hearing,” as well as “the Order of November 25, 2019 which granted Summary Judgment.” **This appeal was filed 2.5 months past the deadline to appeal the MSJ Order. As to the MTR Order, Appellant’s statement of issues and relief sought relate solely to the MSJ Order.**

Mr. Wedlake’s stated issues on appeal are as follows:

1. The Judge erred in misinterpreting the statute with resulting claim that Defendants were immune from suit, which is an error of law.
2. The Judge erred in claiming a "wrong party" was named, which is an error of law in contradiction of statute, and in contradiction of the Judge's own precedent.
3. The Judge erred in granting Summary Judgment which constituted an abuse of discretion when genuine issues of fact existed.
4. The Judge erred in granting Summary Judgment which prohibited Appellant from enjoying "due process" and "equal protection of the laws" by denying adjudication of questions of law as sought with Appellant's-Declaratory-Judgment (DJ) action, which together, represented an abuse of Judicial Discretion.
5. The Judge erred by applying a wrong standard of tort requirements, resulting in subsequent belittlement of Appellant's-DJ action, which is an abuse of discretion and contrary to existing case law.
6. The Judge abused his discretion by accepting without evidentiary support many false claims stated during the Hearing by Defense Counsel.

(R. 225.).

Appellant's Conclusion requests the following relief:

1. Respondents are not immune from suit under the NPCA, where such ruling represented an error of law;
2. Respondents are not a "wrong party" under the NPCA, nor per several other reasons cited, where such ruling represented an error of law;
3. Several genuine issues of fact exist, where to ignore legitimate issues represents abuse of discretion, and Summary Judgment cannot be granted in the face of such issues remaining unresolved;
4. Appellant's US Constitutional guarantees were denied, where rightfully Appellant should enjoy "due process" and "equal protection of the laws" as is the right of, and must be provided to, all US citizens;
5. It is a Court's-proper function to rule upon questions of law, where a precedent of belittlement of Declaratory-Judgment actions must not be allowed to propagate;
6. Counsel's many false claims which were brought to misdirect and obfuscate must not be allowed to influence, nor to negate, judgment based upon law, when particularly Appellant contends that genuine issues of interpretation of law were brought by his action."

(R. 239.)

#### **APPLICABLE COURT RULES**

Rule 203 of the South Carolina Appellate Court Rules requires a notice of appeal to be served "on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." A *timely* motion to alter or amend the judgment will stay the time period for appeal. SCACR 203; *see also* SCRCR 59(f). Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Further, SCRCR 59(g) requires, "A party filing a written motion under this rule shall provide a copy of the motion to the judge within

ten (10) days after the filing of the motion.” The time for serving the notice of appeal under SCACR 203 cannot be extended by the appellate court. SCACR 263(b).

SCACR 208 then governs the initial briefs. SCACR 208(b)(1)(B) requires inclusion of a statement of issues on appeal as follows: “A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” SCACR 208(b)(1)(F) also requires inclusion of “[a] short conclusion stating the precise relief requested.” These rules must be followed, and SCACR 260(a) provides, “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”

#### ARGUMENT

1. THIS COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE APPELLANT DID NOT MEET THE DEADLINE TO APPEAL.

Judge Stilwell issued an order granting Respondents’ Motion for Summary Judgment on November 25, 2019. During the thirty days that followed, Appellant made no attempt to file a notice of appeal. Rule 203(b)(1) of the South Carolina Rules of Appellate Procedure requires notice of an appeal to be served “within thirty (30) days after receipt of written notice of entry of an order or judgment.”

A timely appeal is a clear prerequisite for appellate jurisdiction in South Carolina: “[t]he requirement [for a timely] notice of appeal is jurisdictional, i.e., if a party misses 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.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). Here, Appellant disregarded the

deadline for notice of appeal of the MSJ Order by over two months. Thus, any attempt to consider Appellant's untimely appeal would turn a bright line jurisdictional inquiry into a merits inquiry. *Camp v. Camp*, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010) (“[T]his Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”) (citing *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)). Accordingly, the appeal must be dismissed with prejudice.

