

SUPREME COURT OF SOUTH CAROLINA

Deal v. Deal, 85 S.C. 262

67 S.E. 241 (1910) · Decided March 17, 1910

SUMMARY

The South Carolina Supreme Court considered whether a circuit judge had jurisdiction to extend the time for serving a case and exceptions after notice of appeal had been given. The Court held that the order extending the time was not appealable; any jurisdictional defect could be addressed through a motion to dismiss the underlying appeal, and the appeal from the extension order was dismissed.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Hydrick, J.
JURISDICTION	South Carolina
DECIDED	March 17, 1910
DISPOSITION	dismissed
PROCEDURAL POSTURE	The plaintiff appealed from an order of the circuit judge extending the time for the defendants to serve a proposed case and exceptions for an appeal.
STANDARD OF REVIEW	An order extending the time for serving a proposed case and exceptions was not appealable; any jurisdictional challenge to the order was reviewable on a motion to dismiss the underlying appeal.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of South Carolina
PARTIES	Mary L. Deal v. Margaret E. Deal, A. M. Deal

TOPICS

- appellate procedure
- appellate jurisdiction
- civil procedure
- statutory interpretation

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the circuit judge's order extending the time for service of the case and exceptions was appealable.
2. Whether the Supreme Court should decide whether the circuit judge correctly construed the statutory deadline and had jurisdiction to grant the extension.

HOLDINGS

1. An order by a circuit judge extending the time for serving a proposed case and exceptions is not appealable.
2. The questions whether the circuit judge correctly construed section 345 and had jurisdiction to grant the extension were speculative because the Supreme Court had independently exercised its authority under section 349 to permit the original appeal to be perfected.

KEY QUOTATIONS

“As there is no doubt of the power of this Court, under section 349 of the Code, to exercise its discretion to permit an appeal to be perfected by service of case and exceptions, even after the expiration of the time allowed by statute for the service thereof, and as this Court has exercised its discretion to that end, the question whether Judge Klugh's construction of section 345 is or is not erroneous, and whether he had jurisdiction to pass the order appealed from, become purely speculative.” (264)

“But Judge Klugh's order is not appealable.” (264-265)

*“If the Judge had jurisdiction, his order was a matter solely within his discretion, from which it was held in *Stribling v. Johns*, supra, there is no appeal; if he had no jurisdiction, his order was a nullity, and the proper remedy of the respondent in the original appeal (appellant herein) was to move this Court to dismiss the appeal.” (265)*

FACTUAL BACKGROUND

A verdict was rendered for the plaintiff on May 5, 1909, and judgment was entered on May 18, 1909. The defendants gave notice of appeal and later moved for additional time to serve the case and exceptions. Judge Klugh granted the extension until October 28, 1909, after concluding that the thirty-day period began after the circuit court adjourned. During the pending appeal, the Supreme Court independently extended the time for perfecting the original appeal.

PROCEDURAL HISTORY

A verdict was entered for the plaintiff, and judgment was entered on May 18, 1909. The defendants noticed an appeal and moved for an extension of time to serve the case and exceptions. The circuit judge granted the extension, and the plaintiff appealed from that order. While the appeal was pending, this Court further extended the time for perfecting the original appeal, making the validity of the circuit judge's order a speculative issue. The Court dismissed the appeal from the extension order.

DISPOSITION

dismissed

CASES CITED

- Stribling v. Johns, 16 S.C. 112
- Tribble v. Poore, 28 S.C. 565, 6 S.E. 577
- Gibbes v. Elliott, 8 S.C. 61
- Scurry v. Coleman, 14 S.C. 166

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