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Nov 17 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 REPLY TO APPELLANT’S RETURN TO ITS MOTION TO
DISMISS APPELLANT’S NOTICES OF APPEAL**

Respondent The Travelers Home and Marine Insurance Company, pursuant to Rule 240(f), SCACR, replies to Appellant Marion L. Driggers’ (“Appellant”) Return to its Motion to Dismiss each Notice and Amended Notice of Appeal.

Respondent filed a Return in Opposition to Appellant’s Motion for Enlargement of Time on Appellant’s Return to Respondent’s Motion to Dismiss. This Reply is being

submitted within the five (5) day deadline of Rule 240(f), SCACR should the Court decide to consider Appellant's untimely Return.

Appellate Jurisdiction

In the event the Court considers the merits of Appellant's untimely Return, it too does not provide any evidence to support the jurisdiction of this Court. Appellant's counsel again references an email from undersigned counsel to Appellant on August 2, 2021 as evidence of notice of the original Notice of Appeal. Appellant claims that simply viewing an email sent to a retired attorney's AIS address (not the undersigned, who was counsel of record at the time) constitutes service of process pursuant to the rules of procedure, which invoke the appellate jurisdiction of the Court.¹ Appellant acknowledges that the Covid Order referenced by Rule 262 does not allow for service by AIS email, except "by a lawyer on another lawyer." As set forth in Respondent's Reply to Plaintiff South Carolina Farm Bureau Insurance Company's ("Farm Bureau") Return to its Motion to Dismiss, the rules requiring filing and service of a Notice of Appeal have meaning and purpose far beyond mere notice. Rather, "[q]uestions of compliance with rules, regulations, and statutes governing an appeal involve appellate jurisdiction." JEAN HOEFER TOAL ET AL., APPELLANT PRACTICE IN SOUTH CAROLINA 121 (3d ed. 2016). "The notice of appeal in a case appealed from the South Carolina Court of Common Pleas must be served on all respondents within 30 days after receipt of written notice of entry of the order or judgment. S.C. App. Ct. R. 203(b)(1)." *Elam v. S.C. DOT*, 361 S.C. 9, 13, 602 S.E.2d 772,

¹ Mr. Davis retired at the end of April 2021. Undersigned counsel was listed, alongside Mr. Davis, as counsel of record in the lower court matter. The email at issue was sent only to Mr. Davis. Undersigned counsel happened upon the email and provided her correct AIS email address to the parties. Moreover, the original Notice of Appeal that was emailed only to Mr. Davis listed undersigned counsel as Respondent. Again, no attempt to serve undersigned counsel was made.

774 (2004). Most importantly, “[t]he 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.” *Id.* The procedural rules governing the filing and service of a Notice of Appeal relate to the perfection and invocation of the appellate jurisdiction of this Court. Service was not completed by hand delivery to or mailing to a last known address of Respondent’s counsel, the only method available to Appellant, since the Covid Orders do not allow for e-mail service by non-licensed attorneys or pro se parties.

The rules for filing and service of the Notice of Appeal were not complied with by Appellant in August 2021. Therefore, this Court does not have jurisdiction over this matter.

Interpleader Order Appeal

According to Appellant’s counsel, the Court advised him of a willingness to accept an amended Notice of Appeal along with his Notice of Appearance.² This invitation likely did not include an invitation to add additional arguments and orders to the Notice outside of the timeframes set by this Court for invoking jurisdiction, and such actions clearly and unequivocally prejudice Respondent. Appellant had missed deadlines related to Orders signed at the trial level, which have thereby become the law of the case.

Similar to Plaintiff Farm Bureau, Appellant argues that any Amended Notice of Appeal, including the most recent with a new argument noticed for appeal, should relate

² Appellant also claims that he filed such Amended Notice of Appeal within ten (10) days of receiving the deficiency letter dated October 8, 2021. The letter, as in the previous two deficiency letters, required a response “within ten (10) days of the date of this letter or this appeal will be dismissed,” (emphasis added) not ten (10) days after receipt. Ten days from the date of the letter would be October 18, 2021. The Amended Notice of Appeal was filed by Appellant October 22, 2021 and served October 25, 2021.

back to the original filed notice in August 2021. Appellant goes as far as to claim that such relation back, seventy-four (74) days beyond the thirty (30) day limit for a properly perfected appeal, “cannot possibly . . . prejudice[]” Respondent “as they were aware of such Notice of Appeal within the 30 day time period required.” Claiming that the Notice of Appeal of the Order granting summary judgment on Appellant’s bad faith/breach of contract claims relates to issues in the Order granting interpleader, Appellant argues that a Notice of Appeal of one Order appeals another entirely separate Order and gives notice to the Respondent of the appeal of an unappealed order, notwithstanding the thirty (30) day deadline for appellate jurisdictional requirements of this Court.

