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Jun 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS OF NEWBERRY COUNTY
Samuel M. Price, Jr., Special Referee

Appellate Case No. 2022-000722

Joy Phil II, LLC,

Respondent,

v.

Mattie Ladora Perry, Ernest D.
Perry And Angela M. Perry
and John Doe and Richard Roe,

Defendants,

Of whom Ernest D. Perry is,

Appellant.

MOTION TO DISMISS APPEAL
AND MEMORANDUM IN SUPPORT

Respondent moves, pursuant to Rules 203, 240 and 262, South Carolina Appellate Court Rules, for an order of this Court dismissing any appeal in the above captioned matter. This motion is made with the consent of opposing counsel. The motion is based on the fact that Appellant failed to serve any notice of appeal upon Respondent within thirty (30) days of written notice of the entry of the order and judgment of the lower court which Appellant purports to appeal.

Respondent served Appellant with a copy of the lower court's order denying Appellant's motion for reconsideration on April 21, 2022. (See Exhibit 2, Affidavit of Kyle B. Parker attached hereto and made a part hereof). Appellant has filed a notice of appeal with this Court in which he represents to have received notice of the order and judgment appealed from more than thirty (30) days from the date of the instant motion. (Notice of

Appeal). As of the date hereof, Appellant has not served any notice of appeal on Respondent as required by Rule 203, South Carolina Appellate Court Rules. (Affidavit of Kyle B. Parker).

Rule 203, South Carolina Appellate Court Rules, requires an appellant to serve the notice of appeal on all respondents “within thirty (30) after written notice of entry of the order or judgment.” “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.” USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). An appellant's failure to serve notice of appeal within 30 days after receiving written notice of the entry of a final order or judgment divests the appellate court of subject-matter jurisdiction and results in the dismissal of the appeal. Id.

Here, Appellant seeks appeal of an order denying his motion made pursuant to Rule 59, South Carolina Rules of Civil Procedure. Therefore, a notice of appeal must be served within thirty (30) days of Appellant’s notice of the entry of the lower court’s order. Appellant has failed to serve the notice of appeal on Respondent within such time as required by Rule 203, South Carolina Appellate Court Rules. As a result, this Court lacks jurisdiction and must dismiss the appeal. Id.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests the Court dismiss the appeal with prejudice.

(Signature of Counsel Appears on Following Page)

Newberry, South Carolina
June 6, 2022

Respectfully submitted,

/s/ Kyle B. Parker

Kyle B. Parker

POPE PARKER JENKINS, P.A.

1508 College Street

Newberry, SC 29108

Phone (803) 948-9263

Fax (803) 276-8684

Attorneys for Respondent

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Joy Phil II, LLC, Respondent,

v.

Mattie Ladora Perry, Ernest D.
Perry And Angela M. Perry
and John Doe and Richard Roe, Defendants,

Of whom Ernest D. Perry is, Appellant.

AFFIDAVIT OF KYLE B. PARKER

PERSONALLY APPEARED BEFORE ME, the undersigned, Kyle B. Parker, who,
after being duly sworn, deposes and says:

1) That he is one of the attorneys representing Joy Phil II, LLC, the purported
Respondent in the above captioned matter.

2) That, in such capacity, he received a letter from the Clerk of the South
Carolina Court of Appeals addressed to Ernest D. Perry ("Mr. Perry") advising of
deficiencies with a notice of appeal he apparently filed with the clerk in the above matter.
A copy of the letter is attached hereto as Exhibit 1 and made a part hereof.


3. That he served a copy of the order of the lower court denying Mr. Perry's
motion for reconsideration filed pursuant to Rule 59, South Carolina Rules of Civil
Procedure, on April 21, 2022. A copy of the certificate of service filed with the lower court

evidencing such service is attached hereto as Exhibit 2 and made a part hereof.

4. That Mr. Perry apparently acknowledges in his notice of appeal receiving notice of the entry of the order he seeks to appeal more than thirty (30) days prior to the date of this affidavit.


5. That, as of the date of this affidavit, 45 days following service of the order from which Mr. Perry seeks to appeal, the undersigned has not been served with any notice of appeal.

FURTHER THE AFFIANT SAITH NOT.



Kyle B. Parker

SWORN to and subscribed this 6th day
of June, 2022.



Notary Public for South Carolina
My commission expires: 11/19/29



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 27, 2022

Ernest Perry
409 Highland Ave
Sumter SC 29150

Re: Ernest Perry v. Joy Phi II, LLC
Appellate Case No. 2022-000722

Dear Mr. Perry:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. The proof of service must state the date the notice of appeal was served on opposing counsel.
- Pursuant to Rule 203(d)(1)(B), SCACR, a copy of the notice of appeal must be filed with the county court clerk of court.
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

A handwritten signature in cursive script that reads "Catharine Jamison, deputy".

