

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2020-001135
Case No. 2015-CP-40-1805

RECEIVED
Sep 03 2020
SC Court of Appeals

Wendy Brawley, Respondent-Appellant,

v.

Richland County, South Carolina Appellant-Respondent.

**RETURN IN OPPOSITION TO
MOTION TO HOLD APPEAL IN ABEYANCE**

The Respondent-Appellant Wendy Brawley has filed a motion to hold the cross-appeals in abeyance and to remand the action to the Circuit Court to allow for a ruling on her affidavit for attorney’s fees. The Appellant-Respondent Richland County opposes this motion because the Circuit Court has been divested of jurisdiction and there is no basis for a remand to the Circuit Court.

This is an action brought pursuant to the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, *et seq.* By Order filed February 13, 2020, the Circuit Court entered a final judgment in favor of Wendy Brawley. In that Order, the Circuit Court ruled that Brawley “is entitled to reasonable attorney’s fees incurred herein” and directed her counsel “to

submit a schedule of fees *and a motion* to support the amount of the fees and costs incurred herein.” See, Order filed February 13, 2020, p. 12. (Emphasis added). By law, Brawley had ten days, or until Monday, February 24, 2020, in which to file a motion for attorney’s fees and costs as directed by the Circuit Court. Brawley did not file a motion for attorney’s fees or costs by that date.

The South Carolina Supreme Court has held that “[g]enerally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.” *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722, 730 (2006). Both appellate courts have consistently held that a motion for attorney’s fees is a post-trial motion and must be filed within ten days of the entry of final judgment. See e.g., *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014); *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002).¹ As this Court explained in *Pitman*, “[a]bsent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.” 570 S.E.2d at 190. See also, *Rutland v. Holler, Dennis, Corbett, Ormond, & Garner*, 371 S.C. 91, 637 S.E.2d 316, 319 (Ct. App. 2006) (“because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment”). Importantly, the FOIA does not vest the trial judge with continuing jurisdiction. See, S.C. Code Ann. § 30-4-100(b). Moreover, it is well settled that the ten-day deadline for filing post-trial motions is an “absolute deadline” and is not subject to

¹ This is also consistent with Rule 54(d), SCRCP, which includes a ten-day limit for filing a motion for costs.

extension by the trial court. *See, Overland, Inc. v. Nance*, 423 S.C. 253, 815 S.E.2d 431, 433 (2018).

In this case, the Circuit Court entered final judgment in favor of Wendy Brawley on February 13, 2020. Thus, Brawley had ten days, or until February 24, 2020, to file a motion for attorney's fees. She did not do so. Richland County did file a timely Rule 52(b) and Rule 59(e) motion which allowed the Circuit Court to continue to exercise jurisdiction over that post-trial motion and only until that motion was decided. However, once that motion was decided by the Circuit Court on July 16, 2020, its jurisdiction ended. As this Court has held, "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *Pitman*, 570 S.E.2d at 190. That occurred by July 16, 2020, and in fact, that is the date on which the thirty days for filing an appeal began to run -- which is further indication that that is the date on which the Circuit Court was necessarily divested of jurisdiction. To repeat, by July 16, 2020, Brawley had filed no motion for attorney's fees. Her lawyer filed an Affidavit as to Attorney's Fees and Costs on July 27, 2020, but by that time the Circuit Court had lost its jurisdiction.

On August 17, 2020, the County filed its timely Notice of Appeal. Brawley also filed her Notice of Appeal on that same date. When those Notices of Appeal were filed, there was not any post-trial motion pending in the trial court and certainly not a timely-filed motion. There is, in fact, still no motion for attorney's fees filed, and even if Brawley's lawyer's affidavit would be considered a "motion," which it is not, that was still not timely filed on July 27, 2020.

Nonetheless, Brawley asks this Court to hold the cross appeals in abeyance to allow the trial court to rule on a non-existent motion and an untimely affidavit over which there is no jurisdiction. There is precedent for a trial court to exercise jurisdiction and rule on a *timely post-trial motion* which was filed prior to a notice of appeal. In *Hudson v. Hudson*, 290 S.C. 215, 349

S.E.2d 341 (1986), the Supreme Court held “that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a *timely post-trial motion*.” *Holmes*, 758 S.E.2d at 496, *citing Hudson*, 349 S.E.2d at 341. However, the converse is also true: if the post-trial motion is not timely filed, then the Circuit Court has no jurisdiction to proceed. That is the situation in this case. The Respondent-Appellant Wendy Brawley is asking this Court to hold these cross appeals in abeyance and remand to the Circuit Court to rule on a non-existent motion and an untimely affidavit over which that court no longer has jurisdiction. Indeed, if Brawley really believes that the Circuit Court still has jurisdiction, then she would not have filed her Notice of Appeal on August 17, 2020.

In her motion, Brawley relies on the case of *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), which is inapposite. Unlike this case, *Jackson* involves a *timely* motion for attorney’s fees. The opinion states that the trial ended on May 12, 1994. The trial judge directed that a motion for attorney’s fees and costs needed to be filed within five days, and the plaintiffs filed their motion on May 17, 1994. 486 S.E.2d at 754-755. Thus, the motion at issue in *Jackson* was timely filed -- certainly within the ten days in which the trial court retains jurisdiction. That motion was not adjudicated until well after the notice of appeal was filed; yet, consistent with *Hudson, supra*, the Supreme Court found that the Circuit Court had jurisdiction to hear and adjudicate the *timely filed* motion for attorney’s fees. The present case is different. Here, there is no timely motion now pending in the Circuit Court.

In sum, the Circuit Court was divested of its jurisdiction on July 16, 2020, when the only pending and timely post-trial motion was decided. No other motions were filed -- timely or untimely. Brawley’s lawyer filed an affidavit on July 27, 2020, but that is not a post-trial motion, and it certainly was not timely. Quite simply, there is no basis for holding these cross appeals in

abeyance. The Appellant-Respondent Richland County respectfully requests that the motion be denied and the cross appeals be allowed to proceed.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

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September 3, 2020

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DeAndrea Gist Benjamin, Circuit Court Judge

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CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court’s Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (as amended May 29, 2020), the undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Appellant-Respondent Richland County, does hereby certify that service of the **Return in Opposition to Motion to Hold Appeal in Abeyance** in the above-captioned matter was made upon all counsel of record by email only this the 3rd day of September 2020:

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September 3, 2020

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Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
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RE: Wendy Brawley v. Richland County, South Carolina
Civil Action Number: 2015-CP-40-1805
Appellate Case Number: 2020-001135
Our File Number: 314.9670

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SC Court of Appeals

Dear Ms. Kitchings:

Pursuant to Section (c)(6) of the Supreme Court’s Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), please find enclosed for filing the **Return in Opposition to Motion to Hold Appeal in Abeyance** in the above referenced matter. In accordance with Section (g)(3) of the same Order, I am herewith serving copies on all counsel of record.

If you have any questions, please advise. Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: (w/ Enclosure)

Via Email Only

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