

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

RECEIVED

AUG 07 2013

SC Court of Appeals

Gloria Parker, Employee, Respondent,

v.

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

MOTION TO AMEND TRANSFER ORDER

STATEMENT OF THE CASE

This is an appeal from a final decision by the Workers Compensation Commission. On May 23, 2013, the respondent filed and served a motion to dismiss, arguing that the court of appeals lacks jurisdiction for two reasons:

(1) the appellants failed to serve their notice of appeal on the Commission within 30 days after notice of its decision, as required by Rule 203(b)(6), SCACR (as applicable perforce S.C. Code Ann. §1-23-380), and

(2) the circuit court, not the court of appeals, has appellate jurisdiction of compensation cases the age of this one.

On August 2, this Court entered an order denying the motion to dismiss and

transferring the appeal to circuit court. The Court agreed that the court of appeals is not the proper forum for this appeal but held it could transfer the appeal under Rule 204(a), SCACR. Order filed August 2, 2013. However, the Court did not address Respondent's first ground for dismissal, viz., that no appellate court could exercise jurisdiction because the appellants failed to comply with the jurisdictional requirement of timely service on the Commission.

The respondent now seeks clarification of this aspect of the August 2 order.

DISCUSSION

The Court should either rule on the respondent's first ground for dismissal or expressly defer such ruling to the circuit court.

By failing to address the respondent's primary grounds for dismissal of this appeal, the Court placed a serious and substantial jurisdictional issue in limbo.

The supreme court has very clearly stated that, in appeals to which Rule 203(b)(6) applies, service on the administrative agency within the prescribed 30-day period is a "jurisdictional requirement." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 797 - 98 (2008) (emphasis added). The order of August 2 omits any mention whatsoever of this issue. However, the order denies the motion to dismiss that asserts this issue.

Respondent's counsel believe that, in declining to address the issue of service on the Commission, the Court intended that the circuit court, as the initial appellate forum for pre-2007 workers compensation cases, decide that issue in the first instance. But the August 2 order sends mixed signals. The appellants are

certain to argue in the circuit court that this Court has rejected the respondent's argument *sub silentio* and that the circuit court is not at liberty to consider the issue. Whether or not the circuit court agrees, that question itself is sure to become an unnecessary issue below and likely also in a subsequent appeal to this Court.

The respondent respectfully submits that, in transferring this appeal, this Court should not present the circuit court with a conundrum as to what it may consider and what the Court has taken off the table.

CONCLUSION

All the parties are entitled – at some stage – to a definitive decision whether the appellants' failure to serve the Workers Compensation Commission precludes appellate jurisdiction. The Court should either expressly rule on that issue or expressly indicate that it defers that issue to the circuit court.

August 7, 2013



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CERTIFICATE OF SERVICE

Personally appeared before me Carly D. Jewell, who being duly sworn, deposes and says that she is the legal assistant for Lex A. Rogerson, Jr., attorney, with offices at 111 East Main Street, Suite C, Lexington, South Carolina, that on the 7th day of August, 2013, she served the MOTION TO AMEND TRANSFER ORDER 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


Carly D. Jewell

SWORN TO before me this
7th day of August, 2013.


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