

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2020-CP-10-2676
Appellate Case No.: 2020-001209

Deon Tedder.....Respondent,

v.

Charleston County Board of Voter Registration and Elections
and Jeffrey W. Wilder,

Of whom, Jeffery W. Wilder is.....Appellant.

**RESPONDENT’S MOTION TO DISMISS APPEAL
AND MEMORANDUM IN SUPPORT**

Respondent Deon Tedder, pursuant to Rule 240, SCACR, hereby moves this Court for an order dismissing the above-captioned appeal on the grounds that the Appellant does not have standing and this Court lacks appellate jurisdiction. In support thereof, Respondent would respectfully show the following:

1. This matter arises out of Appellant’s appeal of a Circuit Court decision finding Respondent to be a qualified voter residing in South Carolina House District 109 (“District 109”).

2. On May 20, 2020, Tiffany Spann-Wilder¹ (“Challenger”) publicly opposed her husband’s (“Appellant”) two opponents for District 109, Respondent and James Johnson, by challenging their voter registration qualifications.²
3. On May 27, 2020, Samuel W. Howell, Esq. (“Howell”), counsel for the Charleston County Board of Voter Registration and Elections (“CCBVRE”), sent an e-mail to members of the CCBVRE, counsel for Respondent, and Challenger, a copy of which is attached hereto and incorporated herein by reference as Motion Exhibit A pursuant to Rule 240(c)(3), SCACR. The e-mail stated, in pertinent part, “The Board...notes that S.C. Code Section 7-5-240 allows an appeal from an adverse decision of the Board to the State Circuit Court only by the voter; the challenger has no right to appeal an adverse decision by the Board.” *See* Mot. Ex. A.
4. The challenge hearings were held before the CCBVRE on May 29, 2020. The challenge to James Johnson’s residency was denied and the challenge to Respondent’s residency was granted.
5. At the hearing on the challenge to Respondent’s voter qualification, Howell stated on the record that “Code Section 7-5-230 and 240 provide that persons denied registration, they have a right to appeal the decision of this Board.”
6. On June 11, 2020, the CCBVRE served written notice of its decision from the May 29, 2020 hearing on all parties, a copy of which is attached hereto and incorporated herein by reference as Motion Exhibit B pursuant to Rule 240(c)(3), SCACR. Specifically, “the

¹ At the time of her challenge, Challenger was and remains a part time magistrate judge for Charleston County. Having characterized this matter as one pertaining to elections and election procedure in her cover letter to this Court, Respondent craves reference to Judicial Canon 5(A)(1)(b).

² Specific to this appeal, Challenger alleged that Respondent did not reside in District 109 when he changed his voter registration to reflect his new address of 2629 Orchid Avenue, N. Charleston, SC 29405 on March 17, 2020.

Election Board also notes that Code Section 7-5-240 allows an appeal from an adverse decision of the Election Board to the State Circuit Court only by the voter; the Challenger has no right to appeal an adverse decision by the Election Board.” *See* Mot. Ex. B.

7. That same day, counsel for Respondent served CCBVRE with Respondent’s Notice of Intent to Appeal its decision to the Court of Common Pleas for the Ninth Judicial Circuit pursuant to S.C. Code Ann. § 7-5-230(c).
8. On June 12, 2020, Howell forwarded Respondent’s Notice of Intent to Appeal to the Challenger via e-mail, and thereafter, filed Respondent’s Notice of Intent to Appeal, along with the written decision of the Board, the exhibits introduced at the hearing, and the transcript of same, with the Charleston County Court of Common Pleas pursuant to S.C. Code Ann. § 7-5-240.
9. On June 19, 2020, while the voter registration matter was pending appeal, Appellant filed a separate action (“DJ Action”) in the Charleston County Court of Common Pleas against Respondent, among others, alleging that Respondent was not domiciled in District 109 when he filed his Statement of Intention of Candidacy to run for the open District 109 seat on March 23, 2020 and requested an Order of the Court declaring same.³
10. On June 29, 2020, knowing that she lacked standing to appeal a future adverse decision of the circuit court in the voter registration matter, Challenger filed a Motion to Intervene on behalf of Appellant in an attempt to circumvent S.C. Code Ann. § 7-5-230, -240, and -250, a copy of which is attached hereto and incorporated herein by reference as Motion Exhibit C pursuant to Rule 240(c)(3), SCACR.

³ *See* Charleston County Case No.: 2020-CP-10-2678. This matter was dismissed by Order of the Hon. R. Ferrell Cothran, Jr. on September 1, 2020 and is currently on appeal to this Court. *See* Appellate Case No. 2020-001232.

