

The South Carolina Court of Appeals

Andre Brooks, Appellant,

v.

South Carolina Department of Labor, Licensing, and
Regulation, South Carolina Board of Registration for
Professional Engineers and Surveyors, Respondent.

Appellate Case No. 2023-000825

ORDER

After careful consideration of the parties' memoranda regarding appealability, this appeal may proceed as to the Administrative Law Court's April 28, 2023 order only. First, the April 28, 2023 order is the only order Appellant included with his notice of appeal to this court, pursuant to Rule 203(d)(2)(B)(ii), SCACR (providing a notice of appeal from the ALC shall be accompanied by "[a] copy of the decision(s) to be challenged on appeal"). Moreover, Appellant's March 21, 2023 motion for reconsideration was untimely, and therefore did not operate to toll the time for serving and filing the notice of appeal of the ALC's February 6, 2023 final order. *See* Rule 40, SCALC ("A motion for rehearing must be filed within ten days of receipt of the order. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion."); Rule 203(b)(6), SCACR ("If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion.").

Because Appellant failed to serve and file his notice of appeal within thirty days of receipt of the ALC's final order, and no timely motion for reconsideration tolled the time for serving and filing the notice of appeal, this court has no jurisdiction over the February 6, 2023 order. *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."). However, Appellant did serve and

file his notice of appeal within thirty days of receipt of the ALC's April 28, 2023 order, denying his second motion to allow late filing of his motion for reconsideration. Accordingly, if Appellant chooses to proceed, issues on appeal will be limited to the April 28 order only; the parties may not argue the merits of the case because the final order is not properly before this court.


FOR THE COURT

Columbia, South Carolina

cc:

Andre Brooks, PE

Timothy Kyle Tennis, Esquire

FILED
Jul 19 2023