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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP

Order in Appellate Case No. 2021-001462 (S.C. Ct. App. Mar. 4, 2021)
Appellate Case No. 2022-000746

Katrina Daniels,

Petitioner

v.

South Carolina Department of Employment and Workforce and 4056
Main LLC, DBA Spill the Beans, currently known as Andee's Custom
Blended Ice Cream,

Respondents

Respondent's Return to Petition for a Writ of Certiorari

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STATEMENT OF THE CASE

This case involves Petitioner's attempt to obtain additional pandemic unemployment benefits beyond the \$20,000.00 she has already received (including over \$10,000 in overpaid benefits to which she was not entitled but which she has been excused from repaying). Respondent South Carolina Department of Employment and Workforce (the Department) issued a final agency decision finding Petitioner was ineligible for additional benefits because she failed to accept a bona fide offer of work from her former employer following a pandemic shutdown and Petitioner appealed that decision to the Administrative Law Court (ALC). *See Exhibit A – ALC 10/21/21 Order.*¹ Ultimately, the ALC found substantial evidence supported the final agency decision and affirmed in an order dated October 21, 2021. *Id.* Petitioner filed a Motion for Rehearing which was denied by a November 12, 2021, ALC Order. *Exhibit B – ALC 11/12/21 Order.*

The ALC Order denying Petitioner's Motion for Rehearing was sent to Petitioner via email on November 12, 2021. *Exhibit C – ALC 11/12/21 Email.* Additionally, Petitioner admitted she received a copy of that Order in the U.S. mail on November 15, 2021. *Exhibit D – COA Appeal.* On December 13, 2021, Petitioner attempted to file an appeal with the Court of Appeals by sending an email with various attachments to ctappfilings@sccourts.org, Legal@dew.sc.gov, KChesley@dew.sc.gov, and jshealy@scalcalc.net. *Exhibit E – COA Appeal Email and Proof of Service.* Notably, none of

¹ Because of the irregular nature of Petitioner's filings in this case and because there is no corresponding case entry on C-Track, Respondent has included exhibits which may be duplicative of documents included in Petitioner's original email to ensure they are in the Court's possession.

those email addresses correspond to Petitioner's former employer. On December 22, 2021, Petitioner sent another email with various attachments to ctappfilings@sccourts.org, Legal@dew.sc.gov, KChesley@dew.sc.gov, and andee.osell@gmail.com. *Exhibit F – COA Second Email and Proof of Service.* Petitioner identifies “andee.osell@gmail.com” as the email address of her former employer, Respondent 4056 Main, LLC, a party to the ALC case in this matter. *Exhibit G – Petitioner's Motion to Amend.* Petitioner never served the Department with her notice of appeal to the Court of Appeals by either personal delivery, or by delivery through the U.S. mail. *Exhibit H – Affidavit of Kristi Chesley.* Respondent filed a Motion to Dismiss for lack of jurisdiction with the Court of Appeals on January 11, 2022, and the Court dismissed Petitioner's appeal by decision on March 4, 2022, based on lack of jurisdiction due to Petitioner's failure to serve all parties of record. *Exhibit I – COA Dismissal.* Petitioner filed a petition to rehear the dismissal which was denied by Order dated May 12, 2022. *Exhibit J – COA Rehearing Denied.*

On May 29, 2022, Petitioner sent an email entitled “Petition for Writ” to: “Legal@dew.sc.gov”; “andeeosell@gmail.com”; “jshealy@scal.c.net”; “ctappfilings@sccourts.org”; “supctfilings@sccourt.org”; and “KChesley@dew.sc.gov”. *Exhibit K – Emailed Petition.* Notably, the email address “supctfilings@sccourt.org” does not match the Supreme Court's posted email address for filings (“supctfilings@sccourts.org”). The Department has not received any service of a Petition for Writ of Certiorari from Petitioner by either personal delivery or delivery through the U.S. mail. *Exhibit L – Second Affidavit of Kristi Chesley.*

ARGUMENT

This Court should either dismiss or deny the Petition for Writ of Certiorari for several reasons. First, the petition was neither properly filed with this Court, nor properly served on the Department. The only communication received by the Department from Petitioner related to the Petition was the May 29, 2022, email which was sent to the wrong email address for this Court (“supctfilings@sccourt.org” rather than “supctfilings@sccourts.org”). *Exhibit K*. On information and belief, the Supreme Court did not receive that email and, as a result, this Petition was never actually filed with the Supreme Court at that time. *See Rule 242, SCACR* (“A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals....”). Additionally, to Respondent’s knowledge, Petitioner has taken no actions to follow up on the misfiled Petition in almost two calendar years. Moreover, Petitioner did not properly serve the Petition on either the Department or Petitioner’s former employer. *Id.* Petitioner is a *pro se* litigant and, as such, is not permitted to serve by email. *RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules (As Amended May 6, 2022)*, S.C. Sup. Ct. Order dated May 6, 2022 (Davis Adv. Sh. No. 17) (specifying that electronic service may be made by lawyers admitted to practice law in this state and by appellate courts). This Court should dismiss Petitioner’s Petition for these procedural failings and her overall failure to pursue this matter for almost two calendar years.

In addition to the procedural failings, there are also no special or important reasons for this Court to grant the Petition in this case. *See Rule 242(b), SCACR* (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons....”). There is no novel question of law here, no dissent at the Court of Appeals, no conflict between the Court of Appeals and a prior decision of this Court, and neither substantial constitutional issues nor federal questions involved in this case. *See Rule 242(b), SCACR*. This is a straightforward case of lack of appellate jurisdiction due to a failure of the appealing party to serve the other parties to the case with her Notice of Appeal to the Court of Appeals.

