

The South Carolina Court of Appeals

Michael Jarrard, Claimant, Respondent,

v.

Federal Express, Employer and Self-Insured, Appellant.

Appellate Case No. 2011-204646

ORDER

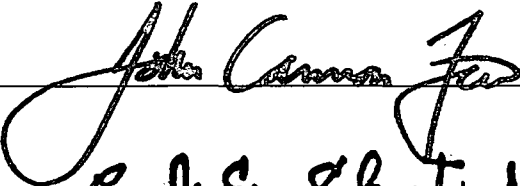
On November 3, 2011, the circuit court issued two orders involving the parties. It appears that the orders arose from the same case before the Workers' Compensation Commission, WCC No. 0217907, but from separate cases in the circuit court. The first case, Case No. 11-CP-23-898, involved the partial award of lump sum benefits, and the second case, Case No. 10-CP-23-7077, involved the award of attendant care benefits. Appellant timely filed a notice of appeal, appealing "the Order . . . dated November 2, 2011." The notice of appeal references only Case No. 11-CP-23-898, and Appellant attached the lump sum benefits order to the notice of appeal.

Appellant has now filed a motion for leave to file an amended notice of appeal, arguing it inadvertently failed to attach the attendant care order. Respondent filed a return in opposition to the motion, arguing this Court is without jurisdiction to hear an appeal stemming from the attendant care order because Appellant failed to timely serve a notice of appeal from that order. Respondent adds that granting Appellant's motion would materially change the scope of this appeal. Appellant filed a reply, arguing its reference to the wrong case number was a clerical error, and the filing of an amended notice of appeal would not prejudice Respondent.

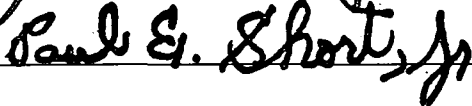
"This Court has previously held that a mere clerical error in a notice of appeal does not warrant dismissal of the appeal." *See Weatherford v. Price*, 340 S.C. 572, 577, 532 S.E.2d 310, 313 (Ct. App. 2000) (*citing Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995)). Our review of

Appellant's notice of appeal, however, does not indicate Appellant's notice of appeal contained a clerical error. As set forth above, Appellant's notice of appeal provides that Appellant is appealing "the *Order* . . . dated November 2, 2011," and references the Case No. 11-CP-23-898. The only order attached to the notice of appeal was the lump sum order. Accordingly, Appellant failed to perfect an appeal from Case No. 10-CP-23-7077 and the attendant care order, and thus, this Court lacks jurisdiction to entertain an appeal from that order. *See* Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule[] 203 . . . may be extended or shortened by the appellate court . . .").

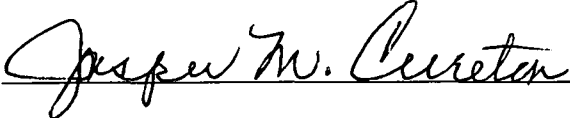
Appellant's motion to amend is therefore denied. Within thirty days, Appellant shall serve and file an amended initial brief arguing only those issues relating to Case No. 11-CP-23-898.



C.J.



J.



A. J.

Columbia, South Carolina

cc:
C. Daniel Vega
Russell Thomas Infinger
Blake Alexander Hewitt
John S. Nichols

FILED
6-29-12 LST