

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

S.C. SUPREME COURT

Appellate Case No. 2026-001999

Lavisha Green, Petitioner,

v.

South Carolina Department of Consumer Affairs, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals properly assign the burden of proof and dismiss the appeal for lack of jurisdiction due to Ms. Green's failure to timely file an appeal from the Administrative Law Court decision?
- II. Did the Court of Appeals correctly apply the receipt requirement and existing precedent in alignment with the Wells Fargo decision?
- III. Did the Court of Appeals properly weigh the evidence contained in the record when deciding the date of receipt of the Administrative Law Court decision was August 2, 2024?

COUNTER-STATEMENT OF THE CASE

Ms. Green did not dispute that she failed to timely file the mortgage log. R. p. 1. At trial, Ms. Green maintained that the failure to submit the log as required by law was an innocent mistake made by a new broker¹ and the penalty imposed was excessive under the circumstances. R. p. 1. Even though the Department sent three reminder notices prior to the March 31 deadline and a late notice on April 4, Ms. Green argued the fine was unreasonable because she was not notified until ninety (90) days had passed that \$9,000.00 in penalties had accrued.² R. pp. 2–3. By order dated August 2, 2024, the Administrative Law Judge (“ALJ”) upheld the Department’s decision to impose a \$9,000.00 administrative fine because Ms. Green offered no explanation for the failure to timely submit the mortgage log other than a lack of experience and some confusion regarding the filing requirements. R. p. 5. The ALJ concluded the court was without discretion to reduce or alter the penalty in any way given the statute’s mandatory language that licensees “shall pay a fine of one hundred dollars a day” for late submissions of their annual mortgage log. R. p. 5.

¹ Fab Seven LLC was first issued a mortgage broker license on July 1, 2021. R. p. 1. Ms. Green timely submitted Fab Seven LLC’s 2021 mortgage log on March 31, 2022. R. p. 3.

² Well before the imposition of the fine, the Department’s reminder notices to Ms. Green included a specific reference to the penalty accruing at one hundred dollars per day. R. pp. 68–71.

On August 2, 2024, the ALJ's law clerk emailed the final order and decision to the Department and to Ms. Green. R. p. 6; p.85. On August 28, 2024, Ms. Green replied to the law clerk's email, stating, "I never received a copy in the mail, received this message yesterday. I am appealing the decision and hiring legal representation." The law clerk replied by email, noting she had also mailed a copy of the order to the address Ms. Green provided to the court. R. p. 92. Ms. Green later claimed she also did not receive the hard copy the law clerk mailed. On September 6, 2024, Ms. Green served upon the Administrative Law Court ("ALC") and the Department a Motion of Continuance.³ R. pp. 95–96. Ms. Green did not file or serve a motion for reconsideration with the ALC at any time prior to filing the Notice of Appeal with the appellate court. On September 9, 2024, Ms. Green wrote the appellate court requesting additional time to file her appeal, arguing she was not properly served with the ALJ's final decision. Ms. Green indicated, "I only recently became aware of the decision, and therefore, I have not had the opportunity to file an appeal within the normal timeframe."

On September 25, 2024, fifty-four days after the ALC emailed the order to the parties, Ms. Green filed a Notice of Appeal with the appellate court. The Department moved to dismiss Ms. Green's appeal on the basis that her notice of appeal was not filed within thirty days of receiving the ALJ's final order, as required by Section 1-23-610(A)(1) (Supp. 2025) and Rule 203(b)(6), SCACR. In response, Ms. Green submitted an affidavit regarding the events after the ALJ issued his order. Ms. Green asserted she did not receive the final order until August 27, 2024, that she notified the court on September 9 that she wished to appeal the order and asked what steps were required, and that she was not informed of the court's requirement to first file a motion for reconsideration prior to appealing the order. Rule 29(D), SCALCR (2024). The appellate court

³ The Department never received an acknowledgement of receipt from the ALC and is basing the filing date upon the date provided in Ms. Green's accompanying cover letter.

denied the Department's motion to dismiss "without prejudice to the parties addressing this court's appellate jurisdiction in their briefs." S.C. Ct. App. Order Denying Respondent's Motion to Dismiss Appeal, at 1 (Jan. 13, 2025).