11. On June 30, 2020, a hearing was held on Respondent's appeal of the above-referenced CCBVRE decision regarding his voter registration qualifications. After hearing arguments from all parties and reviewing the record on appeal, the Hon. R. Markley Dennis, Jr. found Respondent to have established his domicile at 2629 Orchid Avenue, North Charleston, South Carolina on February 28, 2020, and therefore met the provisions of S.C. Code Ann. § 7-1-25(D) when he applied for and received a new voter registration card reflecting the above address on March 17, 2020. Judge Dennis issued an Order granting Respondent's appeal on July 2, 2020,⁴ a copy of which is attached hereto and incorporated herein by reference as Motion Exhibit D pursuant to Rule 240(c)(3), SCACR.
12. On July 11, 2020, Appellant filed a "Motion for Reconsideration" of the July 2, 2020 Order with the Charleston County Court of Common Pleas, however, Appellant failed to serve the same on Judge Dennis within ten days thereafter pursuant to Rule 59(g), SCRCPP. As a result of Appellant's failure to comply with Rule 59, SCRCPP, Judge Dennis was unaware of the filing, the matter was ended by the Clerk, and his order of July 2, 2020 became a final order.
13. On August 25, 2020, a hearing was held in the DJ action by the Hon. R. Ferrell Cothran, Jr. on Respondent's Motion to Dismiss, the basis of which was that Appellant should be precluded from attempting to re-litigate the issue of Respondent's domicile pursuant to the doctrine of collateral estoppel.
14. In response, Appellant took the position that since his "Motion for Reconsideration" remained pending, the July 2, 2020 order of Judge Dennis regarding Respondent's domicile

⁴ In his Order reversing the Board's decision as to Respondent's voter registration after finding Respondent to have established his domicile in District 109 on February 28, 2020, the Court granted Appellant's Motion to Intervene without including any findings of facts or conclusion of law regarding same within the Order.

was not a final order. The Court disagreed, finding that since Appellant failed to comply with Rule 59(g), SCRCRCP, his only available remedy was to appeal the final order of Judge Dennis issued July 2, 2020 and dismissed Appellant's DJ action.

15. Immediately following this ruling in the DJ action, Appellant filed an "Amended Motion for Reconsideration" in the voter registration matter and attached it to an email to Judge Dennis's law clerk of August 27, 2020, along with a copy of the unserved July 11, 2020 "Motion for Reconsideration," requesting a ruling on his outstanding motions. On August 28, 2020, Judge Dennis issued a Form 4 Order denying Appellant's motion to reconsider.
16. On September 8, 2020, Appellant filed and served his Notice of Appeal with this Court, to which Respondent moves to dismiss pursuant to Rule 240, SCACR.
17. The matter before the lower court was to determine whether the Election Board erred in finding that Appellant failed to meet the qualifications set forth in S.C. Code Ann. § 7-5-120 for his change of voter registration. In short, whether he established his domicile in District 109 when he became a registered voter of that District on March 17, 2020. A challenge to the legal qualifications of all applicants for registration is controlled by the state constitution and S.C. Code Ann. §§ 7-5-230, -240, and -250.
18. S.C. Const. art. II, § 2 provides that "No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State." "Every citizen possessing the qualifications required by this Constitution...shall be an elector." S.C. Const. art. II, § 3. S.C. Const. art. II, § 9 provides that "any person denied registration shall have the right to appeal to the court of common pleas...and thence to the Supreme Court, to determine his right to vote...and the General Assembly shall provide for such appeal." (Emphasis added).

19. S.C. Code Ann. § 7-5-230(A) provides that “the county boards of voter registration and elections...shall be the judges of legal qualification of all applicants for registration.” (Emphasis added). S.C. Code Ann. § 7-5-230(C) states that “any person denied registration...of his name on the registration books shall have the right of appeal from the decision of the...board...denying him registration...to the court of common pleas of the county...and subsequently to the Supreme Court.” (Emphasis added).
20. S.C. Code Ann. § 7-5-240 provides, in pertinent part, that “any person denied registration...and desiring to appeal must within ten days after notice to him of the decision of the board...file with the board a written notice of his intentional to appeal therefrom.” (Emphasis added).
21. S.C. Code Ann § 7-5-250 governs an applicant/voter’s right to further appeal to the Supreme Court. “From the decision of the court of common pleas...the applicant may further appeal to the Supreme Court...” *Id.* (Emphasis added).
22. It is clear that from the above that the right to appeal a decision of the board following a voter registration challenge belongs exclusively to the “person denied registration” / voter / applicant. (Emphasis added). This was clearly explained to Challenger both prior to and at the start of the Board hearing by Howell and is supported by this Court’s holding in *Gantt v. Selph*, 423 S.C. 333, 814 S.E.2d 523 (2018) (Holding that “while section 7-5-230 would have allowed Murphy [voter / applicant] to appeal an adverse ruling, neither section 7-5-230 nor any other statute gave Respondents [challenger] the right to appeal the Richland Election Board’s conclusion that Murphy was a qualified voter in Richland County.”) *Id.* at 535. *See* Mot. Ex. B

