

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

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SC Court of Appeals

Tanya A. Vaughan-Youmans.....Appellant,

v.

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

Return in Opposition to Appellant’s “Motion to Deny Appeal Dismissal” and Reply in Support of Motion to Dismiss Appeal by Respondent Darby Realty Company, Inc.

Pursuant to Rule 240(e), SCACR, Respondent Darby Realty Company, Inc. (“Darby”) respectfully submits this return in opposition to the “Motion to Deny Appeal Dismissal” served by Appellant Tanya A. Vaughan-Youmans (“Appellant”) on September 30, 2013. Pursuant to Rule 240(f), SCACR, to the extent that Appellant’s motion constitutes a return to Darby’s motion to dismiss this appeal filed on July 23, 2013, Darby also submits this memorandum as a reply in support of dismissal.

On July 23, 2013, Darby served a motion to dismiss Appellant’s appeal for her failure to timely serve the notice of appeal on the Administrative Law Court (“ALC”) as required by Rule 203(b)(6), SCACR. Appellant failed to file a timely return to the motion. See Rule 240(e), SCACR (requiring a party opposing a motion to serve a return within 10 days). Nevertheless, in an abundance of caution, on August 27, 2013, the Clerk of the Court of Appeals sent a letter to Appellant, requesting that she respond to the motion and that she provide proof of service of the

notice of appeal on the ALC within ten (10) days. Appellant served a “Motion to Deny Appeal Dismissal” on September 30, 2013, but failed to include with her motion any proof of service of the notice of appeal on the ALC.

Rule 203(b)(6) provides, in pertinent part: “When a statute allows a decision of the administrative law court . . . to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the . . . 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.” See also S.C. Code Ann. § 1-23-610(A)(1) (same); Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 96, 668 S.E.2d 795, 797 (2008) (requirement to serve notice of appeal on ALC within 30 days is jurisdictional).

The exhibits to Appellant’s “Motion to Deny” are dispositive of this issue and warrant dismissal of this appeal. Exhibit D establishes that Appellant received a copy of the ALC’s decision on June 19, 2013. Exhibit C establishes that Appellant served her notice of appeal on counsel for respondents on July 18, 2013. While Appellant relies on Exhibit B, proof of service of Appellant’s letter ordering the transcript of the underlying proceeding,¹ to establish that she *notified* the ALC of this appeal on July 23, 2013, Appellant failed to include any proof that she served the notice of appeal on the ALC on or before July 19, 2013, as required by Rule 203(b)(6) and section 1-23-610(A)(1).

Appellant repeatedly refers to “Rule 203(B)” for the purported proposition that “[t]he notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.” There is no such language in Rule 203(b), SCACR, which governs *service* of a notice of appeal. Instead, Appellant appears to have

¹ There is no transcript of the proceedings before the ALC because there were none.

taken this language from Rule 203(d)(1)(B), which governs the separate *filing* requirements for a notice of appeal from the *circuit court, family court, and probate court*. Rule 203(d)(2)(B), which governs the filing requirements for a notice of appeal from the *ALC*, provides that “[t]he notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6).”

With respect to Darby’s request that this appeal be dismissed or summarily adjudicated pursuant to Rule 220(c), SCACR, Darby reiterates its position that the issues and arguments raised by Appellant in this appeal are, at best, conclusory and fail to afford the Court of Appeals any basis for reversing or modifying the ALC’s decision.

For the foregoing reasons, Darby respectfully asserts that Darby’s motion should be GRANTED, Appellant’s “Motion to Deny” should be DENIED, and this appeal should be DISMISSED.

Respectfully Submitted,


PRATT-THOMAS WALKER, PA

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October 4, 2013
Charleston, South Carolina

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Proof of Service

I, Michaela L. Shepherd, an employee of Pratt-Thomas Walker, P.A., hereby certify that a true and correct copy of the Return in Opposition to Appellant's "Motion to Deny Appeal Dismissal" and Reply in Support of Motion to Dismiss Appeal or, in the alternative, Affirm the Administrative Law Court's Decision Pursuant to Rule 220(c), SCACR, by Respondent Darby Realty Company, Inc. was served this 4th day of October, 2013, via U.S. Mail, postage prepaid, upon the following:

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Michaela L. Shepherd