

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

WCC No. 062913
Appellate Case No. 2013-000437

Gloria Parker, Employee, Respondent,

v.

Fairfield County School System, Employer, and
S.C. School Boards Insurance Trust, Carrier, Appellants.

SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF THE CASE

On May 23, 2013, Respondent Gloria Parker, through her undersigned counsel, filed a motion to dismiss this appeal for lack of jurisdiction. As the first of two grounds for dismissal, the respondent argued the appellants had failed to serve the South Carolina Workers Compensation Commission with their notice of appeal as required by Rule 203(b)(6), SCACR.

The appellants have not responded to the motion to dismiss. *Cf.* Rule 240(e), SCACR (party opposing a motion has ten days to file a return). However, on July 8, 2013, Belinda Ellison, Esquire, one of the respondent's two attorneys in this matter, received a copy of a cover letter from appellants' counsel addressed to the Workers Compensation Commission, dated July 3, 2013, which purports to accompany a copy of

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the appellants' notice of appeal (the letter is attached as Exhibit A). The letter includes the following statement:

The notice to this tribunal [viz., the Commission] of the appeal was inadvertently omitted, but was served on Gloria Parker and filed with the South Carolina Court of Appeals on March 1, 2013.

The respondent's motion to dismiss is still under consideration by the Court.

DISCUSSION

Neither the court of appeals nor the court of common pleas has jurisdiction of this appeal, because the appellants did not timely serve the Commission with their notice of appeal, and that requirement is jurisdictional.

As discussed in our motion to dismiss, since July 1, 2006, the Administrative Procedures Act has incorporated Rule 203, SCACR. In turn, Rule 203(b)(6), which became effective May 3, 2007, requires that a notice of appeal be served on the agency from which the appeal is taken within thirty days after receipt of the decision. This rule "provides a jurisdictional requirement to serve the agency within thirty days." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 797-98 (2008) (emphasis added). South Carolina appellate courts have consistently held that requirements for timely service of notice of appeal are an absolute jurisdictional prerequisite and that appellate courts have no authority to expand the time in which a notice of appeal may be served. *See, e.g., Sadisco of Greenville, Inc. v. Greenville Co. Bd. of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2002).

The July 3 letter from appellants' counsel concedes they did not serve the Workers Compensation Commission within the jurisdictional thirty-day period. Their attempt to serve the Commission over three months after receiving its final decision cannot cure the resulting jurisdictional defect.

We have separately argued that, based on the date of the accident leading to this proceeding, the court of common pleas, not the court of appeals, would have jurisdiction of a properly perfected appeal in this case. However, because the appellants failed to fulfill the jurisdictional requirement of timely service on the Commission, neither court can properly acquire jurisdiction of this appeal.

CONCLUSION

Because the appellants now concede they did not timely serve the Workers Compensation Commission with their notice of appeal, and because the court of appeals does not have jurisdiction of workers compensation appeals relating to claims arising when this one did, the Court should dismiss this appeal.

July 10, 2013



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* CERTIFIED CIVIL ARBITRATOR AND MEDIATOR

July 3, 2013

Ms. Virginia L. Crocker
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

Re: Gloria Parker v. Fairfield County School District
WCC File No.: 0620913

Dear Ms. Crocker:

Enclosed please find the Notice of Appeal filed by Fairfield County School District regarding the above-referenced matter. The notice to this tribunal of the appeal was inadvertently omitted, but was served on Gloria Parker and filed with the South Carolina Court of Appeals on March 1, 2013.

Should you have questions, or wish to discuss this matter, please feel free to contact me directly.

Sincerely,


Adrienne L. Turner

/clm

Enclosure

cc: Belinda Ellison, Esq. (w/o encl.)
The Honorable Jenny Kitchings, South Carolina Court of Appeals (w/o encl.)

Exhibit

A

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WORKERS COMPENSATION COMMISSION

WCC No. 062913
Ct. App. No. 2013-000437

Gloria Parker, Employee, Respondent,

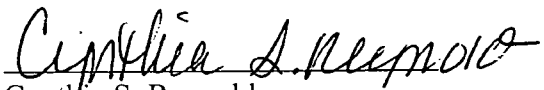
v.

Fairfield County School System, Employer, and
S.C. School Boards Insurance Trust, Carrier, Appellants.


CERTIFICATE OF SERVICE

Personally appeared before me, Cynthia S. Reynolds, who being duly sworn, deposes and says that she is the secretary for Lex A. Rogerson, Jr., attorney, with offices at 111 East Main Street, Suite C, Lexington, South Carolina, that on the 11th day of July, 2013, she served the SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS in the above captioned matter on the appellants by depositing a copy of same in the United States Mail with sufficient postage affixed to the following persons, to-wit:

Adrienne L. Turner
Boykin & Davis, L.L.C.
P.O. Box 11844
Columbia, SC 29211


Cynthia S. Reynolds

SWORN TO before me this
11th day of July, 2013.


Notary Public for South Carolina
My commission expires: 6/23/18