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Oct 26 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, Defendants,

Of whom Marion L. Driggers is Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

**RESPONDENT THE TRAVELERS HOME AND MARINE INSURANCE
COMPANY’S MOTION TO DISMISS APPELLANT’S APPEAL**

Respondent moves before this Court for an Order dismissing each Notice and Amended Notice of Appeal filed by Appellant, because Appellant failed to comply with Rules 203 and 262, SCACR. As a result, this Court does not have jurisdiction to hear this matter, and the appeal must be dismissed.

Deficiencies and Current Status

Appellant filed, but failed to serve, his Notice of Appeal on August 3, 2021. At no point has Appellant provided proof of service of that Notice of Appeal per the Rules nor

was undersigned counsel served pursuant to the Rules with that August 3, 2021 Notice of Appeal.

This Court has requested correction of deficiencies in Appellant's Notice of Appeal on three (3) separate occasions: (1) by letter dated August 18, 2021; (2) by letter dated September 7, 2021; and (3) by letter dated October 8, 2021. The latest deficiency letter requested evidence of proof of service, pursuant to the Rules, of Appellant's original Notice of Appeal dated August 3, 2021 and filed August 4, 2021. Not only did Appellant, now through counsel, fail to properly respond to the deficiency letter by this Court's deadline of October 18, 2021, but Appellant failed to provide the missing proof of service, instead filing an entirely new Amended Notice of Appeal.

Argument

Pursuant to Rule 203 of the South Carolina Appellant Court Rules, "[a] party intending to appeal **must serve and file a notice of appeal**," with service upon all respondents required within thirty (30) days of "receipt of written notice of entry of the order." SCACR 203. Guidance as to these steps has been set out as follows:

The first step in initiating and perfecting the appeal involves serving and filing the notice of appeal. *See* Rule 203(a), SCACR (providing a party intending to appeal must serve and file a notice of appeal and otherwise follow the SCACR). Of course, serving and filing are two separate acts. *See* Rule 203(b), (d), SCACR (providing a party *serves* the notice of appeal on the respondent(s), and *files* the appeal with the clerk of the appellate court and the clerk of the lower court); *see also* Rule 262, SCACR (defining generally the separate acts of serving and filing in the appellate courts). The appellant should strictly adhere to service and filing requirements, as well as form and content requirements contained in the SCACR.

JEAN HOEFER TOAL ET AL., APPELLANT PRACTICE IN SOUTH CAROLINA 289 (3d ed. 2016).

The jurisdictional implications of failing to properly serve a Notice of Appeal are significant:

It is critical that the notice be timely served because, unlike the filing of the notice of appeal, the service of the notice of appeal is jurisdictional and therefore, the appellate court cannot extend the time for serving the notice of appeal. *See* 263(b), SCACR (“The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended” (emphasis added)); *Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000) (“This 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.”); *see also Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (“The 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.”); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985).

Id. at 292-93; *see also Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002) (“Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”).

Rule 262, SCACR, requires that “[a]ny document filed with the appellate court shall be accompanied by proof of service showing the document has been served on all parties,” via either in-person delivery, U.S. Mail delivery, or electronic service as may be allowed by order of the Supreme Court of South Carolina. SCACR 262. Even at the height of Covid-19, “this Court authorize[d] **a lawyer admitted to practice law in this state** to serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary e-mail address listed in the Attorney Information System (AIS),” but no such permission was provided to non-lawyer, pro se parties. RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), Appellate Case No. 2020-000447, dated March 20, 2020 (emphasis added). Moreover, this Court made

specifically clear that “forgiveness [as to procedural defaults during the height of Covid-19] d[id] not apply to the failure of a party to timely serve the notice of appeal under Rules 203, 243, and 247, SCACR.” *Id.*

As will be explained in more detail below, neither number one (1) or number two (2) on Appellant’s Amended Notice of Appeal were properly served within the timeframes dictated by the Rules of this Court following receipt of the written final Orders, and this Court has no jurisdiction to hear these matters and the appeal must be dismissed.