2. BECAUSE APPELLANT'S RULE 59(E) MOTION WAS NOT TIMELY FILED, IT WAS INCAPABLE OF STAYING THE TIME TO FILE A NOTICE OF APPEAL.

The time to appeal an order can only be stayed by “a timely motion for judgment n.o.v. (Rule 50, SCRPC), motion to alter or amend the judgment (Rules 52 and 59, SCRPC), or a motion for a new trial (Rule 59, SCRPC)”. SCACR 203(b)(1). All such listed motions are required to be filed within ten days of the entry of the order or judgment.

On December 5, 2019, the ten-day period for Appellant to file a post-judgment motion concluded, and the MSJ Order became final pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. It was not until December 26, 2019 that Appellant, in utter disregard for the ten-day deadline, filed a Rule 59 Motion to Reconsider. Under South Carolina law, a post-trial motion must be timely to toll the thirty-day period to file a notice of appeal. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“A *timely* post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion”) (*emphasis added*). Otherwise, the motion has no effect on the deadline to file a notice of appeal because the original judgment is final. See *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (noting a judgment that is not appealed, right or wrong, becomes the law of the case).

Appellant contends he can appeal the MSJ Order under the pretense that the deadline for his appeal runs from the date on which his motion to reconsider was denied. Here, Judge Stilwell appropriately found Appellant's Rule 59(e) motion untimely; therefore, Appellant's MTR was incapable of staying the time to file a notice of appeal. Because the deadline to file the notice of appeal was not stayed by Appellant's MTR, the MSJ Order is final and cannot be appealed without retroactively reversing a final judgment—a drastic measure contrary to precedent. Thus, the appeal must be dismissed with prejudice.

3. APPELLANT'S APPEAL SHOULD BE DISMISSED IN ITS ENTIRETY AS HIS STATED ISSUES ON APPEAL AND RELIEF SOUGHT ALL RELATE SOLELY TO THE MSJ ORDER, WHICH HAS NOT BEEN TIMELY APPEALED.

“[F]ormer Chief Judge Alex Sanders famously wrote, ‘[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.’” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 331 fn 4, 730 S.E.2d 282, 286 (2012), *citing Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), *quashed on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985). His point being that, in South Carolina, appeals must raise the issues to be decided. In the absence of a presented and preserved exception, there is nothing properly before the court for it to decide. *See Evans v. Bruce*, 245 S.C. 42, 44, 138 S.E.2d 643, 643 (1964). Therefore, the South Carolina Appellate Court Rules are specific in what is required in an appellant's initial brief to set forth the issues to be decided. SCACR 208(b)(1)(B) requires inclusion of a “concise and direct [statement] as to each issue” presented for the court's review. SCACR 208(b)(1)(F) also requires inclusion of “[a] short conclusion stating the precise relief requested.”

The only issues that Appellant's brief presents are issues pertaining to the MSJ Order. (R. 225.) As set forth more fully above, the MSJ Order was entered on November 25, 2019, and

neither an appeal nor a motion under Rules 50, 52, or 59 of the South Carolina Rules of Civil Procedure were filed within the requisite time periods afterwards. Therefore, an appeal of the MSJ Order is untimely and this Court does not have jurisdiction to decide the matter. No issues outside of the MSJ Order are raised in Appellant's statement of issues, so there is nothing left before the Court to be decided.

“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” SCACR 208(b)(1)(B). If the issue is not included in the statement of issues on appeal, it is unpreserved for appellate review. *See, e.g., Brown v. Odom*, 425 S.C. 420, 436, 823 S.E.2d 183, 191 (Ct. App. 2019) (citing Rule 208(b)(1)(B) in determining the appellant did not preserve an issue which he failed to include in the statement of issues on appeal); *Allen v. Pinnacle Healthcare Sys., LLC*, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011) (declining to address two of appellants' arguments on their merits where the issues were not included in the sole statement of the issue on appeal); *Burris v. Propst Lumber & Logging, Inc.*, 396 S.C. 85, 96, 719 S.E.2d 695, 701 (Ct. App. 2011) (finding an argument abandoned by appellant on two grounds where it was not listed in the statement of issues on appeal and had no supporting authority cited).