23. Knowing that she could not appeal an adverse ruling by Judge Dennis on the voter registration matter, Challenger attempted to circumvent the above statutes and precedence by moving to allow Appellant to intervene. While her motion was granted by the lower court, an intervenor does not automatically become an aggrieved party with appellate standing.
24. Standing refers to a party's "personal stake in the subject matter of a lawsuit." *Newman v. Richland Cnty. Historic Pres. Comm'n*, 325 S.C. 79, 480 S.E.2d 72 (1997). "Only a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. "An aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property." *State v. Looper*, 421 S.C. 384, 388, 807 S.E.2d 203, 205 (2017) (quoting *State v. Rearick*, 417 S.C. 391, 398 n.9, 790 S.E.2d 192, 196 n.9 (2016)). "Aggrieved" means "a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001).
25. Further, Appellant does not, and cannot, have a personal stake in the subject matter of this action, that being whether Respondent met the qualifications set forth in S.C. Code Ann. § 7-5-120 for his change of voter registration; he has not and cannot be aggrieved by this action; and he has not been nor can he be denied some personal or property right by this action. A person's right to vote is plainly addressed in our state's Constitution, and it belongs solely to the voter. "Every citizen possessing the qualifications required by this Constitution...shall be an elector." S.C. Const. art. II, § 3. The Appellant has no stake in Respondent's voter qualification, as it lies solely with Respondent. A challenger nor any

third-party intervenor, is not, and cannot, be aggrieved by a citizen's voter qualification determination.

26. This is exactly why the right to appeal is exclusive to the "person denied registration," as referenced and required in S.C. Code Ann. §§ 7-5-230, -240, and -250. If the Challenger cannot appeal the CCBVRE's decision, to include proceedings at the lower court and the Supreme Court, it follows that no person other than the voter / applicant can appeal, just as this Court held in *Gantt*.

27. For the above reasons, Respondent respectfully moves this Court for an order dismissing the above-captioned appeal for lack of standing.

28. In the alternative, Respondent submits that this appeal should be dismissed by this Court because it lacks appellate jurisdiction over the case. Rule 59, SCRCPP, provides the mechanism whereby a party may make a motion for the Court to alter or amend its judgement or order. Rule 59(e), SCRCPP, states that "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." Rule 59(f), SCRCPP, states that "the time for appeal...shall be stayed by a *timely* motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motion." Emphasis added. Rule 59(g), SCRCPP, requires that "a party filing a written motion under this rule shall provide a copy of the motion to the judge within 10 days after the filing of the motion."

29. Our Court of Appeals has previously held that "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule." *Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017), *reh'g denied* (Feb. 26, 2018).

30. Rule 260, SCACR, provides, in relevant part, that “whenever it appears that an appellant...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.”
31. By failing to comply with Rule 59, SCRCR, the time for appeal was not stayed, and therefore, the notice of appeal was required to be filed and served within thirty days from receipt of written notice of entry of the lower court’s order reversing the decision of the Board, which in the instant case, was received by the parties on July 2, 2020.
32. Appellant failed to file and serve a notice of appeal until September 8, 2020, and therefore, failed to perfect the appeal pursuant to Rule 203(b)(1), SCACR.
33. This failure by Appellant to comply with the procedural requirements for perfecting an appeal deprives this Court of appellate jurisdiction over the case. *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004) (citing *Great Games Inc. v. South Carolina Dept. of Rev.*, 339 S.C. 79, 529 S.E.2d 6 (2000)).
34. As this court held in *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985), “[t]he 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.”
35. For the above reasons, Respondent respectfully moves this Court for an order dismissing the above-captioned appeal for lack of appellate jurisdiction.
36. Finally, Respondent believe this appeal to be frivolous pursuant to Rule 269, SCACR and Appellant should be sanctioned accordingly.

37. In an purposeful attempt to circumvent S.C. Code Ann. § 7-5-230, -240, and -250, the Challenger filed a Motion to Intervene on behalf of Appellant. Both Challenger and Appellant are aware of the statutory language related to voter qualifications; however, they chose to file this frivolous appeal, forcing the Appellant to file the instant motion.

38. Further, Appellant, knowing that he and Challenger lacked standing to appeal any lower court order related to Respondent's voter qualifications (but doing so anyway), also filed an action seeking a declaration from the court on Respondent's domicile so to have another bite at the apple. It was promptly dismissed by order of the Hon. Ferrell Cothran on September 1, 2020, and once again, is being appealed by this same Appellant by and through this same Challenger.

39. Due to the frivolous actions and filings of the Appellant, this Court should order sanctions in accordance with Rule 269, SCACR.

WHEREFORE, having fully set forth its motion, Respondent moves the Court to issue an order dismissing the appeal and ordering sanctions.

Respectfully Submitted,

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