

**STATE OF SOUTH CAROLIA  
IN THE  
COURT OF APPEALS**

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Appeal from the Court of Common Pleas  
For Horry County  
Honorable Paul M. Burch, Circuit Court Judge  
Civil Action No.: 2016-CP-26-07787  
**Appellate Case No.: 2021-000652**

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**RECEIVED**

**Aug 27 2021**

**SC Court of Appeals**

HAROLD G. WORLEY and THOMAS WADE LONG and  
HAROLD G. WORLEY as SUCCESSOR TRUSTEE of  
TRUST B of the SANDRA GAIL WORLEY IRREVOCABLE  
TRUST UNDER TRUST AGREEMENT DATED JULY 31, 2010,

Appellants,

vs.

HORRY ELECTRIC COOPERATIVE, INC.,

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

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*Attorneys for the Respondent,  
Horry Electric Cooperative, Inc.*

**TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:**

COMES NOW the Respondent, Horry Electric Cooperative, Inc. (“HEC”), pursuant to Rule 240(f), SCACR, and respectfully submits this *Reply* to the *Return to Motion to Dismiss Appeal* recently filed with this Court of Appeals by the Appellants, Harold G. Worley and Thomas Wade Long and Harold G. Worley as successor trustee of Trust B of the Sandra Gail Worley Irrevocable Trust under Trust Agreement dated July 31, 2010 (the “Worley Appellants”), in this matter. As was asserted in the *Motion to Dismiss Appeal*, the basis for this action is that the Worley Appellants failed to serve HEC’s undersigned counsel of record with a copy of the *Notice of Appeal* as required by Rule 203(b)(1), SCACR, within 30 days after receipt of written notice of entry of the appealed order. Nothing in the Worley Appellants’ *Return to Motion to Dismiss Appeal* either contests or contradicts this proposition.

**ARGUMENT AND CITATION OF AUTHORITY**

In South Carolina, “[a] party intending to appeal must **serve and file** a notice of appeal . . . .”<sup>1</sup> It is of paramount importance that the appellant serve the notice of appeal from a Court of Common Pleas order “on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.”<sup>2</sup> Service of such a notice of appeal in most cases is made upon the respondent’s trial court attorney of record by either hand delivery, through the United States Mail or “[s]erving a copy on

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<sup>1</sup> Rule 203(a), SCACR. (Emphasis added).

<sup>2</sup> (Waring Affidavit, para. 33; Gardner Affidavit, para. 33). See Rule 203(b)(1), SCACR. See generally Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, 422 S.C. 211, 810 S.E.2d 856 (2018), *affirmed on remand*, 2019 WL 581287 (S.C.App., filed 13 Feb. 2019) (*per curiam*).

the person by [an approved] electronic means . . .”<sup>3</sup> Finally, the appellate rules require the copy of the notice of appeal “filed with the appellate court [requires an accompanying] Proof of [S]ervice showing that the [NOA was] served on all respondents . . . .”<sup>4</sup>

It is clear from our appellate rules that the primary concern in an appeal is that the responding party(ies) receive notice of the appeal within the mandatory 30-day time period. When that is not done the appellate “ ‘court [has no] subject matter jurisdiction’ ” and the appeal must be dismissed.<sup>5</sup> Furthermore, timely service is “ ‘jurisdictional [and] the appellate court . . .has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.’ ”<sup>6</sup>

The Worley Appellants candidly admit that they “served Pope D. Johnson, III, Esq[ui]re, as he had been [HEC’s] counsel [and] did not realize that [HEC] had substituted Mr. Johnson with its current counsel . . . on January 27, 2021.”<sup>7</sup> Nevertheless, the Worley Appellants incorrectly assert that the “Notice of Appeal was timely filed [and, although

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**3** Rule 262(c)(1)-(3), SCACR.

**4** Rule 203(d)(1)(B)(i), SCACR.

**5** USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App. 1999)).

**6** USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004)). See also Mason v. Mason, 412 S.C. 28, 59, 770 S.E.2d 405, 421 (2015) (citing Conner v. City of Forest Acres, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002)). See also State v. Devore, 416 S.C. 115,, 119, 784 S.E.2d 690, 692 (Ct.App. 2016) (“Accordingly, in the absence of a timely served notice of appeal, th[e] [appellate] court [to which the Notice of Appeal was directed] has no jurisdiction.”). See also Trask v. South Carolina Dept. of Public Safety, 2012 WL 10864175, \*1 (S.C.App., filed 21 November 2012) (*per curiam*) (Appeal against the SCDPS dismissed as Notice of Appeal not sent to new counsel of record, although there was evidence of representational confusion concerning SCDPS’s original counsel even after new counsel had been retained).