Even read in conjunction with the rest of Appellant's brief, the stated issues on appeal cannot be construed to address any ruling other than the MSJ Order. In fact, Appellant even explicitly states in his brief that “[s]uch appeal is based upon application of statutorily-wrong standards, where a granting of SJ against Appellant was not based upon merits of the case, but rather was based upon other technical-legalistic arguments.” (R. 227.) Further, Appellant's requested relief as set forth in his conclusion is also exclusively related to the MSJ Order. (R. 239.) Thus, as the MSJ Order has not been timely appealed and there are no issues presented

before this Court relating to anything other than the MSJ Order, the entirety of Appellant's appeal must be dismissed.

4. WHILE NO *PRO SE* LITIGANT IS EXCUSED FROM APPELLATE DEADLINES AND RULES, APPELLANT CERTAINLY NOT SHOULD BE, GIVEN HIS EXTENSIVE LITIGATION HISTORY IN THE LOWER AND APPELLATE COURTS.

First, no matter who the litigant is, the appellate court does not have jurisdiction to hear a matter where the notice of appeal was not filed within the time frame required by SCACR 203. SCACR 263(b); *see also, Elam v. S.C. Dep't of Transp.*, 602 S.E.2d 772, 775 (noting that the appellate court has “no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice” of appeal). Nor is the appellate court able to decide issues which are not preserved and presented to it. *See, e.g., Brown v. Odom*, 436, 823 S.E.2d 183, 191 (citing Rule 208(b)(1)(B) in determining the appellant did not preserve an issue which he failed to include in the statement of issues on appeal).

Second, the law in South Carolina is clear that “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law. *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). “[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001), citing *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988).

Further, Mr. Wedlake is not a typical *pro se* litigant. He is a serial litigant who has filed at least 6 lawsuits in the Circuit Court and two other appeals—Civil Action Nos. 2017CP2306301, 2017CP2306301, 2018CP2303758, 2018CP2306408, 2019CP2300269, 2019CP2301501 and Appellate Case Nos. 2018-001209 and 2020-000506. In many of these matters, including the first

appeal, Mr. Wedlake has been represented by attorney Grant Gibson of G. Gibson & Associates, LLC. In this particular matter, Mr. Wedlake notes in the case caption that he is *pro se*; however, throughout the litigation, he has been in contact with Mr. Gibson. In fact, Mr. Gibson attended the October 28, 2019 hearing on the MSJ. (R. 179-80.) Therefore, even if it were within this Court's discretion to consider leniency for Mr. Wedlake, there is no justification for Mr. Wedlake's failure to comply with deadlines, presentation of issues for appeal, and preservation requirements.

#### CONCLUSION

This appeal must be dismissed for lack of jurisdiction as Appellant (1) did not file a notice of appeal within 30 days of the MSJ Order, (2) did not stay his time to file a notice of appeal by filing a timely motion for reconsideration within 10 days of the MSJ Order, and (3) did not present any issues on appeal or relief sought that are unrelated to the MSJ Order. Therefore, this court does not have jurisdiction to review the merits of this appeal, and the appeal should be dismissed in its entirety with prejudice.

CAMPBELL TEAGUE LLC

/s/ Emily Kate O'Brian

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Attorney for Respondents

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on May 18, 2020 via Certified Mail:

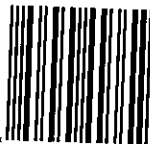
Raymond Wedlake  
703 Creekview Drive  
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MAY 20 2020  
SC Court of Appeals

May 18, 2020  
DATE

/s/ Haden Brogdon  
CAMPBELL TEAGUE  
*Haden Brogdon, Paralegal*

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