

STATE OF SOUTH CAROLINA
In the Court of Appeals

96432

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APPEAL FROM CHARLESTON COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE JUN 08 2022

SC Court of Appeals

Appellate Case No.: 2022-000674

Kevin Dion Hollinshead, Senior,.....Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids,
Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P.
Deas,
Godrey A. Gibson, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D.
Steward,
and Teach for America, Inc. Respondents

AMENDED MOTION TO DISMISS APPEAL

Respondent Leeza D. Steward, by and through her undersigned counsel, moves before this Honorable Court for an order dismissing the appeal for lack of jurisdiction as a result of Appellant's failure to timely serve a Notice of Appeal.

Two form orders have been issued and filed in this matter. The original form order dismissing Appellant's second amended complaint specifically as to Respondents Leeza Steward and Charleston Coalition for Kids was filed on April 5, 2022, which showed service of the order on all counsel of record, including Edward K. Pritchard, counsel of record for Appellant (**Exhibit A**). No motion for reconsideration was filed by any of the parties after the original order was issued, but counsel for the remaining Respondents informally contacted Judge Cothran for clarification as to the effect of the order on the remaining Respondents. Judge Cothran then issued a second order

dismissing Appellant's second amended complaint as to all the Respondents, specifically identifying each Respondent. The second order was filed on April 26, 2022. On or about May 12, 2022, Edward K. Pritchard filed the Notice of Appeal with this Court, more than thirty (30) days from the date of the original order.

Rule 203(b)(1), SCACR, provides in mandatory terms as follows: "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(b)(1), SCACR. This Court recognizes and has held consistently that "[t]he failure to timely serve a notice of appeal divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). The Supreme Court has, in fact, held as follows: "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." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 775 (2004). *See also, USAA Property & Casualty Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008) (same).

Respondent Leeza Steward submits that the Notice of Appeal was not timely served as to her, and as a result, this Court lacks appellate jurisdiction over the appeal as it relates to her. The only exception to the requirement of service of a Notice of Appeal within thirty days is contained in Rule 203(b)(1), which holds the period for appealing in abeyance only "[w]hen a form order. . . indicates that a more full and complete order or judgment is to follow." That did not occur here. The Form 4 order issued on April 5, 2022 was a final order as to all relief against Leeza Stewart. The thirty-day deadline for

service of the Notice of Appeal will run from the earliest date that the Appellant's counsel received notice of the entry of Judge Cothran's original order for summary judgment, which was April 5, 2022. The issuance of the second Form 4 order, which restated the earlier grant of summary judgment to Leeza Steward did not begin the time to appeal any orders in Ms. Steward's favor over again.

WHEREFORE, having fully set forth the grounds for the relief sought herein, Respondent Steward moves for an order dismissing this appeal.

Respectfully submitted,

s/ Joseph M. McCulloch
Joseph M. McCulloch (S.C. Bar No. 3760)
Kathy R. Schillaci (S.C. Bar No. 17248)

McCulloch & Schillaci, Attorneys at Law
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ATTORNEYS FOR RESPONDENT
STEWARD

June 8, 2022

Exhibit A

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Defendant's Motions to Dismiss Plaintiff's Second Amended Complaint as to Defendant Charleston Coalition for Kids and Defendant Leeza Steward is GRANTED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/05/2022

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS Thomas J Bell ,
defendant, et al
Case Number: 2021CP1000426
Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-04-05 13:21:53 page 3 of 3

Certificate of Electronic Notification

Recipients

Julianne Farnsworth - Notification transmitted on 04-05-2022 03:07:06 PM.

Edward Pritchard - Notification transmitted on 04-05-2022 03:07:05 PM.

Victoria Kepes - Notification transmitted on 04-05-2022 03:07:06 PM.

Dwayne Green - Notification transmitted on 04-05-2022 03:07:06 PM.

Joseph McCulloch - Notification transmitted on 04-05-2022 03:07:06 PM.

David Cobb - Notification transmitted on 04-05-2022 03:07:05 PM.

Nickisha Woodward - Notification transmitted on 04-05-2022 03:07:05 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2021CP1000426

Official File Stamp: 04-05-2022 03:06:54 PM

Court: CIRCUIT COURT

Common Pleas

Charleston

Case Caption: Kevin Dion Hollinshead Sr , plaintiff, et al VS
Thomas J Bell , defendant, et al

Document(s) Submitted: Order/Motion to Dismiss Pltf 2nd Amnd Cmplt is
Granted Order/Electronic Form 4

Filed by or on behalf of: Gayle Brunson

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

Julianne Farnsworth for Charleston Coalition For
Kids, Angelica M Colwell, Lee P Deas, Godfrey A
Gibbison, Eric P Strickland, Loren R Ziff, Thomas
J Bell

Edward K. Pritchard, III for Kevin Dion
Hollinshead, Sr

Nickisha M Woodward for Teach For America Inc

David Starr Cobb for Teach For America Inc

Dwayne Marvin Green for Courtney S Waters

Victoria Therese Kepes for Charleston Coalition
For Kids, Angelica M Colwell, Lee P Deas,
Godfrey A Gibbison, Eric P Strickland, Loren R
Ziff, Thomas J Bell

Joseph M. McCulloch, Jr. for Leeza D Steward

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Kevin Dion Hollinshead, Sen

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Deas,
Godfrey A. Gibson, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D.
Steward,
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PROOF OF SERVICE

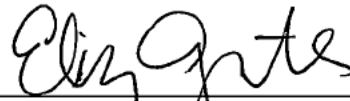
I certify that I have served Respondent Leeza D. Steward's **Amended Motion to Dismiss Appeal** by email and by depositing one copy of it in the United States Mail, first-class mail, postage prepaid, on June 8, 2022, addressed to:

Edward K. Pritchard, III, Esq.
Pritchard Law Group, LLC
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Elizabeth Gunter, Paralegal
McCulloch & Schillaci, Attorneys at Law

Columbia, South Carolina
this 8th day of June, 2022.

McCULLOCH & SCHILLACI
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KATHY SCHILLACI
kathy@mccullochlaw.com

June 8, 2022

Delivered Via Hand Delivery

South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings, Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: Kevin Dion Hollinshead, Senior v. Thomas J. Bell, et al.
Appellate Case No. 2022-000674

Dear Ms. Kitchings:

Please find enclosed for filing Respondent Leeza D. Steward's Amended Motion to Dismiss Appeal along with the proof of service. If you would, please clock and file the original and clock and return the copy in the self-addressed, pre-stamped envelope. We greatly appreciate your attention to this matter.

Sincerely,



Elizabeth Gunter
Paralegal

Enclosure(s)

cc: Edward K. Prtichard, III
Brittany Tanya Bihun, Esq
David Starr Cobb, Esq.
Nickisha M. Woodward, Esq.
Dwayne Marvin Green, Esq.

McCULLOCH & SCHILLACI

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