On June 10, 2026, the appellate court issued a per curiam unpublished opinion dismissing Ms. Green's appeal. The court determined Ms. Green failed to demonstrate she did not timely receive the ALJ's final order at the email address or mailing address she had provided to the court, and there was no credible evidence on the record to suggest Ms. Green did not receive the final order on August 2, 2024. Therefore, the court dismissed her appeal as untimely. No Judge issued a dissenting opinion. On August 4, 2026, Ms. Green filed a Petition for Rehearing, which the court denied on September 1, 2026, finding it was unable to discover that any material fact or principle of law had been overlooked or disregarded. Ms. Green filed a Petition for Writ of Certiorari with this Court on September 9, 2026.

ARGUMENTS

The South Carolina Supreme Court has held that not only does Rule 242(b), SCACR, emphasize the Supreme Court's discretionary authority "to review decisions of the court of appeals," but also that "it will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion." S.C. Dep't of Soc. Servs. v. Benjamin, 430 S.C. 235, 236, 2020 S.C. LEXIS 84, 1 (2020) (citations omitted). Specifically, the Court stated that a writ of certiorari will only be granted:

when there are special and important reasons, such as when there are novel questions of law; a dissent in the decision of the court of appeals; the decision of the court of appeals is in conflict with a prior decision of this Court; substantial constitutional issues are directly involved; or a federal question is included, and the decision of the court of appeals conflicts with a decision of the United States Supreme Court.

Id. at 1–2; Rule 242(b), SCACR.

In this appeal, there are no special or important reasons for this Court to grant a writ of certiorari: no novel question of law, no dissent in the Court of Appeals decision, no conflict with prior decisions of the Supreme Court, and no substantial constitutional issue involved. The Court of Appeals dismissed Ms. Green’s appeal on the basis that she failed to timely file an appeal from a decision of the Administrative Law Court. This per curiam unpublished opinion of the Court of Appeals is based on existing South Carolina precedent and is not in conflict with prior decisions of the South Carolina Supreme Court. Further, Ms. Green’s failure to timely file an appeal in compliance with a well-established court rule does not create a constitutional issue regarding due process principles of fair notice and a meaningful opportunity to be heard. Thus, the Department asks the Supreme Court to follow its historical jurisprudence of denying writs of certiorari for cases absent “special and important reasons.”

I. The Court of Appeals properly dismissed the appeal for lack of jurisdiction due to Ms. Green’s failure to timely file an appeal from the ALC decision.

Ms. Green asserts the Court of Appeals’ dismissal is an unconstitutional denial of due process and a meaningful opportunity to be heard. Rule 203(b)(6), SCACR contains a clear, strict requirement to serve a notice of appeal within thirty days. Further, Rule 263(b), SCACR, explicitly forbids courts from extending or shortening the time for serving the notice of appeal. Because Ms. Green filed notice fifty-four days after receipt, the Court of Appeals was divested of jurisdiction. Procedural rules are not suggestions; the court rules are strict boundaries of judicial power.

Procedural due process requires notice and an opportunity to be heard. Mathews v. Eldridge, 424 U.S. 319, 348–49, 96 S. Ct. 893, 909 (1976). It does not, however, require an

indefinite, open-ended timeline to seek judicial review. The thirty-day window provided under Rule 203, SCACR, and the South Carolina Administrative Procedures Act is an entirely reasonable and constitutionally sufficient time frame to initiate an appeal.