First and foremost, like Plaintiff Farm Bureau, Appellant cites absolutely no case law or authority in its Return to support this relation-back or interconnected appeals argument. There is also no confusion regarding the dates of each separate Order, as alleged by Appellant, which have been set forth previously in Respondent’s Motion to Dismiss and are set forth again below for the convenience of the Court:

Interpleader Order Chronology

- 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.

Summary Judgment Order Chronology

- 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.

Appellant's Motion to Reconsider the summary judgment order dated March 15, 2021 states, "There are some serious errors that Mr. Davis stated in his Motion for Summary Judgment" and ends "I ask the Court to Reconsider the Summary Judgment as premature." This Motion to Reconsider did not mention in any way the lower court's Order on Respondent's interpleader motion.

Rule 203(b), SCACR, requires that "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(d)(1)(B)(ii) requires that the notice of appeal filed with the appellate court shall include "[a] copy of the order(s) and judgment(s) to be challenged" Rule

203(e)(1)(C) requires the notice include “[t]he date of the order, judgment, or sentence from which the appeal is taken.” Appellant’s Notice of Appeal did not include the interpleader order, and the order became final law of the case as to Appellant. *See Citifinancial Mortg., Inc. v. Kennedy*, No. 2007-UP-062, 2007 S.C. App. Unpub. LEXIS 119, at *6 (Ct. App. Feb. 12, 2007) (“Once the time to file notice of appeal concerning the November 30, 2005 order had expired, that order, ‘right or wrong,’ became the law of the case and res judicata would preclude any further review on the issues decided therein.”). The Rules, nor anything cited by Appellant in its Return, supports a finding that a single Notice of Appeal should preserve appellate jurisdiction of any and all related causes of action at the lower level, irrespective of the actual language, orders, and appeal information provided by the appellant in its initial notice of appeal. Furthermore, Respondent is unaware of any precedent that allows for a party to trigger and perfect appellate jurisdiction of this Court through an entirely separate appeal brought by a separate party, like Plaintiff Farm Bureau.

Appellant did not file a Notice of Appeal related to the lower court’s final Order filed April 12, 2021 on Respondent’s interpleader motion within thirty (30) days. Even if the Appellant were to somehow receive the benefit of an extension of time by filing his Motion to Reconsider on the summary judgment Order, which failed to mention the interpleader cause of action in any way, he neglected its inclusion in his initial Notice of Appeal filed in August 2021, which does not list the date or information related to the Order on the interpleader motion or attach the order, as per Rule 203, SCACR. With the benefit of counsel, in hindsight, it is clear that Appellant now desires to appeal the Form 4 Order filed April 12, 2021, which concluded the Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed January 5, 2021, but the deadlines for invoking this Court’s jurisdiction have long since expired and cannot be extended. *See Hill*

v. S.C. Dep't of Health & Env'tl. Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court."); *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) ("Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal.").

Conclusion

Appellant's Return should be denied, as this Court does not have appellate jurisdiction. Appellant's Notices of Appeal in this case should be dismissed.



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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 17th day of November 2021, I have served the following with the foregoing Respondent The Travelers Home and Marine Insurance Company's Reply to Appellant's Return to Its Motion to Dismiss Appellant's Notices of Appeal via electronic mail and U.S. Mail of same to counsel of record at the addresses shown below:

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November 17, 2021



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November 17, 2021

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The Honorable Jenny Abbott Kitchings
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SC Court of Appeals

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 Reply to Appellant's Return to Its Motion to Dismiss Appellant's Notices of Appeal and Proof of Service thereof via electronic mail and U.S. Mail.

By copy of this letter, the same is being served upon all counsel of record via U.S. Mail and 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

cc w/encl. via Email and U.S. Mail:

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