

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Aug 14 2023**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

**SC Court of Appeals**

The Honorable Deborah Brooks Durden, Administrative Law Court Judge

Case No. 22-ALJ-11-0441-AP  
Court of Appeals Case No. 2023-001083

Cremation Society of SC – Westville Funerals.....Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,  
State Board of Funeral Services .....Respondent.

**RETURN IN OPPOSITION TO RESPONDENT’S  
MOTION TO DISMISS APPEAL**

Appellant, by and through undersigned counsel, hereby submits this memorandum in opposition to Respondent’s motion to dismiss the appeal. The grounds for this opposition are: (1) all parties were served with the notice of appeal; therefore, the court of appeals has jurisdiction over this appeal; and (2) Appellant respectfully requests the Court allow this appeal to proceed; or in the alternative, to remand this case to the administrative law court so that the appropriate motion to reconsider may be filed.

**FACTS**

This is an appeal of a final decision of the Administrative Law Court, sitting in its appellate capacity, of the interpretation of the Safe Cremation Act, S.C. Code Ann. § 32-8-345 as well as the Funeral Board Practices Act, including S.C. Code Ann. § 40-19-110. To put it simply,

Appellant, who is a funeral and cremation service provider in this State, seeks clarification as to the laws that govern its business practices.

### ARGUMENT

**I. It is undisputed that *all parties* were served with the notice of appeal on July 6, 2023; therefore, this Court has subject matter jurisdiction over this appeal.**

The requirement that a notice of appeal be served on *all parties* is jurisdictional. S.C. Code Ann. § 1-23-380 (Supp. 2022).; *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). While Appellant admittedly did not serve the notice of appeal on the Administrative Law Court on or before July 6, 2023<sup>1</sup>, it did serve the notice of appeal on the Respondent and therefore, there is no jurisdictional defect. *See* Rule 41, South Carolina Administrative Law court Rule (“the appellant shall file a copy of the notice of appeal from the decision of the administrative law judge with the clerk of Court.”)

Importantly, Respondent has suffered no prejudice by this four day delay on serving the Administrative Law Court, as Respondent timely received notice of the appeal. Accordingly, the Court of Appeals has subject matter jurisdiction to hear the novel issues of law and issues of statutory interpretation that have been decided in this case.

**II. While Appellant did not file a Motion to Reconsider, the Administrative Law Court’s June 6, 2023 Order was a “final order” and Appellant requests the Court hear this appeal or alternatively, remand this case to the Administrative Law Court with leave to file a Motion to Reconsider.**

The Administrative Procedures Act permits an appeal only from “a final decision of the administrative law court.” *Spalt v. South Carolina Department of Motor Vehicles*, 423 S.C. 576, 816 S.E.2d 579 (2018). The order in this case was a final decision, as it left no further act to be done by the Court, and the determination of the party’s rights had been finally adjudicated. *Id.*

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<sup>1</sup> Appellant did serve the Administrative Law Court with notice of the appeal on July 10, 2023.

Appellant contends that the Administrative Law Court erred in interpreting the Safe Cremation Act, S.C. Code Ann. § 32-8-345 as well as the Funeral Board Practices Act, including S.C. Code Ann. § 40-19-110, which is an error of law. Accordingly, the Court of Appeals has subject matter jurisdiction to hear the novel issues of law and issues of statutory interpretation that have been decided in this case.

Respondent argues that Rule 40 of the Rules of Procedure for the Administrative Law Court as amended in 2021 made it mandatory<sup>2</sup> that Appellant file a Motion to Reconsider as a prerequisite to filing an appeal. Appellant concedes it filed no such Motion. However, Appellant again can show no prejudice has been suffered to it as a result. In the event, the Court finds there is an issue of preservation as a result of no Motion to Reconsider being filed, Appellant seeks the Court remand this matter to the Administrative Law Court and expressly grant Appellant leave to file a Motion to Reconsider.

### **CONCLUSION**

The notice of appeal in this case was served on all parties, and the Court of Appeals has jurisdiction over this appeal. Additionally, while Appellant concedes it did not file a Motion to Reconsider the Administrative Law Court's Order, the Order was a "final order." In the event, the Court finds there is an issue of preservation as a result of no Motion to Reconsider being filed, Appellant seeks the Court remand this matter to the Administrative Law Court and expressly grant Appellant leave to file a Motion to Reconsider.

*<Signature Page to Follow>*

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<sup>2</sup> Prior to this amendment, the rules expressly stated that a Motion to Reconsider was not required prior to filing an appeal.

Respectfully Submitted.

August 14, 2023

s/ Christina M. Brown

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Carl D. Hiller (SC Bar #101242)  
Christina M. Brown (SC Bar #104085)  
HHP LAW GROUP, LLC  
924 Gervais Street  
Columbia, South Carolina 29201  
T: (803) 400-8277  
*Attorneys for Appellant*