In short, Ms. Green's argument is that it is unconstitutional to hold her accountable to filing timelines because, she states, two reliable methods of delivery, email and mail, failed simultaneously. As discussed below, this Court already evaluated the constitutional balance between electronic court administration and finality, holding that electronic notification from a judicial or quasi-judicial portal serves as the proper trigger for the appellate clock. Wells Fargo Bank, N.A. v. Fallon Properties, S.C., LLC, 422 S.C. 211, 810 S.E.2d 856 (2018).

The Court of Appeals operated in strict conformity with both the rules, case law, and the constitution when it dismissed the appeal. As such, the Petition should be denied.

II. The Court of Appeals' determination of when the ALC order was received is consistent with applicable court rules, statutes, and case law, including Wells Fargo.

The Court of Appeals dismissed Ms. Green's appeal based on one issue: she failed to timely file the appeal after receipt of the ALC decision. Section 1-23-610(A)(1) and Rule 203(b)(6) require that the notice of appeal be filed with the court as well as served upon the opposing party and ALC, all within not more than thirty days after the party receives the final decision of the ALJ. S.C. Code Ann. § 1-23-610(A)(1); Rule 203(b)(6), SCACR. Section 1-23-610(A)(1) specifically provides:

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). The Appellate Court Rules also require that when a party appeals a decision of the ALC to the Court of Appeals, the notice shall be served on the agency, the ALC, and all parties of record “within thirty (30) days after receipt of the decision.” Rule 203(b)(6), SCACR. Ms. Green filed more than thirty days after receipt of the ALC’s decision.

This Court has long recognized that timely service of a notice of appeal is a non-waivable requirement and failure to timely serve divests the appellate court of jurisdiction resulting in dismissal of the appeal. First Carolina Nat’l Bank v. A & S Enterprises, Inc., 272 S.C. 339, 251 S.E.2d 762 (1979); Burnett v. South Carolina State Highway Dep’t, 252 S.C. 568, 167 S.E.2d 571 (1969); Rule 203(d)(3), SCACR (“If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.”).

Ms. Green contends the Court of Appeals misapplied Rule 203(b)(6), SCACR, and section 1-23-610(A)(1) by assessing the date the ALC sent the decision as the date she was in actual receipt of the decision. In support, she relies on Wells Fargo, where this Court determined that in cases deriving from the ALC, “the [C]ourt is concerned with the date the party actually receives the decision, not the date the party receives written notice that an order or judgment has been entered.” Wells Fargo, 422 S.C. at 218, 810 S.E.2d at 859.

The Wells Fargo opinion contains a discussion of White v. S.C. Dep’t of Health & Envtl. Ctrl., 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), acknowledging the distinction between Rule 203(b)(1) (appeals from circuit court) and 203(b)(6) (appeals from the ALC). This Court concluded, “when determining whether the service of a notice of appeal *from the ALC* is timely, the court is concerned with the date the party actually *receives the decision*, not the date the party receives written notice that an order or judgment has been entered.” Wells Fargo, 422 S.C. at 218,

810 S.E.2d at 859 (emphasis added). This Court overruled the Court of Appeals' decision in White "to the extent it [...] interprets 'receipt of the decision' to require receipt of the decision by mail or hand delivery in order to trigger the time to appeal under Rule 203(b)(6), SCACR." Id. at 219, 810 S.E.2d at 860. An email regarding an order or judgment, if sent from the court, an attorney of record, or a party, triggers the time to serve a notice of appeal.⁴ Id. at 217, 810 S.E.2d at 859.

In the current case, the record shows the ALC emailed the final decision to the parties on August 2 to the exact electronic mail addresses provided by each party. The Department received the email on August 2. Ms. Green ultimately responded to the court's August 2 email, which included the ALC's final decision as an attachment.

