

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001951
Common Pleas Case No. 2019-CP-10-0067

Alan G. Nix, Norma J. Nix, and the Estate of Norma J. NixAppellants,

v.

Churchill Park, Churchill Park Homeowner's Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Southern Community Services, LLC, Park West Master Association, Inc., LPPM, Inc., McCabe, Trotter & Beverly, PC, Larry Ridlehover, Stephanie Trotter, Ryan McCabe, Jamie McSweeney, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson Builders, Inc., D.R. Horton, Inc., Brian Gardner, Dodds & Hennessey LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Park West Development, Inc., Rogers, Townsend Thomas, PC, Henry Munn, Individually Directors, Officers, Agents, Attorneys, Accountants, Independent Contractors, Investors, Successors, Predecessors, Parents, Subsidiaries, Sister and Affiliated entities, Partners, and Members of all named EntitiesRespondents.

INITIAL BRIEF OF RESPONDENTS CHURCHILL PARK, IMPROPERLY NAMED AS CHURCHILL PARK AT PARK WEST, INC. AND IMPROPERLY NAMED AS CHURCHILL PARK AT PARK WEST ASSOCIATION, INC., AND STEPHEN SUMNER

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STATEMENT OF ISSUES

Whether the trial court erred in dismissing Appellant's Complaint where the Complaint contained only headings with no factual allegations.

STATEMENT OF THE CASE

On January 4, 2019, Appellant filed a Complaint in the Court of Common Pleas for Charleston County naming the above-named Respondents as well as a series of other individuals and entities as defendants. As determined by the trial court, the Complaint is without any factual allegations, contains merely headings and conclusory statements for the seventeen causes of action, and ends with a prayer for relief.

In lieu of filing Answers, the above named Respondents and other parties filed motions to dismiss under Rule 12b, SCRPC, some of which were heard before the Honorable Deadra L. Jefferson in Charleston County on September 26, 2019. By orders entered October 17, 2019 granting the motions of Defendants David and Catherine Brown as well as Defendants McCabe, Trotter & Beverly PC, Stephanie Trotter, Ryan McCabe, and Jamie McSweeney, Judge Jefferson dismissed the underlying action in its entirety as being facially deficient under applicable Rules of Civil Procedure.

On November 25, 2019, Appellants filed a Notice of Appeal with this court. By letter from the clerk of court dated December 11, 2019, this court advised Appellants that a copy of the notice of appeal must be filed with the clerk of the trial court. The clerk's letter likewise stated that Appellants' deficiencies must be corrected within ten days of December 11, 2019 or the appeal will be dismissed. Upon information and belief, no copy of the notice of appeal has been filed with the trial court as required by Rule 203(d)(1)(B).

STANDARD OF REVIEW

In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), *SCRCP*, the appellate court applies the same standard of review as the trial court. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then dismissal under Rule 12(b)(6) is improper. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

ARGUMENT

I. Appellant’s various issues raised on appeal are not preserved for appellate review and are patently without merit.

Rule 208(b)(1)(E), *SCACR*, states in relevant part that “[t]he brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority.” Rule 208(b)(1)(E), *SCACR* (emphasis added); see *State v. Crocker*, 366 S.C. 394, 399 n. 1, 621 S.E.2d 890, 893 n. 1 (Ct.App.2005) (holding conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review, and noting failure to provide such argument and citation renders an issue abandoned); see also *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding the court should not address an issue which was not explicitly ruled on by the trial court or brought to the trial court’s attention in a motion to alter or amend).

Here, as the trial court properly found, Appellant's Complaint simply alleges no facts that would entitle him to any relief on any theory of the case. In his initial brief, Appellant merely makes conclusory statements and fails to cite any case law authority at any time in support of his issues on appeal or in support of a reversal of Judge Jefferson's orders dismissing the case. The authority cited above supports this court finding that all issues are abandoned on appeal, that no issue is preserved for appellate review, and that this appeal should be dismissed as to the above-named Respondents with prejudice.

II. Appellant did not timely file a Notice of Appeal from the circuit court's final orders dismissing the case; therefore, this court is without appellate jurisdiction to consider the appeal.

In an appeal from the circuit court, the notice of appeal *shall* be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. Rule 203(d)(d)(1)(B), *SCACR*. Without a timely notice of appeal, the reviewing court has no jurisdiction. *Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 571, 167 S.E.2d 571, 572 (1969); *see also Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (stating "[t]his Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served."); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (stating "[s]ervice of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.").

Here, Appellant failed to file a notice of appeal with the trial court as required by the rules of appellate procedure and as directed by the clerk of court for the court of appeals.

Therefore, this court is without appellate jurisdiction to entertain the appeal and the matter should be dismissed.

CONCLUSION

For the foregoing reasons, Respondents respectfully requests this court dismiss Appellant's appeal with prejudice as to the above-named Respondents. Respondents likewise join in and further state any and all arguments by all other Respondents to this action, pursuant to Rule 208(b)(6), SCACR.

Respectfully submitted,

s/ Kevin W. Mims

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AND STEPHEN SUMNER***

Charleston, SC
December 9, 2020

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Deadra L. Jefferson and Maite Murphy, Circuit Court Judges

Appellate Case No. 2019-001951
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v.

Churchill Park, Churchill Park Homeowner's Association, Inc., Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Southern Community Services, LLC, Park West Master Association, Inc., LPPM, Inc., McCabe, Trotter & Beverly, PC, Larry Ridlehover, Stephanie Trotter, Ryan McCabe, Jamie McSweeney, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson Builders, Inc., D.R. Horton, Inc., Brian Gardner, Dodds & Hennessey LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Park West Development, Inc., Rogers, Townsend Thomas, PC, Henry Munn, Individually Directors, Officers, Agents, Attorneys, Accountants, Independent Contractors, Investors, Successors, Predecessors, Parents, Subsidiaries, Sister and Affiliated entities, Partners, and Members of all named Entities . . .
.....Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of Respondents Churchill Park and Stephen Sumner's Initial Brief and Designation of Matter have been served upon the following counsel of record by mailing a copy of the same by United States Mail, addressed as shown below this 9th day of December, 2020.

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AND STEPHEN SUMNER***

Charleston, SC
December 9, 2020

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VIA EMAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Alan Nix v. Churchill Park HOA, et al.
Case Number: 2019-CP-10-0067
Claim Number: 072-0000125-2017
LM File Number: 114-20177015

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Dear Ms. Kitchings:

Enclosed please find the original and one copy of Respondents Churchill Park and Stephen Sumner's Initial Brief and Designation of Matter in connection with the above-referenced matter. Please return a filed copy to me in the enclosed stamped envelope. Please let me know should you have any questions or need additional information.

With kindest regards, I am

Sincerely,

LUZURIAGA MIMS, LLP



Kevin W. Mims

KWM/mlw
Enclosures

Cc: Alan G. Nix (Via U.S. Mail only)
Andrew W. Countryman, Esquire (Via U.S. Mail only)
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