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SEP 05 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM THE ADMINISTRATIVE LAW
The Honorable Deborah Brooks Durden, Administrative
Law
Docket No. 21-ALJ-22-0448-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

South Carolina Department
Of Employment and Workforce, and
School District of Greenville County,

Respondents.

MOTION IN OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS AND MOTION TO
STRIKE APPELLANT'S RECORD ON APPEAL
AND APPELLANT'S MOTION TO AMEND
RECORD ON APPEAL AND MOTION TO
AMEND PROOF OF SERVICE OF THE
RECORD ON APPEAL

1. Motion to Dismiss

The alleged failure to include only some of the matters designated by the Respondents in the Record on Appeal, particularly the Administrative Law Court (ALC) order for consolidation of cases and the Record on Appeal, does not rise to the level of dismissing the Appeal. Moreover, the purpose of requiring a party to provide a Record on Appeal is to give the reviewing Court the ability to decide whether the lower Court erred in the respects alleged. The Record on Appeal submitted by the Appellant provides the court with enough information to determine if the decision by the South Carolina Department of Employment and Workforce was supported by substantial evidence. *See Wilson v. Am. Cas. Ins.*, 252 S.C. 393, 397, 166 S.E. 2d 797.798 (1969).

On July 26, the court notified all parties that the Appellant's time to provide proof of service of the Record on Appeal had expired and gave the Appellant ten days to correct this error, or his appeal would be dismissed. This is the second time that the Respondent has miscalculated the timeline the Appellant was required to submit a document to the Court, and this prior error in the Respondent's calculations led to the reinstatement of his Appeal. The 10th day falls on Saturday, August 5, 2023. Thus, the Record on Appeal must be postmarked by Monday, August 7th, 2023. However, a letter sent by mail an additional five days is added to the postmarked date. Hence, the postmarked date for the Record on Appeal would be Monday, August 14, 2023. The Appellant's Record on Appeal was postmarked on August 6, 2023, well within the appointed time to submit the Record on Appeal to the Court. However, there was a clerical. The proof of service was dated August 5, 2023, instead of August 6, 2023. Inadvertent clerical errors are not grounds to dismiss the Appellant's appeal. The Appellant is allowed to correct such errors without penalty. *See Moody v. Dickinson*, 54 S.C. 526, 32 S.E. 563 (1989).

The Respondent alleges that the omission of the ALC Record on Appeal in the Appellant's Record on Appeal deprives the court of critical information it needs to review this case. The Respondent has not identified any specific documents in their matter of designation letter that they feel are critical to the point. Consequently, the Respondent's matter of designation letter is incomplete when they are requesting the entire ALC Record on Appeal be included in the Record on Appeal. In addition, this request conflicts with Rule 209(b) SCAR. They expect this Court to sift through numerous documents, some of which might have nothing to do with the matter before the Court, and to determine which documents would be applicable. This exercise would place an undue burden on the Court as well as waste the Court's time. Based on the above information, the Appellant is not bound to include the entire ALC Record on Appeal cause some of the information in the record is irrelevant to the matter on appeal.

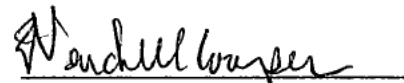
The Appellant's counsel contacted the Court (Appeals Specialist) on Monday, August 28, 2023, and the Court confirmed that the Appellant's Amended Final Brief was accepted and filed on time, July 24, 2023, without any objections. Likewise, the Record on Appeal was accepted on August 9, 2023, and filed on time without any deficiencies. Knowing these facts, the Respondent continues not to acknowledge that the Appellant has ten days to correct any deficiencies as a matter of law, in addition to having another five days when the Court sends a letter of deficiencies through the mail in their calculations. The above mathematical formalisms are needed in determining whether the documents were not timely filed with the Court. Based on the above information, the Respondent's argument that the Appellant failed to file an Amended Final Brief and Record on Appeal on time is inaccurate. These arguments by the Respondent should not be considered in this matter before the Court.

The Appellant respectfully requests this Court to deny the Respondent's request to dismiss

his Appeal and strike the Record on Appeal. There is enough information in the submitted Record on Appeal to allow this Court to decide whether the lower court erred in the respects alleged. Alternatively, suppose the court disagrees with the arguments presented by the Appellant. In that case, he kindly requests that the court allow him to amend the record on appeal, correct any clerical errors in the proof of service of the Record on Appeal or any other matter before making a final ruling, and require Respondents to identify the specific documents in the ALC Record on Appeal that they want to include in the Record on Appeal.

Respondent further kindly asks that all deadlines and due dates be held in abeyance pending the outcome of this motion.

Respectfully Submitted,


Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville, South Carolina 29681
864-230-7049

August 31, 2023

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SC Court of Appeals

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 21-ALJ-22-0490-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

South Carolina Department of
Employment of Workforce and
School District of Greenville County,

Respondents,

PROOF OF SERVICE

I certify that I have served the Motion in Opposition to the Respondent's Motion to Dismiss Appeal and Strike the Record on Appeal and the Appellant's Motions to Amend the Record on Appeal and Correct Proof of Service of the Record on Appeal to the South Carolina Department of Employment of Workforce and School District of Greenville County by depositing a copy of it in the United States Mail postage paid on ~~July 17, 2023~~ ^{August 31, 2023}, addressed to their attorney of record, Benjamin T. Cook, Post Office Box 8597, Columbia, SC 29202, and General Counsel for School District of Greenville County Post Office Box 2848, Greenville SC 29602.

August 31, 2023

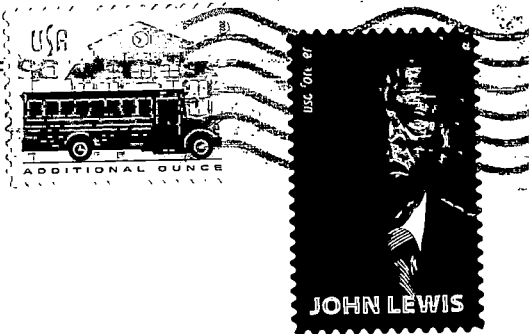


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31 AUG 2023



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SC Court of Appeals

S.C. Court of Appeals

1220 Senate Street
Columbia SC 29201

29201-376999

