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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Samuel L. Johnson, Administrative Law Judge

ALC Docket No. 26-ALJ-07-0089-CC
Appellate Case No.: 2026-001550

Robert Litzenberger,

Appellant,

vs.

South Carolina Department of Environmental Services
and Branden Baker,

Respondents.

**RESPONDENT'S REPLY TO APPELLANT'S RETURN TO
RESPONDENT'S MOTION FOR DISMISSAL OF APPEAL
ARISING FROM ALC DOCKET NO. 26-ALJ-07-0089-CC**

Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Environmental Services (“Department”) hereby replies to Appellant’s Return in Opposition to Respondent SCDES’s Motion for Dismissal of Appeal [Arising from ALC Docket No. 26-ALJ-07-0089-CC] and, in the Alternative, Request for Extension of Time Under Rule 263(b), SCACR (“Appellant’s Return”).

Within Appellant’s Return, Appellant argues this Court should deny the Department’s Motion for Dismissal of Appeal Arising from ALC Docket No. 26-ALJ-07-0089-CC (“Department’s Motion”) or, alternatively, extend the deadline for Appellant to serve and file his Initial Brief on the basis of good cause.¹ Specifically, Appellant notes that he filed a Notice of Appeal for two separate ALC decisions: (1) the Order of Dismissal issued in ALC Docket No. 26-ALJ-07-0089-CC, pertaining to an onsite wastewater system (septic) permit (“Order of Dismissal”), and (2) the Order Granting Motion for Summary Judgment issued in ALC Docket No. 25-ALJ-07-0420-CC, pertaining to a grant of stormwater permit coverage. This Court initially administratively processed these matters as a single appeal under Case No. 2026-001550; however, a separate appellate case number, 2026-001905, was assigned to the appeal arising from ALC Docket No. 25-ALJ-07-0420-CC. According to Appellant, these facts and “overlapping procedural tracks created a concrete risk of confusion as to which perfection step applied to which appeal and when.” Appellant’s Return, p. 3.

¹ In Appellant’s Return, Appellant also draws a distinction between the ALC’s Order of Dismissal, dated June 16, 2026, and the Department’s Motion, arguing that the Department “should not obtain dismissal by importing the ALC’s jurisdictional analysis into a different deadline for which the appellate rules expressly preserve judicial discretion.” Appellant’s Return, p. 3. It is noted that within the Department’s Motion, the Department did not cite the jurisdictional analysis within the ALC’s Order of Dismissal as parallel or comparable to Appellant’s failure to timely file his Initial Brief. The Department, in spite of Appellant’s incorrect perception that this Court would “conflate the procedural default asserted here with the jurisdictional issue decided by the ALC,” understands that this Court would apply an appropriate analysis and standard of review to the filing issue at matter here.

Thus, Appellant's Return implicitly argues that good cause exists to deny the Department's Motion on the basis of potential confusion he experienced due to "overlapping procedural tracks" of the two appeals that he is responsible for filing. The Department would request this Court to take note of Appellant's Motion for Permission to Order Transcript Outside Appellant's Rule 207(b)(1) Deadline ("Appellant's Rule 207 Motion") under Case No. 2026-001550, in which Appellant indicated that "[t]his motion concerns only Appellant's stormwater appeal from ALC Docket No. 25-ALJ-0420-CC." Appellant's Motion, p. 1 (emphasis removed). Appellant's Rule 207 Motion was filed on August 14, 2026, which was four (4) days after the deadline for Appellant to file his Initial Brief for his Appeal arising from ALC Docket No. 26-ALJ-07-0089-CC. It is noteworthy that Appellant, by August 14, 2026, was demonstrably aware that two separate appeals existed and made this specific request to extend the deadline to order a transcript only for one of those appeals.

Furthermore, as stated in the Department's Motion, Appellant has not filed with this Court any motion for permission to order a transcript of ALC Docket No. 26-ALJ-07-0089-CC outside the Rule 207(b)(1) deadline. These facts illustrate that Appellant was aware of the existence of multiple appeals, has access to the appellate court rules, was made aware of the Rule 207(b)(1) deadline by this Court, and made the conscious decision to request a Rule 207(b)(1) deadline extension for only one of the two appeals. These facts also demonstrate that Appellant has willfully failed to take any concrete action to ensure that he served and filed his Initial Brief by August 10, 2026, as required by Rule 208, SCACR. For example, Appellant, in spite of his access to the appellate court rules, failed to request an extension to file and serve his Initial Brief at any time until it was later stated in Appellant's Return, which was filed twenty-two (22) days after the deadline to file and serve his Initial Brief. For these reasons, there does not exist sufficient good

cause to deny the Department's Motion nor to extend the deadline for Appellant to serve and file his Initial Brief.

Lastly, while Appellant's Return correctly interprets Rule 240(b), SCACR, to provide that a motion to dismiss an appeal automatically stay time limits for perfecting an appeal until the motion is decided, this does not alter the fact that Appellant's deadline to file an Initial Brief for the appeal of ALC Docket No. 26-ALJ-07-0089-CC was August 10, 2026, and the Department filed its Motion to Dismiss on August 28, 2026. Thus, even though the Department's Motion to Dismiss automatically stays time limits for perfecting an appeal, Appellant was eighteen (18) days past the deadline to file his Initial Brief as provided by the appellate court rules.²

CONCLUSION

For the additional reasons set forth above, the Court should grant the Department's Motion for an order directing the Clerk of Court to issue an order dismissing Appellant's appeal in accordance with Rules 208(a)(4), SCACR and 260(a), SCACR.

² As an additional consideration for this Court, in Appellant's Return, Appellant states that, as another basis for denying the Department's Motion, "[the Order of Dismissal] demonstrates that the appeal presents concrete reviewable questions." Appellant's Return, p. 3. In the event this Court granted Appellant an extension of the deadline for Appellant to serve and file his Initial Brief, this Court would be unable to rule on any issue Appellant has with the Order of Dismissal. Specifically, the Department would request this Court to take note of Rule 29(D) of the ALC Rules, which states the following: "A party must file a motion for reconsideration prior to filing a notice of appeal and must state with particularity the points supposed to have been overlooked or misapprehended by the Court." Rule 29(D), SCALCR. As stated in detail within the Department's Motion, Appellant failed to properly file a motion for reconsideration of the Order of Dismissal in accordance with Rules 4(B) and Rule 7(A) of the Rules of Procedure of the Administrative Law Court. Because Appellant failed to properly file a motion for reconsideration, this Court lacks jurisdiction, therefore this matter must be dismissed.

Respectfully submitted,

S/ Joseph A. Giordano
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Columbia, South Carolina

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CERTIFICATE OF SERVICE

I, Joseph A. Giordano, attorney for the South Carolina Department of Environmental Services does hereby certify that on this 8th day of September, 2026, I have served the ***Respondent's Reply to Appellant's Return to Respondent's Motion for Dismissal of Appeal Arising from ALC Docket No.: 26-ALJ-07-0089-CC*** by mailing a copy of same to all known parties of records, U. S. Mail, First Class to the following:

Mr. Robert Litzenberger 219 Talons Ridge Road Seneca, South Carolina 29672	Mr. Branden Baker Open Water Realty, LLC 7314 Trail Blvd Naples, Florida 34108
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/s/ Joseph A. Giordano
Joseph A. Giordano

September 8, 2026
Columbia, South Carolina