

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2020-000734

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge
Trial Court Case No. 2018-CP-07-02387

RECEIVED

JUN 04 2020

SC Court of Appeals

Mary J. Chaplin,

Appellant,

v.

Twila E. Montgomery,

Respondents.

RESPONDENT'S MOTION TO DISMISS APPELLANT'S APPEAL

E. Mitchell Griffith
Hillary G. Meyer
GRIFFITH, FREEMAN & LIPFERT, LLC
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Counsel for Respondent

I. The Appellant did not timely serve her Notice of Appeal; therefore, her Appeal should be dismissed.

By email correspondence and fax dated May 1, 2020, the Appellant, Mary J. Chaplin, informed the Court of Appeals that she would be pursuing an Appeal on her own behalf. The email and fax correspondence were never timely served upon Counsel of record for the Respondent pursuant to the requirements of Rules 203 and 262, SCACR.

Under Rule 203 of the South Carolina Appellate Court Rules:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCRCP), or a motion for a new trial (Rule 59, SCRCRCP) 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.

Under Rule 262 of the South Carolina Appellate Court Rules, service upon a party represented by an attorney “shall be made upon the attorney... by delivering a copy to him or by mailing it to him at his last known address.” Delivery may be accomplished under this Rule by “handing it to the attorney or to the party; or leaving it at his office with his clerk... or... leaving it in a conspicuous place therein.” “Service by mail is complete upon mailing.”


The Appellant brought suit against the Respondent, Twila Montgomery, in the Court of Common Pleas, Beaufort County, after the parties were involved in a motor vehicle accident. The Appellant’s case went to trial and a jury verdict for the Respondent was entered on February 25, 2020. Thereafter the Appellant, through her counsel of record in the Circuit Court, filed post-trial motions pursuant to Rules 50(b) and 59 of the South Carolina Rules of Civil Procedure. The Appellant’s motions were denied by Order of the Court dated March 31, 2020, which was electronically filed and served on the same date to Appellant’s

counsel through the court's electronic filing system. (Exhibit A). Pursuant to Rule 203, the Appellant had thirty (30) days from the date of receipt of the trial judge's Order to properly serve a Notice of Appeal under Rule 262. To date, no Notice of Appeal has been served upon Respondent's counsel of record. Moreover, the Appellant failed to properly file her Notice of Appeal by the thirty (30) day deadline, which would have passed on April 30, 2020. The earliest date that Appellant submitted materials to the Court of Appeals was on May 1, 2020. Nor can the Appellant rely on the extenuating circumstances surrounding the Coronavirus Pandemic in this case. Although Justice Beatty's Supreme Court Order dated 2020-03-20-01 allows for extensions of time in some matters, the Order distinctly states that no such extensions of time will apply to service of a notice of appeal pursuant to Rule 203.

Based on the foregoing, the Appellant has failed to comply with the plain language of South Carolina Court of Appeals Rules 203 and 262, and her Appeal should be dismissed.

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By:



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Attorneys for Respondent

June 1, 2020

Beaufort, South Carolina

Other Party to Case:

Mary J. Chaplin

PO Box 108

St. Helena Island, SC 29920

Telephone: (843) 592-6487

Pro Se Appellant

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2018-CP-07-02387

Mary J. Chaplin

Twila E. Montgomery,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

This case having come before the Court on a Motion for New Trial and for Judgement Not Withstanding the Verdict filed by counsel of the Plaintiff, Mary J. Chaplin. The Plaintiff moves pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure for a judgement notwithstanding the verdict and Rule 59 of the South Carolina Rules of Civil Procedure for an order setting aside the verdict, judgement in this action and granting a new trial.

In the present case, it was stipulated by both parties prior to trial that the matters for the jury's determination were proximate cause and damages.

In *Vinson v. Hartley*, the South Carolina Court of Appeals held that "under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when [the judge] finds the evidence does not justify the verdict." *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.Ed.715, 722 (1996). See also *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct.App.1995) (under "thirteenth juror doctrine," trial court may grant new trial if judge believes the verdict is unsupported by evidence and, similarly, a new trial may be granted if verdict is inconsistent and reflects jury's confusion). In the current case, when reviewing the evidence presented at trial, the memorandums submitted by both parties, and applicable law, this court finds there is evidence to justify verdict for the Defendant. As such, this Court respectfully denies the Plaintiff's Motion for New Trial and Judgement Notwithstanding the Verdict.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code 2161 Date 3/30/2020

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 20 ____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

ELECTRONICALLY FILED - 2020 Mar 31 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702387



Beaufort Common Pleas

Case Caption: Mary J Chaplin VS Twila E Montgomery

Case Number: 2018CP0702387

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2020-03-31 10:32:18 page 3 of 3

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
DeAndrea G. Benjamin, Circuit Court Judge

Civil Action No. 2018-CP-07-02387
Appellate Case No. 2020-000734

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PROOF OF SERVICE

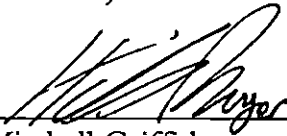
I certify that on June 4, 2020, I served *Respondent's Motion to Dismiss Appellant's Appeal* by depositing it in the United States Mail with postage prepaid and addressed as follows:

Mary J. Chaplin
PO Box 108
St. Helena Island, SC 29920

McDougall Law Firm, LLC
ATTN: William Thomas Bacon, IV
PO Box 1336
Beaufort, SC 29901

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By:



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Attorneys for Respondent

June 1, 2020

Beaufort, South Carolina



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E. MITCHELL GRIFFITH+
O. EDWORTH LIIPFERT III+
MICHAEL D. FREEMAN+
KELLY DENNIS DEAN
HILLARY G. MEYER

+ certified mediator

June 1, 2020

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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JUN 04 2020
SC Court of Appeals

RE: Chaplin v. Montgomery
Civil Action No: 2018-CP-07-02387
GF&L File No: 1012-315.001

Dear Madam Clerk:

Please find enclosed the original and six (6) copies of *Respondent's Motion to Dismiss Appellant's Appeal* and the original and one (1) copy of a *Proof of Service* in this case. Also enclosed is our \$25 check for the filing fee. I would appreciate you returning a filed copy of the *Motion to Dismiss* and *Proof of Service* in the enclosed envelope.

By copy of this letter with enclosures, I am serving the *pro se* Appellant, Mary J. Chaplin, with the same.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

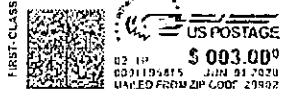
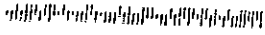
Very truly yours,


Hillary G. Meyer

HGM/

Enclosures

cc: Mary J. Chaplin
William Thomas Bacon, IV



 **GRIFFITH FREEMAN LIPPERT**
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