

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Brian M. Gibbons, Circuit Court Judge

Appellate Case Number: 2020-000982

**RECEIVED**  
**Aug 26 2020**  
**SC Court of Appeals**

Broad River Campground, LLC .....Appellant,

v.

Jenkinsville Water Company, Inc.. ..... Respondent.

**REPLY IN SUPPORT OF MOTION TO DISMISS THE APPEAL**

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules (“SCACR”), Respondent Jenkinsville Water Company, Inc. (“JWC”) respectfully submits this Reply to Appellant Broad River Campground’s (“Broad River” or “BRC”) Response to JWC’s Motion to Dismiss the Appeal. For the reasons set forth herein, Broad River’s Response fails to present any valid legal argument, and therefore, the Motion to Dismiss the Appeal should be granted.

**ARGUMENT**

**BRC did not timely file its Motion to Alter or Amend, and Rule 60(b)(1), SCRCPP, cannot create jurisdiction to excuse this late filing**

While BRC’s counsel’s illness discussed in its Response is extremely unfortunate, the deadline for filing a Motion to Reconsider under Rule 59(e) of the South Carolina Rules of Civil Procedure (“SCRCPP”) is both absolute and jurisdictional. BRC’s Response admits that it did not timely file its Motion to Alter or Amend the Order of April 30, 2020. Instead, BRC’s Response

argues that the trial court excused the late filing under Rule 60(b), SCRCF.<sup>1</sup> To the contrary, this argument is without merit. The June 11, 2020, Order denying BRC's Motion to Alter or Amend specifically states that "Plaintiff's [Motion to Alter or Amend] was untimely filed, and therefore, the Court lacks jurisdiction to consider Plaintiff's Motion." The June 11, 2020, Order does not mention excusing JWC's late filing under Rule 60(b)(1), SCRCF, but instead, confirms the trial court lacks jurisdiction to consider the motion since it was not timely filed.

Even if the trial court wanted to grant JWC an extension to file an untimely Rule 59(e) Motion, the trial court lacked jurisdiction to do so after BRC's May 11, 2020, deadline passed. *See Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (2018) ("A trial court does not have the power to alter or amend a final order if more than ten days passes and no 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion....The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal."); *Leviner v. Sonoco Prod. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) ("When no **timely** Rule 59 motion was made nor **timely sua sponte** order filed under Rule 59(e), the [Order] 'matured' into a final judgment...because the trial judge no longer had jurisdiction over the matter.") (emphasis added).

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<sup>1</sup> BRC never filed a formal motion under Rule 60(b)(1), SCRCF, in the trial court, nor did it raise its Rule 60(b)(1) defense in response to JWC's Response filed in Opposition to Plaintiff's Motion to Alter or Amend that specifically challenged the timeliness of BRC's Motion. In fact, BRC never raised, in the least bit, any issue regarding excusable neglect or any other reason fortifying its untimely filed Motion to Alter or Amend.

Once BRC failed to file its Motion to Alter or Amend on or before May 11, 2020, the April 30, 2020, Order became final and BRC's only recourse was to file a timely notice of intent to appeal.

**BRC did not timely file its Notice of Appeal and Rule 60(b)(1), SCRCP, cannot be used to create appellate court jurisdiction**

While BRC erroneously argues that the Court of Appeals can use Rule 60(b)(1), SCRCP, to grant BRC the right to file an untimely notice of appeal, this argument is contrary to well-established South Carolina law. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1986) (“Service of the notice of intent to appeal is a jurisdictional requirement.”); *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the 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.**”) (emphasis added); *Hill v. S.C. Dep’t of Health & Env’tl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) (“The service of the notice of appeal is a jurisdictional requirement, and **the time for service may not be extended by this Court.**”) (emphasis added).

Rule 203(b)(1), SCACR, states:

[Only] [w]hen a **timely** motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from the receipt of the written notice of entry of the order granting or denying such motion.