CLERK

cc: Kyle B. Parker, Esquire



STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-36-00200

JOY PHIL II, LLC,)
)
Plaintiff,)

v.)

CERTIFICATE OF SERVICE

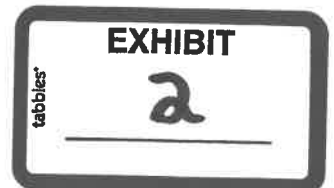
MATTIE LADORA PERRY,)
ERNEST D. PERRY AND)
ANGELA M. PERRY be they alive)
or be they dead, and if dead, their)
heirs or devisees, and JOHN DOE)
and RICHARD ROE, representing)
all unknown persons having or)
claiming to have any right, title or)
interest in or to, or lien upon the real)
estate herein described, any such)
persons, heirs assigns, and all other)
persons, firms, or other entities who)
may claim under, by or through any)
of the above defendants and all other)
persons or entities unknown claiming)
any right, title, interest, estate in or)
lien upon, the aforesaid known as)
Newberry County TMS No. 357-13,)
)
Defendants.)

I, the undersigned counsel for Plaintiff, do hereby certify that on this 21st day of April, 2022, I have deposited a copy of the following described pleading in the United States mail with sufficient postage affixed and addressed to the party (or the party's counsel) identified below at the address of record:

Pleading Served: Order Denying Motion for Reconsideration

Party Served: Earnest D. Perry, Inmate No. 281290
Turbeville Correctional Institute
1578 Clarence E. Coker Hwy
Turbeville, SC 29162

(Signature of Counsel Appears on Following Page)



/s/ Kyle B. Parker

Kyle B. Parker
1508 College Street
P.O. Box 190
Newberry, SC 29108
803-276-2532 (Phone)
803-276-8684 (Fax)

Attorneys for Plaintiff

Newberry, South Carolina
April 21, 2022

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE COURT OF COMMON PLEAS OF NEWBERRY COUNTY
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Respondent,

v.

Mattie Ladora Perry, Ernest D.
Perry And Angela M. Perry
and John Doe and Richard Roe,

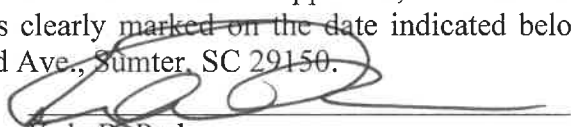
Defendants,

Of whom Ernest D. Perry is,

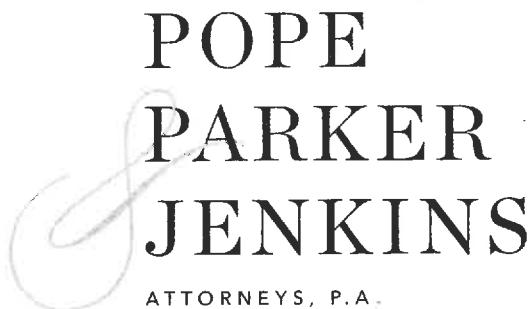
Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Motion to Dismiss Appeal by mailing a copy of same via regular United States mail to Appellant, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed to Ernest D. Perry, 409 Highland Ave., Sumter, SC 29150.


Kyle B. Parker
POPE PARKER JENKINS, P.A.
1508 College Street
Newberry, SC 29108
Phone (803) 948-9263
Fax (803) 276-8684
Attorneys for Respondent

Newberry, South Carolina
June 6, 2022



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www.ppjlaw.com

Thomas H. Pope III
W. Chad Jenkins
Kyle B. Parker

Thomas H. Pope
(1913-1999)
Joseph W. Hudgens
(1932-2019)

June 6, 2022

VIA US MAIL AND EMAIL
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Ernest Perry v. Joy Phil II, LLC
Appellate Case No.: 2022-000722

Dear Ms. Kitchings:

Enclosed please find one (1) original and six (6) copies of the Respondent's Motion to Dismiss Appeal in the above matter. I am, as stated above, emailing a copy of the enclosed for filing and will look for the Court's notification of receipt of such filing for my records. Also enclosed is this firm's check in the amount of \$50.00 to cover the filing fee.

Should you have any questions, concerns, or require something further, please do not hesitate to contact me. With my kindest regards, I am,

Sincerely,

POPE PARKER JENKINS, P.A.



Kyle B. Parker

KBP/rb

Enc.

cc: Ernest D. Perry
409 Highland Ave.
Sumter, SC 29150