Ms. Green also relies upon Lemmons v. Maced. Water Works, Inc., 431 S.C. 186, 847 S.E.2d 471 (Ct. App. 2020), to argue that adopting a "send-date" theory for receipt would fundamentally change the triggering event of Rule 203(b)(6) into something that was not intended. The Department disagrees. In its assessment of the requirements of Rule 203(b)(1) (appeals from circuit court), the Lemmons court acknowledged that as of 2020, "the question of whether the e-mail's time-stamp can be presumed to be the date of a party's receipt of the notice has not yet been addressed by our appellate courts." Lemmons, 431 S.C. at 194, 847 S.E.2d at 476. As such, the Lemmons court "look[ed] to the Record on Appeal to determine the date of receipt of the circuit court's e-mail notice according to the standards of section 26-6-150(B)." Id. That section of the Uniform Electronic Transactions Act provides:

Unless otherwise agreed between a sender and the recipient, an electronic record is received when it: (1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and (2) is in a form capable of being processed by that system.

⁴ As discussed in Wells Fargo, "Rule 203(b)(1) only requires the party receive written notice that an order or judgment has been entered, whereas Rule 203(b)(6) requires the party receive a copy of the decision in order to trigger the time to appeal." 422 S.C. at 218–219, 810 S.E.2d at 860.

S.C. Code Ann. § 26-6-150(B). Because there was no record establishing the date the court's email notice entered counsel's server, the Lemmons court rejected the Utility's argument that the customer did not timely invoke the Court of Appeals' appellate jurisdiction. Lemmons, 431 S.C. at 194, 847 S.E.2d at 476.

In the decision before this Court, the Court of Appeals weighed the evidence in the record and distinguished the facts and circumstances of the Lemmons case from those of this case. Unlike the Lemmons case, the record in this case demonstrated the date of the ALC's email serving the parties with the final decision. This includes Ms. Green's reply to the court's August 2, 2024, email, which included the final decision as an attachment. The Court also addressed Ms. Green's assertion she never received the hard copy of the final decision the ALJ's law clerk stated she mailed on August 2 to the address provided to the court by Ms. Green. The Court determined the Record on Appeal before it "demonstrate[d] a pattern of behavior by Green of claiming she has not received notices sent to email or mailing addresses that she has provided for the purpose of receiving such notices." S.C. Ct. App. Order, p. 5 (June 10, 2026).

The Court of Appeals properly applied Rule 203(b)(6), section 1-23-610(A)(1), and established case law on the subject matter to the evidence in the record in determining Ms. Green received the decision on August 2, 2024, and dismissing her appeal as untimely. Because the questions of law were previously addressed and the Court of Appeals decision aligns with such precedent, and is otherwise not in conflict with prior decisions of this Court, the Petition should be denied.

III. The Court of Appeals correctly assigned the burden of proof and weighed the evidence on the Record on Appeal in determining Ms. Green received the ALC order on August 2, 2024.

Ms. Green asserts the Court of Appeals improperly shifted the burden of proof to her to prove nonreceipt of the August 2 email delivering the ALC's final decision. She proffers three pieces of evidence in support of her claim that she received the ALC order on August 27, 2024: her August 28 email where she told the ALJ's law clerk she received the August 2 email only the day before, her statement in her Notice of Appeal, and her affidavit filed in opposition of the Department's Motion to Dismiss. Ms. Green believes this evidence to be sufficient proof that she did not receive the email until August 27 but they each rely on her word alone.

As the Court of Appeals noted in its order, Ms. Green has established a pattern, from the initial ALC contested case hearing to the present action, of claiming not to receive notices, court correspondence, or orders at email or mailing addresses that she provides for that purpose. S.C. Ct. App. Order, at 5 (June 10, 2026). Her August 28 email to the ALJ's law clerk is only proof that she responded to the court's August 2 email, not proof of the content of her reply.⁵ That reply came from the same email address she provided to the ALC and she had used during the pendency of the case to correspond with the court. She claims to also not have received the hard copy of that same order that the ALJ's clerk mailed to the address Ms. Green provided. The Court of Appeals found the record void of any evidence to support her assertion. *Id.* at 6, n.1.

