

THE STATE OF SOUTH CAROLINA

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In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Commission Appellate Panel

RECEIVED

JUL 16 2013

WCC No.: 062913
Appellate Case No. 2013-000437

SC Court of Appeals

Fairfield County School System/SC School Boards Insurance Trust,..... Appellants,

v.

Gloria Parker, ..... Respondent.

Motion to Transfer/Remand Appeal to Circuit Court and to Except Motion in Lieu of Return to Respondent's Motion for Extension of Time to File Initial Brief on Appeal

Appellant hereby moves to remand/transfer this appeal to the circuit court for adjudication pursuant to Rule 204(a), SCACR. The Respondent correctly notes that this matter predates Act 111, 2007 S.C. Acts 111, which requires appeals from the Workers' Compensation Commission to go directly to the Court of Appeals if the injury occurred on or after July 1, 2007. Here, the Claimant's alleged injury occurred on October 19, 2006. By order of the South Carolina Supreme Court, the Workers' Compensation reform applies only to injuries occurring on or after July 1, 2007. Accordingly, this appeal should have been made to the Circuit Court.

Rule 204(a) of the South Carolina Rules of Appellate Procedure provides:

In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.

Because this case predates the July 1, 2007 changes to the workers' compensation act, this appeal should be remanded or transferred to the Circuit Court for adjudication, including determination of any jurisdictional issues raised by the Respondent. Rule 204(a), SCACR.

Alternatively, should this Court determine adjudication of jurisdictional issues is appropriate at this procedural juncture, jurisdiction is proper in the Circuit Court pursuant to case and statutory law applicable to pre-July 1, 2007 workers' compensation cases.

It is uncontradicted that notice of intent to appeal in this matter was timely served on Respondent's counsel and filed in the South Carolina Court of Appeals well within the thirty (30) day applicable time limitation. Moreover, the proof of service indicates that the notice of appeal was also to be forwarded to the South Carolina Workers' Compensation Commission at the same time as the notice was served on the Respondent. However, the proof of service does not list the address of the Workers' Compensation Commission. Because counsel for Appellant did not retain a copy of an envelope forwarding the notice of appeal to the Workers' Compensation Commission, and because the paralegal who addressed and mailed the notice of appeal is no longer employed with counsel for Appellant's law firm, counsel for Appellate was unable determine with certainty whether or not the notice of appeal was actually forwarded to the Workers' Compensation Commission. Accordingly, counsel for Appellant served or re-served the Workers' Compensation Commission with the Notice of Appeal on July 3, 2013.

Pursuant to the Supreme Court's holding in Skinner v. Westinghouse, 380 S.C. 91, 668 S.E.2d 795 (2008), Appellant's service on the commission more than thirty days after filing the appeal did not divest the Circuit Court of appellate jurisdiction. In Skinner, the Appellant Westinghouse served its appeal in the circuit court on August 2, 2006 and served the notice of

appeal on the commission on October 16, 2006. The circuit court determined it lacked jurisdiction to hear the appeal because service on the commission was not accomplished within thirty days of the filing of the appeal and dismissed the appeal. The South Carolina Supreme Court reversed the circuit court's ruling, holding that under the law applicable to pre-July 1, 2007 cases, a thirty day deadline only existed for service on the appellate court and not on the commission. Id.