**7** Return to Motion to Dismiss, p.1. Additionally, the Worley Appellants conceded that their appellate “counsel overlooked that a substitution of counsel had been made.” Return to Motion to Dismiss, p.1 fn.1.

they] erred in not including [HEC's] current counsel in the Notice of Appeal [such an] error should be treated as a clerical error.”<sup>8</sup> There are a number of serious misconceptions in that proposition. First, the NOA was not timely filed as it was not timely served on HEC's correct counsel of record. Secondly, not only is Butler Snow HEC's current counsel, it has been HEC's only counsel since 27 January 2021, a fact easily ascertainable by a cursory review of the online Horry County Court of Common Pleas Public Index. Finally, this error is not merely clerical, it is an error so material that it divests this Court of Appeals of any jurisdiction to consider this appeal or to extend the appellate service deadline.

The facts cannot readily be disputed. The Worley Appellants' only time “notifying” HEC of the appeal was on 2 July 2021. This was some thirty-six (36) days after the Worley Appellants first had written notice of the *Final Order* and six (6) days after the jurisdictional 30-day limit to serve the *Notice of Appeal* on HEC.

The Worley Appellants minimize their error by characterizing it as merely “clerical” and they cite some allegedly “supporting” authority.<sup>9</sup> None of those cases, however, provide the Worley Appellants with an appellate “safe harbor”. In Charleston Lumber, this Court of Appeals declined to dismiss an appeal even though the appellant failed to include the name of one of the several cases being appealed since the Respondents knew that the intention was to appeal all five cases, not just the four cases named.<sup>10</sup> In Moody, the

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<sup>8</sup> Return to Motion to Dismiss, p.2.

<sup>9</sup> See Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 478, 458 S.E.2d 431, 435 (Ct.App. 1995); Moody v. Dickinson, 54 S.C. 526, 534, 32 S.E. 563, 566 (1899); Weatherford v. Price, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct.App. 2000); Connor v. City of Forest Acres, 348 S.C. 454, 460-461, 560 S.E.2d 606, 609 (2000).

<sup>10</sup> Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 478, 458 S.E.2d 431, 435-436.

Supreme Court declined to dismiss an appeal because the respondents “did have notice of defendants' intention to appeal, within due time, and the [the relevant issue was] a mere clerical error in the *title* of the notice . . . .”<sup>11</sup> In Weatherford, this Court of Appeals declined to dismiss an appeal where the appellant failed to designate an order which he wanted to appeal, but still attached a copy of the order to the NOA.<sup>12</sup> Finally, in Connor, which the Worley Appellants attempted to distinguish, the Supreme Court addressed a situation similar to this one. The appellant named one respondent and then later added two additional respondents, although she never served those people with an NOA. The Supreme Court dismissed the appeal as to the new respondents, noting

Service of the notice of intent to appeal is a jurisdictional requirement, and th[is] [Supreme] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.

Clearly, [the two additional respondents] were not served with a Notice of Appeal naming them as respondents within the 30-day time period prescribed by Rule 203(b)(1), SCACR.<sup>13</sup>

The Worley Appellants failed to serve HEC with the *Notice of Appeal* within the applicable 30-day time limit.<sup>14</sup> This is a fatal flaw and eliminates this Court of Appeals' appellate jurisdiction.<sup>15</sup> Furthermore, this Court of Appeals is not permitted to “rescue” the Worley Appellants from this mistake in order to resurrect a non-existent appeal.

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<sup>11</sup> Moody v. Dickinson, 54 S.C. 526, 532-534, 32 S.E. 563, 565-566 (1899).

<sup>12</sup> Weatherford v. Price, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct.App. 2000).

<sup>13</sup> Connor v. City of Forest Acres, 348 S.C. 454, 460-462, 560 S.E.2d 606, 609-610 (2000) (Internal citation omitted).

<sup>14</sup> See generally Mason v. Mason, 412 S.C. 28, 59-61, 770 S.E.2d 405, 421-422 (Ct.App. 2015) (Newly added respondent had notice within the 30-day time period);

<sup>15</sup> Keowee Inv. Grp., LLC v. Pickens County, S.C. Dep't Of Transp., 2004 WL 6331837, \*4 (S.C.App., filed 30 Aug. 2004) (*citing* Connor v. City of Forest Acres, 348 S.C. 454, 461-462, 560 S.E.2d 606, 609-610) (“ . . . service of the notice of intent to appeal is a jurisdictional requirement, and the failure to

## CONCLUSION

Based upon the foregoing arguments and citation of authority the Respondent, Horry Electric Cooperative, Inc., respectfully reiterates its request that this Court of Appeals enter and order dismissing the appeal of the Appellants, Harold G. Worley and Thomas Wade Long and Harold G. Worley as successor trustee of Trust B of the Sandra Gail Worley Irrevocable Trust under Trust Agreement dated July 31, 2010. The Worley Appellants did not timely serve HEC with a copy of the *Notice of Appeal* as required by the South Carolina Appellate Court Rules. This failure cannot reasonably be characterized as a mere clerical error. This appeal must be dismissed.

Respectfully submitted:

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27 August 2021

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serve particular parties meant they were not part of the appeal)) (*per curiam*); Trask v. S.C. Dep't of Public Safety, 2012 WL 10864175, \*1 (S.C.App., filed 21 Nov. 2012) (*citing* Rule 203(b)(1), SCACR; Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)) (*per curiam*)