

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No.: 13-ALJ-22-0095-AP

RECEIVED
AUG 26 2013
SC Court of Appeals

Tanya A. Vaughan-Youmans,

Appellant,

v.

South Carolina Department of Employment and Workforce
and Darby Realty Company, Inc,

Respondents.

**RESPONDENT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND
WORKFORCE'S MOTION TO JOIN RESPONDENT DARBY COMPANY, INC'S
MOTION FOR DISMISSAL OF APPELLANT'S APPEAL**

NOTICE IS HEREBY GIVEN that Respondent South Carolina Department of Employment and Workforce, (hereinafter "SCDEW" or "Department") through its undersigned attorney in support of its Motion to Join Respondent Darby Company, Inc's (hereinafter "Darby") Motion for Dismissal of Appellant's Appeal, states as follows:

1. Darby has filed a Motion to Dismiss the Appellant's Appeal based upon S.C. Code Ann. § 1-23-610(A)(1) and Rule 203(b)(6), SCACR.

2. The Department agrees with the argument and rationale supporting Darby's Motion to Dismiss, and in the interest of judicial economy, the Department incorporates by reference the arguments raised in Darby's Motion and moves this Honorable Court for permission to join in said Motion filed with the Court on July 23, 2013.

3. The Department would further support Darby's argument for dismissal by stating this action is ostensibly a petition for judicial review of a final decision of the Administrative Law Court and is governed by section 1-23-610 which requires:

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. Appeal in these matters is by right.

S.C. Code Ann. § 1-23-610(A)(1) (emphasis added)

4. Furthermore, Rule 203(b)(6), SCACR requires, "when a statute allows a decision of the administrative law court...to be appealed directly to...the Court of Appeals, *the notice of appeal shall be served on* the agency, *the administrative law court*...and all parties of record *within thirty (30) days* after receipt of the decision...." *Id.* (emphasis added)

5. The final decision of the Administrative Law Court ("ALC") was filed and mailed to Appellant on June 8, 2013.

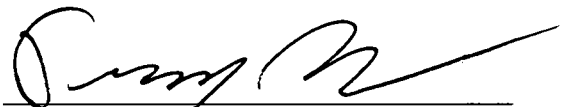
6. The Department is informed and believes as of the filing of this Motion the ALC not been served with Appellant's Notice of Appeal. Service of a notice of appeal is required for jurisdiction over the appeal to attach and this Court "has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004); Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)("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.")

7. Appellant has failed to comply with the requirements governing this appeal and the thirty (30) day statutory time period for perfecting the appeal has expired, Furthermore, "the policy of liberally allowing amendment of pleadings does not apply to the amendment of a notice

of appeal requested after expiration of the thirty (30) day statutory period for filing the appeal.”
Pringle v. Builders Transport, 298 S.C. 494, 381 S.E.2d 731, 732 (1989).

8. Finally, SCDEW recognizes Appellant is proceeding *pro se*. However, “[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Appellant’s potential failure to understand the procedures to be followed in pursuing an appeal cannot excuse her lack of compliance with the rules. See Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001) (finding that a party’s lack of familiarity with legal proceedings does not constitute excusable neglect which would relieve the party from a default judgment).

WHEREFORE, the Department prays that this Honorable Court permit this Respondent to join in Respondent Darby’s Motion to Dismiss Appellant’s Appeal and/or dismiss Appellant’s appeal of the ALC’s Order and/or any other relief this Court deems just.



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August 23, 2013

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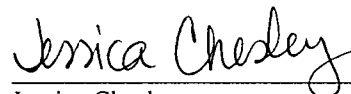
PROOF OF SERVICE

I certify that I have served the Respondent SCDEW's Motion to Join Respondent Darby Realty Company Inc.'s Motion for Dismissal on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2013, addressed to the parties at their addresses of record:

Tanya A. Vaughan-Youmans
218 Reagan Drive
Summerville, SC 29483

Daniel S. McQueeney, Jr.
PO Drawer 22247
Charleston, SC 29413

August 23, 2013



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