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Oct 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine SteinemanPlaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman isRespondent.

REPLY

As authorized by Rule 240(f), SCACR, Respondent files this Reply to Appellant Meridian Security Insurance Company’s (“Meridian’s”) September 30, 2021 Return to Motion to Dismiss.

When a motion to alter or amend the judgment is made, any appeal must be taken within 30 days of the order denying the motion. Rule 203(b)(1), SCACR. On June 10, 2021, Meridian received written notice of the Circuit Court’s entry of the Order denying its Motion to Alter or Amend. That Form 4 Order does not indicate a more full and complete order or judgment would follow. Because Meridian failed to appeal the Order within thirty days, the current appeal is

untimely and should therefore be dismissed. *See Coward Hund Construction Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

Also, Meridian’s appeal of the Order refusing to set aside the default of Defendants Smith and Griffin is interlocutory. *See 5Star Life Insurance Co. v. Peck Performance*, Op. No. 5837 (S.C. Ct. App. filed July 21, 2021) (Howard Adv. Sh. No. 25 at 9). This appeal should therefore be dismissed.

Respondent reserves all other arguments in opposition to this appeal.

I. Meridian’s appeal of the Order finding Meridian did not make an appearance in this action within 30 days of service as contemplated by S.C. Code Ann § 38–77–150 is not timely.

An appeal must be taken, if at all, “within thirty days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. “When a timely motion . . . to alter or amend the judgment (Rules 52 and 59, SCRCPP) . . . has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” *Id.*

Here, the Circuit Court’s March 8, 2021 Order found Meridian did not make an appearance in this action within 30 days of service as contemplated by S.C. CODE ANN. § 38–77–150 (1976, as amended). On March 11, 2021, Meridian filed a Motion to Alter or Amend that Order. On June 10, 2021, the Circuit Court, in a Form 4 Order, denied the Motion to Alter or Amend and did not indicate a more full and complete order or judgment would follow.¹ Meridian’s time to appeal began running at that time. Its deadline to perfect the appeal thus became July 12, 2021, considering July 10, 2021, was a Saturday. Rules 203(b)(1) & 263(a), SCACR.

¹ The Form 4 Order did not “indicate[] that a more full and complete order or judgment [was] to follow.” See Rule 203(b)(1), SCACR. Instead, it clearly provided:

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Meridian did not appeal the Order. Instead, it filed another Motion for Reconsideration. The subsequent motion did not challenge a new ruling. Thus, Meridian is incorrect that its time for appeal began to run on August 13, 2021, when the Circuit Court issued an Order denying Meridian's successive Rule 59(e) motion.

On September 10, 2021, Appellant filed its appeal. But the July 12, 2021, deadline for filing the appeal was not stayed or tolled. Meridian's appeal is therefore untimely.

Just like the appellant in *Coward Hund*, Meridian failed to appeal within thirty days from the denial of its first Rule 59(e) motion and its second Rule 59(e) motion did not challenge a new ruling. Meridian's second motion did not stay or toll the time for filing its notice of appeal.

Meridian argues in its Return that the Order finding Meridian did not make an appearance in this action within 30 days of service as contemplated by Section 38-77-150 was immediately appealable. This concession is fatal to Meridian's argument that its appeal is timely because the June 10, 2021 Form 4 Order did not indicate a more full and complete order or judgment would follow and Meridian did not appeal within 30 days of that Order.

II. Meridian's appeal of the Order refusing to set aside the default of Defendants Smith and Griffin is interlocutory.

As Respondent's September 20, 2021 Motion to Dismiss points out, the Circuit Court has not held a default damages hearing, nor has it entered judgment against Defendants Smith or Griffin (the alleged uninsured and underinsured motorists) or against Meridian. In that regard, this matter is in the same procedural posture as the action in *5Star Life Insurance Co. v. Peck Performance*.

The fact that the August 6, 2021 Form 4 Order incorrectly included a checked box indicating it "ends" the case does not mean that it did so nor did that Order result in a judgment enforceable via execution, which Meridian acknowledges is necessary to make it a final judgment.

(Return to Motion to Dismiss, p. 6). Because a damages hearing remains necessary for the Circuit Court to enter a final judgment, the August 6, 2021 Order was interlocutory.

Accordingly, the Court should dismiss the present appeal and remand it to the Circuit Court to conduct a damages hearing and enter final judgment.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court of Appeals dismiss this appeal.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Reply to Return to Motion to Dismiss Appeal upon the
Appellant Meridian Security Insurance Company by mailing same via E-mail addressed to
counsel of record

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