Appellant’s Number (1) Interpleader Appeal

The only Order appealed in Appellant’s Notice of Appeal filed August 4, 2021 was The Honorable Judge Kristi F. Curtis’s Order dated March 4, 2021, granting Respondent summary judgment as to Appellant’s cross-claims. Appellant did not appeal The Honorable Judge Kristi Curtis’s Orders granting Respondent’s Interpleader Motion until his Amended Notice of Appeal and Notice of Appearance filed October 22, 2021. The important dates for these particular Orders are as follows:

- Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCF filed January 5, 2021;
- Notice of Motion & Motion to Alter/Amend/Reconsider and/or Clarify filed January 14, 2021 by **Plaintiff South Carolina Farm Bureau Mutual Insurance Company**;
- Respondent’s Response in Opposition to Plaintiff’s Motion to Alter/Amend/Reconsider And/Or Clarify filed February 17, 2021;
- Form 4 Order Denying **Plaintiff South Carolina Farm Bureau Mutual Insurance Company’s** Motion to Alter or Amend the Court’s Order of

January 5, 2021 filed April 12, 2021;

- Order of Dismissal of Respondent with Prejudice filed April 19, 2021.

The portion of the Amended Notice of Appeal mentioning “the Order denying Motion for Reconsideration with respect to the same, issued by the Honorable Kristi F. Curtis on July 25, 2021” does not exist in the record below in relation to the Interpleader Motion. *See* Amended Notice of Appeal and Notice of Appearance, p. 2.

Again, Appellant originally only appealed The Honorable Judge Kristi F. Curtis’s Order dated March 4, 2021, granting Respondent summary judgment as to Appellant’s cross-claims. Appellant has recently claimed that he received written notice of the Order denying his March 15, 2021 Motion to Reconsider this Order granting summary judgment on July 8, 2021, although it was filed June 25, 2021. Appellant seemingly makes a generic statement that he “received notice . . . via U.S. Mail on July 8, 2021,” apparently now referencing both the Orders related to Interpleader, which ended, at the latest, in April 2021, and the Orders related to Respondent’s Summary Judgment Motion, which ended June 2021.

To claim that he received the above Motions and resulting Orders related to Respondent’s Motion to Interplead on July 8, 2021, when the latest orders are dated at the beginning of April 2021, is disingenuous. Appellant failed to file and serve a Notice of Appeal addressing the Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCF filed January 5, 2021 or the Order of Dismissal of Respondent with Prejudice filed April 19, 2021 within the thirty (30) days required pursuant to the Rules of this Court. The first Notice of Appeal mentioning these Orders was filed and emailed, without Certificate of Service, on October 22, 2021. The Certificate of Service for this

Amended Notice of Appeal was not filed until October 25, 2021. Appellant has not timely appealed, served, or filed number one (1) listed in his Amended Notice of Appeal. Even assuming Appellant did not receive written notice of these April 2021 Orders until July 8, 2021, his thirty (30) days would have run on August 9, 2021 (August 7, 2021 is a Saturday). October 22, 2021 is an additional seventy-four (74) days, well beyond the time limits of this Court. This Court lacks jurisdiction to hear the matter addressed for the first time in Appellant's Amended Notice of Appeal filed October 22, 2021 at number one (1), and the appeal must be dismissed.

Appellant's Number (2) Civil Conspiracy, Breach of Contract, Bad Faith Appeal

The Order addressed in number two (2) on Appellant's most recent Amended Notice of Appeal has the following timeline, which is also not accurate in Appellant's filing:

- Order Granting Respondent's Motion for Summary Judgment as to Appellant's Cross-Claims filed March 4, 2021;
- Appellant's Motion to Reconsider dated March 15, 2021 and filed March 17, 2021;
- Form 4 Order denying Appellant's Motion to Reconsider filed June 25, 2021;
- Appellant claims to have received receipt of written notice of this final Order on July 8, 2021;
- Thirty (30) days ran August 7, 2021 (a Saturday), which therefore becomes August 9, 2021.