Finally, the dismissal of Petitioner’s appeal by the Court of Appeals was proper due to Petitioner’s failure to properly serve any of the other parties to the case by the deadline for service.

I. Deadline for Service

S.C. Code Ann § 1-23-610(A)(1) states:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge.

Similarly, Rule 203(b)(6), SCACR states:

Appeals From Administrative Tribunals. When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30)

days after receipt of the decision. 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. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

Per Rule 263(b), SCACR, the timelines for service may not be extended by the appellate court:

Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

The ALC issued its decision on November 12, 2021, and transmitted a copy of that decision to Petitioner the very same day. *Exhibits B and C*. As a result, Petitioner had thirty (30) days from her receipt of the ALC decision on November 12, 2021, to properly file and serve the notice of appeal on the Department, the ALC, and all parties of record. *See* § 1-23-610(A)(1); *see also* Rule 203(b)(6), SCACR. Thirty (30) days from November 12, 2021, would have been December 12, 2021; however December 12, 2021, was a Sunday, therefore Rule 263(a), SCACR extended the deadline to Monday, December 13, 2021.

II. Permitted Methods of Service

Rule 262(c), SCACR provides:

Service. Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the appellate court. Service upon the attorney or upon a party shall be made by:

- (1) Delivering a copy to the person, in which case service is complete upon delivery. Delivery of a copy under this provision means: handing

it to the attorney or to the party; or leaving it at the office of that person with a clerk or another person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

- (2) Depositing a copy in the U.S. mail, properly addressed to the person at that person's last known address with sufficient first class postage attached, or, if no address is known, by leaving it with the clerk of the appellate court. Service by mail is complete upon mailing; or,
- (3) Serving a copy on the person by electronic means in a manner provided by order of the Supreme Court of South Carolina.

This Court, by Order dated August 25, 2021 (current at the relevant time for this case), provided for service by electronic means under very limited circumstances:

(d) Electronic Service Using AIS E-mail Address.

(1) Service on Another Lawyer. A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(2) Service by an Appellate Court. An appellate court may send an order, opinion or other correspondence to a person admitted to practice law in South Carolina using that lawyer's primary address in AIS.

(3) Service on Persons Admitted Pro Hac Vice. For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30). Petitioner Katrina Daniels is neither a lawyer admitted to practice law in South Carolina, nor is she an appellate court. Further, no attorneys have been admitted pro hac vice in this case. As a result, neither the Appellate Court Rules, nor order of this Court permitted Petitioner to serve a notice of appeal by email on either the Department or any other parties to the case. Because Petitioner was not authorized by rule or order of this Court to serve by electronic means, her only permissible methods for service were either personal delivery or delivery through the U.S. mail. *See* Rule 262(c), SCACR. Petitioner neither personally delivered a copy of her notice of appeal in this case, nor did she deliver a copy of her notice of appeal through the U.S. mail. *Exhibit H.*

III. Timely Service as Jurisdictional Requirement

“The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law.” S.C. Const. art. V, § 9.

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty (30) days after the party receives the final decision and order of the administrative law judge.

§ 1-23-610(A)(1). “[T]he question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction” *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). “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.” *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *see also Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”). “[T]he failure of a party to serve the notice of appeal within thirty days after receiving written notice of the entry of the order divests this court of jurisdiction and requires the dismissal of the appeal.” *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 647, 776 S.E.2d 575, 578 (Ct.App.2015) (citing *Canal Insurance Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct.App.1999)).

Petitioner admitted she did not even attempt to serve 4056 Main, LLC, until December 22, 2021, well after her deadline for service had passed. *See Exhibits F and G*. Further, Petitioner only ever attempted to accomplish service on any party to this case by email and made no attempt to serve either the Department or 4056 Main, LLC, by either personal service or by service through the U.S. mail. *See Exhibits E and F*. Petitioner is a *pro se* litigant and is not permitted by either the Appellate Court Rules or Order of this Court to serve by electronic means. *See Rule 262(c), SCACR; see also RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules*, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30). As a result, any attempted service through email was ineffective and did not confer jurisdiction on the Court of Appeals.

To establish appellate jurisdiction at the Court of Appeals over an appeal from the ALC's decision in this case, Petitioner was required to serve her notice of appeal on both the Department and 4056 Main, LLC, by either personal service or service through the U.S. mail on or before December 13, 2021. *See* § 1-23-610(A)(1); *see also* Rule 203(b)(6), SCACR; *see also* Rule 262(c), SCACR; *see also RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules*, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30); *see also Mears*, 287 S.C. at 169, 337 S.E.2d at 207 (1985); *see also Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775 (2004). Petitioner failed to timely serve the notice of appeal on the Department or 4056 Main, LLC and, as a result, the Court of Appeals lacked jurisdiction and properly dismissed Petitioner's appeal.

CONCLUSION

The Supreme Court should dismiss this Petition for Petitioner's failure to properly file the Petition with this Court, her failure to properly serve the Petition on the other parties to this case, and her failure to follow up on the misfiled Petition for almost two calendar years. Further, this Petition should be denied because there are no special or important reasons to grant the Petition and because Petitioner's appeal to the Court of Appeals was properly dismissed due to Petitioner's failure to properly serve the other parties to the case which deprived the Court of Appeals of jurisdiction. Accordingly, Respondent requests that this Court dismiss or deny the Petition for Writ of Certiorari.

[Signature on Following Page]

Respectfully Submitted,



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April 4, 2024.

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