The Skinner Court noted that the circuit court relied substantially on Rule 74, SCRPC,<sup>1</sup> in determining that it lacked jurisdiction. In finding the circuit court's reliance on Rule 74 was misplaced, the Supreme Court held that South Carolina jurisprudence "confirms that jurisdictional appealability issues are governed by statute, and not by the rules of civil procedure." Id. at 796, Citing N.C. Fed Sav. & Loan Ass'n v. Twin States Dev. Corp., 289 S.C. 480, 481, 347 S.E.2d 97,97 (1986)( rejecting an attempt to invoke a rule of civil procedure as a basis of the right to appeal and holding, "[t]he right to appeal arises from and is controlled by statutory law"). The Court also referenced Rule 82(a), SCRPC for the proposition that the thirty-day time period referenced in Rule 74 could not be construed as jurisdictional. Skinner at 94, 668 S.E.2d at 796. Rule 82(a) provides: "[t]hese [civil procedure] rules shall not be construed to extend or limit the jurisdiction of any court of this State . . . ." Having found that the Rules of Civil Procedure were not controlling as to determining the appellate jurisdiction of the circuit court, the Skinner court next turned to applicable statutory law in order to determine whether Westinghouse's service on the commission more than thirty days after filing its appeal divested

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<sup>1</sup> As the Supreme Court explained, "Rule 74 refers to controlling statutorily imposed time periods –'the notice of intention to appeal shall be filed with the . . . administrative agency . . . within the time provided by statute, or by this rule when no time is fixed by statute.' The nonjurisdictional default period imposed by Rule 74 is thirty days." Id. at 94, 668 S.E.2d at 797, Note 2.

the circuit court of jurisdiction. The Skinner Court found no such divestment of jurisdiction had occurred.

In determining which statutes were instructive to its inquiry regarding the circuit court's jurisdiction, the Skinner Court specifically recognized that:

In 2006 the General Assembly passed Act No. 387, 2006 S.C. Acts 387, which altered the procedure for appealing the decision of state agencies; however, the General Assembly addressed Workers' Compensation law subsequently in Act No. 111, 2007 S.C. Acts 111. Act 111 comprehensively reformed Workers' Compensation law in 2007. By order of this Court, the Workers' Compensation reform applied to injuries on or after July 1, 2007. *Pee Dee Reg'l Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007). Therefore, the law of this case predated the appellate procedural changes to Workers' Compensation law.

Skinner at 95, note 3, 668 S.E.2d at 797, note 3 (emphasis added). The appellate courts of this state have consistently held that the date of injury, rather than any other factor relevant to workers' compensation cases, governs which law is applicable to determinations involving workers' compensation cases. See, e.g., Id. Having determined that the law applicable to the case was that law which predated the July 2007 reformations to workers' compensation law, the Court went on to find that "[u]nder the Administrative Procedures Act, section 1-23-380(A)(1) of the South Carolina Code (2005) fails to supply a clear deadline to serve an agency" when it states:

Proceedings for review are instituted by filing a petition in the circuit court within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the final decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

While the Court noted that the commission must be served with a copy of the appeal petition, the Court specifically noted that §1-23-380(A)(1) of the Administrative Procedures Act does not, from a jurisdictional standpoint, mandate such service within thirty days. *Id.* at 95, 668 S.E.2d at 797. As the Court noted, [“t]he reference to serving the agency is not associated with the filing deadline with the court.”

The Skinner Court next considered section 42-17-60 of the South Carolina Code of laws (Supp. 2006), which specifically applies to workers’ compensation cases and states, “either party to the dispute, *within thirty days* from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not thereafter, may appeal from the decision of the commission to the court of common pleas . . . .” (emphasis added). The Court determined that “[a]gain, the deadline for filing the notice of appeal with the circuit court is provided, but no mention of a deadline to serve the agency is given.”

Here, as in Skinner, a review of the law applicable to this pre-July 1, 2007 case, yields the conclusion the thirty-day deadline only existed for service on the appellate court and not on the agency. Because the commission has been served with the notice of appeal, this procedural defect has been cured.


#### CONCLUSION

For all of the foregoing reasons, the Circuit Court has jurisdiction over this appeal and the matter should be remanded to the circuit court for adjudication.

**[SIGNATURE ON NEXT PAGE]**

Respectfully Submitted,

BOYKIN & DAVIS, L.L.C.

A handwritten signature in cursive script, reading "Adrienne L. Turner", written over a horizontal line.

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July 16, 2013

Columbia, South Carolina