While Appellant apparently filed his Notice of Appeal as to this single Order on August 4, 2021, within the thirty (30) day required timeframe, this Court has astutely recognized that

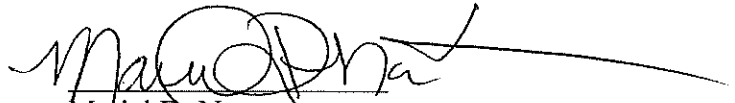
no proof of service on Respondent pursuant to the Rules related to this August 4, 2021 filing has never been substantiated by Appellant. Undersigned counsel on behalf of Respondent was not served with Appellant's August 4, 2021 Notice of Appeal pursuant to the Rules, and, as such, Appellant cannot substantiate that proper service was made on Respondent to invoke the jurisdiction of this Court. Appellant has failed to meet the two step requirement necessary for properly perfecting his appeal. With no jurisdiction to hear number two (2), as listed on Appellant's most recent Amended Notice of Appeal, this portion must also be dismissed.

Conclusion

This Court has gratuitously allowed numerous opportunities for Appellant to correct the deficiencies related to this appeal. The most recent Amended Notice not only failed to correct the deficiency requested by the Court's most recent correspondence within the deadline it set, it also attempts to add an issue on this appeal in complete disregard for the Rules and prescribed deadlines of this Court. The entirety of this appeal, from August 4, 2021 to October 22, 2021, is not in compliance with the deadlines set by the Rules of this Court. Appellant failed to properly serve a Notice of Appeal addressing the Orders related to Respondent's Motion for Interpleader within thirty (30) days after receipt of notice of the entry of judgment, even if he failed to receive such notice until July 8, 2021. As this Court is aware, Appellant never served undersigned with his August 3, 2021 Notice of Appeal, which attempted to appeal the grant of Respondent's Summary Judgment Motion as to his cross-claims. While he may have filed his Notice of Appeal for this single issue from the lower court within the timeframe of the Rules, filing and service are two separate steps. By failing to properly serve his Notice within the thirty (30) days following

his receipt of the Order, allegedly on July 8, 2021, he failed to invoke the jurisdiction of this Court to hear the matter, warranting complete dismissal.

There are not further actions Appellant can take to correct this appeal. This Court does not have jurisdiction over these matters, and the appeal must be dismissed.



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APPEAL FROM WILLIAMSBURG COUNTY
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The Honorable Kristi F. Curtis
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Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, Defendants,

Of whom Marion L. Driggers is Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

PROOF OF SERVICE

I, Mariel D. Norton, of Baker, Ravenel & Bender, LLC, Attorney for Respondent, hereby certify that, on this 26th day of October 2021, I have served the following with the foregoing Respondent The Travelers Home and Marine Insurance Company's Motion to Dismiss Appellant's Appeal via electronic mail of same to counsel of record at the e-mail addresses shown below:

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October 26, 2021*



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ATTORNEYS AT LAW

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SC Court of Appeals

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October 26, 2021

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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RE: South Carolina Farm Bureau Mutual Ins. Co., Appellant v. Marion L. Driggers, et al.
Of Which The Travelers Home and Marine Insurance Company is the Respondent
Appellate Case No.: 2021-000835
Our File No.: 7746.1749

Dear Ms. Kitchings:

Attached for filing in the above-referenced matter please find Respondent The Travelers Home and Marine Insurance Company's Motion to Dismiss Appellant's Appeal with Proof of Service thereof via electronic mail.

By copy of this letter, the same is being served upon all counsel of record via electronic mail.

If you have any questions concerning this letter, please do not hesitate to contact me.

Sincerely yours,

Mariel D. Norton

MDN:sr

Enclosures

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