Ms. Green argues she was put in the untenable position of having to prove she did not receive the ALC order on August 2, 2024, effectively being faced with having to prove a negative. However, as the party contesting the date on which she received the ALC order, precedent requires

⁵ Ms. Green's reply also reinforces the Court of Appeals' analysis with respect to the Uniform Electronic Transactions Act because it further demonstrates that the order was sent in a form capable of being processed by her email service.

she provide some credible evidence to support her claim. South Carolina case law has long established that parties who raise a claim must provide sufficient evidence in support of it. On the issue of “proving a negative,” this Court concluded long ago:

There is a general rule of evidence that a party will not be required to prove a negative; but that is not inconsistent with another rule of logic and universal recognition, that he who affirms must prove, and therefore the plaintiff who alleges must make out his case. ‘The obligation of proving every fact lies upon the party who substantially asserts the affirmation of the issue.’

‘To the general rule that the burden of proof is on the party holding the affirmative, there are some exceptions in which the proposition, though negative in its terms, must be proved by the party who states it. One class of these exceptions will be found to include those cases in which the plaintiff grounds his right of action upon a negative allegation, and where, of course, the establishment of the negative is an essential element in his case[.]’

Latimer v. Latimer, 22 S.C. 257, 263 (1885) (internal citations omitted).

Because Ms. Green is the party asserting that she did not receive the ALC order by email on August 2, the burden of proof was hers to provide credible evidence to support that claim. The Court of Appeals properly weighed the evidence on the record before it: an August 2, 2024, email from the ALC transmitting the order to both parties’ designated email addresses; acknowledgement from the Department that said email was received by it on August 2; an August 28, 2024, email from Ms. Green saying she received the email the day before; her Notice of Appeal saying the same; Ms. Green’s affidavit saying the same; and a pattern of conduct by Ms. Green making similar claims at various points of this case. When submitting this evidence to scrutiny, it is clear the Court of Appeals was correct to conclude that Ms. Green received the ALC order on August 2, 2024.

Ms. Green asserts the Department is actually the party that must prove she did not receive the ALC order on August 2. This argument, however, fails because the Department is not the party disputing the date the order was received. The issue of burden of proof is well-established. It does

not fall into the category of a novel question. Further, the Court of Appeals' actions in this matter align with this Court's precedents. As such, the Petition should be denied.

CONCLUSION

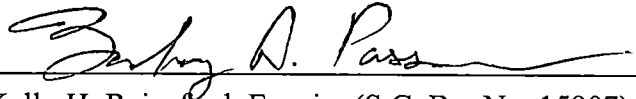
The holding in the Court of Appeals' per curiam unpublished opinion issued on June 10, 2026, is supported by cogent reasoning and sound interpretation of South Carolina law. The Court properly held Ms. Green failed to timely file her Notice of Appeal with the court because, looking to the Record on Appeal, she did not file her appeal within thirty days of receiving the August 2, 2024, ALC order, pursuant to Section 1-23-610(A)(1) and Rule 203(b)(6), SCACR. Ms. Green was unable to reasonably demonstrate how two reliable methods of delivery, email and mail, failed simultaneously. Furthermore, as the party who called into question the date that she received the ALC order, precedent demands that Ms. Green provide credible evidence to support her claim. The Court of Appeals determined the evidence before it was unconvincing. Also, a failure to comply with well-established rules requiring timely filing of a notice of appeal does not create a constitutional issue regarding due process principles of fair notice and meaningful opportunity to be heard. There are no special or important reasons for this Court to grant a writ of certiorari in this matter. There is no novel question of law, no dissent in the Court of Appeals decision, no conflict with prior decisions of the Supreme Court, and no substantial constitutional issue involved.

For the reasons stated herein, Ms. Green's Petition for Writ of Certiorari should be denied.

(signatures appear on following page)

Respectfully submitted,

October 9, 2026

A handwritten signature in cursive script, appearing to read "Zachary A. Passmore", written over a horizontal line.

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