(emphasis added). Even if BRC had timely moved under Rule 60(b)(1), SCRCP, at the trial court level, which it did not, under the express language of Rule 203(b)(1), SCACR, a Rule 60 motion would not have tolled BRC's time to file its Notice of Appeal. Since BRC concedes that

it did not file a **timely** Motion under Rule 59(e), it was required to file its notice of appeal of the April 30, 2020, Order within 30 days of receipt of written notice of the entry of that order. Therefore, BRC was required to file its notice on or before June 1, 2020, and its failure to do means that this Court lacks jurisdiction to consider the appeal.

**The Supreme Court’s Orders for Operation of the Trial and Appellate Courts during the Coronavirus Emergency did not extend the time to file a Motion under Rule 59(e), SCRCP, or Rule 203, SCACR**

BRC’s Response erroneously argues it should have been allowed to file its untimely Rule 59(e) Motion and it should be allowed to file its untimely Notice of Appeal based on the Supreme Court’s orders relating to the operation of the courts during the Coronavirus pandemic that extended certain due dates for filings by 20 days and forgave certain procedural defaults. While these orders did provide some relief to due dates and procedural defaults, the Orders expressly did not extend any deadlines to file a Motion under Rule 59(e), SCRCP<sup>2</sup>, or a Notice of Appeal under Rule 203, SCACR<sup>3</sup>. Therefore, BRC’s Notice of Appeal was untimely, and this Court should grant JWC’s motion to dismiss this appeal.

**CONCLUSION**

BRC untimely filed its Notice of Appeal 70 days after receipt of written notice of the April 30, 2020, Order. BRC did not file a timely motion under Rule 59(e), SCRCP, so its deadline to file its Notice of Appeal under Rule 203, SCACR, was never tolled, and it expired on

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<sup>2</sup> “The provisions of (A) through (C) above **shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b)**, SCRCP...” S.C. Supreme Court Order dated April 3, 2020, titled “Operation of the Trial Courts during the Coronavirus Emergency” at (c)(9(D)) (emphasis added).

<sup>3</sup> “**Lawyers and litigants are warned that this extension does not extend the time to serve a notice of appeal under Rules 203, 243, and 247, SCACR.**” S.C. Supreme Court dated March 20, 2020, titled “Operation of Appellate Courts during the Coronavirus Emergency” at 1(1)&(2) (emphasis added).

June 1, 2020. Neither Rule 60(b), SCRCR, nor the Supreme Court Orders related to the Coronavirus provided any mechanism for BRC to extend the absolute deadlines related to its untimely Rule 59(e) Motion or its untimely Notice of Appeal. Thus, BRC filed its Notice of Appeal 40 days late, and this court lacks subject matter jurisdiction and must dismiss this appeal per Rule 203, SCACR.

TURNER PADGET GRAHAM & LANEY P.A.

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August 26, 2020

ATTORNEYS FOR RESPONDENT  
JENKINSVILLE WATER COMPANY, INC.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FAIRFIELD COUNTY  
Brian M. Gibbons, Circuit Court Judge

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that on the 26th day of August, 2020, she served a copy of the foregoing Respondent Jenkinsville Water Company, Inc.'s Reply in Support of its Motion to Dismiss the Appeal in the above-captioned matter to all counsel of record, by electronic mail and by placing a copy in the United States Mail, with due and proper postage affixed thereto as addressed below:

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August 26, 2020

**VIA EMAIL TO [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)**

The Honorable Jenny Abbott Kitchings

Clerk

The South Carolina Court of Appeals

P.O. Box 11628

Columbia, SC 29211

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**Aug 26 2020**

**SC Court of Appeals**

**Re: Broad River Campground, LLC v. Jenkinsville Water Company, Inc.  
Appellate Case No. 2020-000982  
Our File No. 10728.151**

Dear Ms. Kitchings:

Pursuant Section (c)(6) of the Amended Order Regarding the Operation of the Appellate Courts During the Coronavirus Emergency, as amended on May 29, 2020, attached for filing is Respondent Jenkinsville Water Company's Reply in Support of its Motion to Dismiss the Appeal in the above-referenced matter. Please file this motion and return a clocked copy to me at [mgoddard@turnerpadget.com](mailto:mgoddard@turnerpadget.com). By copy of this letter, I am serving all counsel of record.

Should you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Mark B. Goddard

MBG:mhs

Enclosure

cc: Glenn E. Bowens, Esquire  
Jonathan Goode, Esquire