

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-10-04371

APPELLATE CASE NO 2021-000446

Cary E. Fechter, MD

Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal, and
Rosenthal, Levy, Simon and Ryles, PA

Respondents.

**REPLY TO RETURN TO
MOTION TO DISMISS APPEAL**

Respondents, Gerald Rosenthal, and Rosenthal, Levy, Simon and Ryles, PA (collectively, “Respondents”) provide this Reply to Appellant’s Return, filed June 3, 2021, to Respondents’ Motion to Dismiss Appeal.

As an initial matter, Appellant’s Return (a) cites no authority and (b) fails to address how (i) Appellant’s improper, successive post-trial motion tolled the time to appeal and (ii) the Circuit Court maintained jurisdiction over the August 4 Order more than 10 days after its entry. For these reasons alone, the Court should deem Appellant’s arguments abandoned, consider Respondents’ Motion to Dismiss Appeal to be unopposed, and grant Respondents’ Motion.

Respondents’ Motion to Dismiss Appeal raises a simple issue: timing. For the Court’s

convenience, Respondent provides an abridged timeline:

1. June 8, 2020: Circuit Court dismisses Appellant's case.
2. June 17: Appellant files first motion to reconsider.
3. August 4: Circuit Court (for a second time) dismisses Appellant's case.
4. August 13: Appellant files improper, successive post-trial motion. In Appellant's own words: ". . . this Motion to Reconsider . . . is **primarily the same motion** [as the one] filed on June 17, 2020." (Exhibit H, ¶ 6 (emphasis added), to Respondent's Motion to Dismiss Appeal (Motion to Reconsider Order Granting Gerald Rosenthal's and Rosenthal, Levy, Simon, and Ryle's Joint Motion to Dismiss)).
5. August 14: With no proper, post-trial motion pending, Circuit Court loses jurisdiction over August 4 Order.
6. August 18: Appellant admits September 3 is the date by which Appellant must appeal.
7. August 24: Circuit Court enters void order.
8. September 3: Respondents file motion to reconsider Circuit Court's August 24 Order, in which Respondents argue, among other things, Circuit Court **lacks jurisdiction** to enter August 24 Order, which again puts Appellant on notice of need to appeal (Exhibit A, Argument ¶ 1, to Appellant's Return to Respondents' Motion to Dismiss Appeal).
9. September 3: Appellant's deadline to appeal lapses; Appellant does **not** appeal.
10. April 21, 2021: Appellant provides notice of appeal.

Appellant's Return suggests Respondents' having filed a motion to reconsider the August 24 Order tolled the time by which Appellant was required to appeal. Appellant's reasoning is flawed. Respondents' motion did not relate to the August 4 Order so the motion did not toll the time to appeal from that order. If the Circuit Court lacked jurisdiction to enter the August 24 Order, then

Respondents' motion seeking to have the Circuit Court reconsider that order is a nullity, and neither the August 24 Order nor Respondents' motion changed anything.¹ Either Appellant's improper, successive post-trial motion tolled Appellant's deadline to appeal or it did not. Either the Circuit Court had "rule 60" jurisdiction to enter the August 24 Order or it did not. These issues are not addressed by Appellant's Return. And, neither of these issues is impacted by Respondents' motion.

Appellant's time to appeal expired on September 3.

CONCLUSION

WHEREFORE, for the reasons stated above and in Respondents' Motion, this Court should dismiss Appellant's appeal with prejudice and remit the matter to the Circuit Court for proceedings consistent with the dismissal.

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¹*Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) ("Without jurisdiction, a court cannot proceed at all in any cause; . . . when [jurisdiction] ceases to exist, the **only function remaining to a court is that of announcing the fact and dismissing the cause.**" (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007) (footnotes omitted)) (emphasis added)).

Respectfully submitted,

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June 4, 2021

Greenville, South Carolina