

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

Gloria Parker, Employee,)
Respondent,)
vs.)
Fairfield County School System, Employer,)
and S.C. School Boards Insurance Trust,)
Carrier,)
Appellants.)

2013-CP-20-00305

ORDER DISMISSING APPEAL

2013 NOV 27 AM 11 04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

This is an appeal from a final decision of the South Carolina Workers Compensation Commission dated February 20, 2013. Respondent Gloria Parker has moved to dismiss the appeal on two grounds. She asserts (1) this court lacks jurisdiction of the appeal because the appellants failed to serve the Workers Compensation Commission with notice of their appeal within 30 days after receiving notice of the Commission's order, and (2) the appellants have failed to perfect or prosecute their appeal, in that they have not certified the record from the Commission to this court. The court heard arguments at a non-jury term in Fairfield County on November 14, 2013. For the reasons that follow, the respondent's motion is granted.

JURISDICTION

The appellants have certified they received the Commission decision on the date it was entered, viz., February 20, 2013. On March 1, 2013, they filed a notice of appeal¹ and served a

¹ The appellants initially filed this appeal with the South Carolina Court of Appeals. On August 2, 2013, the Court of Appeals transferred the appeal to this court because the workers compensation amendments permitting direct appeals to the Court of Appeals apply only to injuries that occurred after July 1, 2007. See *Pee Dee Regional Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007). It is undisputed that Ms. Parker's injury occurred on

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SC Court of Appeals

copy on the attorney for the respondent. However, the appellants did not serve the notice of appeal on the Workers Compensation Commission until July 3, 2013, over four months later. The respondent asserts this failure to serve the Commission within 30 days created a jurisdictional defect that could not later be cured.

The parties agree that the governing authority is *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008). There the Supreme Court held that the rules applicable to that case did not include a jurisdictional requirement for service on the Commission within any particular time. But the Court noted that the result would not be the same under current law:

Under the current law, the thirty-day deadline applies to service on an agency and proof of such service is required when a party files the notice of appeal with the Court of Appeals. The current version of section 1-23-380(A)(1), which became effective on July 1, 2006, states:

Proceedings for review are instituted by serving and filing notice of appeal as provided in the *South Carolina Appellate Court Rules* within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency, the Administrative Law Court, and all parties of record.

(emphasis added).

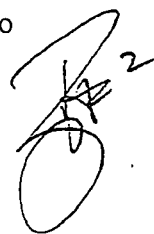
Section 1-23-380(A)(1) thus references the South Carolina Appellate Court Rules. The key jurisdictional provision of the appellate court rules is found in Rule 203, SCACR, which became effective on May 3, 2007. Rule 203, as it now reads, provides a jurisdictional requirement to serve the agency within thirty days. Rule 203(b)(6), SCACR, provides:

When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, 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.

380 S.C. at 96, 668 S.E.2d at 797-98 (emphasis in second paragraph added).

It is clear, therefore, that timely service on the agency whose decision is being appealed

October 19, 2006. The Court of Appeals did not determine whether the appellants' failure to serve the Commission timely deprived either that court or this one of jurisdiction.



is now a jurisdictional requirement. The issue dividing the parties is: on which side of the divide does this case fall? The appellants contend it is governed by the prior law because Ms. Parker's injury occurred before July 1, 2007, the effective date of certain workers compensation law amendments. The respondent counters that the current law applies because the appeal was initiated after the effective dates of 2006 amendments to the Administrative Procedures Act and 2006 revisions to the South Carolina Appellate Court Rules. The respondent has the better part of this argument.

The workers compensation amendments to which the appellants refer were adopted by Act No. 111 of 2007 and apply to cases in which the injury occurred on July 1, 2007, or thereafter.² Those amendments include a revision to code section 42-17-60, which relates to judicial review of Commission decisions.³ But the primary change to that section was to make workers compensation decisions appealable directly to the Court of Appeals instead of circuit court. Nothing in Act No. 111 purports to change the requirements for filing and service of a notice of appeal. Because these amendments are not the source of the "current law" to which the *Skinner* court refers, application of the timely service requirement is not limited to cases arising after July 1, 2007.

Instead, as the passage quoted from *Skinner* expressly indicates, the source of the jurisdictional requirement for timely service on the agency is the Administrative Procedures Act – specifically S.C. Code Ann. §1-23-380(A)(1),⁴ as amended effective July 1, 2006. As the

² 2007 Acts 111, part IV, § 2.

³ 2007 Acts 111, part I, § 30.

⁴ An amendment in 2008 renumbered this subsection as §1-23-380(1) and made an additional change not material here. 2008 Acts 334 § 5.



Skinner court observed, this section incorporates by reference the filing and service requirements of the Appellate Court Rules – specifically, Rule 203(b)(6), which requires that “the notice of appeal shall be served on the agency . . . and all parties of record within thirty (30) days after receipt of the decision” (emphasis added). The revision to Rule 203(b)(6) containing this requirement became effective on a permanent basis on May 3, 2007.⁵ But the same rule was adopted in materially identical form on an emergency basis effective August 15, 2006,⁶ over two months before Ms. Parker's injury. Thus, the 2006 revisions to both the APA and the appellate court rules -- which, taken together, make timely service on the agency a jurisdictional requirement -- took effect before the respondent's claim arose.

The appellants also argue that timely service is not jurisdictional here because Rule 203(b)(6) is expressly limited to cases appealed directly to the Supreme Court or Court of Appeals. But incorporation by reference by its very nature mandates that the statute so adopted (or, here, the court rule) is to be applied outside its original context. Therefore, limitations on the applicability of the adopted provision are not themselves adopted but are, in effect, overridden. See *University of South Carolina v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964) (When legislature applied the procedures in the Public Works Eminent Domain Law to condemnations by the university, it did not thereby incorporate the provision in that statute making it inapplicable in certain counties.); see also *Timmons v. South Carolina Tricentennial Commission*, 254 S.C. 378, 175 S.E.2d 805 (1970).

The first principle of statutory construction is to apply the expressed intent of the legislature. Here the General Assembly mandated that, in all appeals of administrative cases

⁵ Order No. 2007-05-03-01 (S.C. Supreme Court dated May 3, 2007).

⁶ Order No. 2006-08-15-01 (S.C. Supreme Court dated August 15, 2006).

pending on or after July 1, 2006,⁷ the appellant must comply with the South Carolina Appellate Court Rules in filing and serving the notice of appeal. This court must presume the legislature was aware that – as illustrated by this case – those appeals would include some in which the initial appeal is to the circuit court. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 570, 743 S.E.2d 778, 783 (2013) (courts must presume the legislature has knowledge of relevant law); *see also* 2007 Acts 387 § 2 ("Except as otherwise provided by law, an appeal [from an administrative decision] is to the court of appeals" (emphasis added)). The legislature was also presumably aware that all the appellate practice rules in the SCACR are, by their terms, applicable only in the Supreme Court and Court of Appeals. *See* Rule 101, SCACR (The appellate practice rules "govern[] practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals."). The only reasonable conclusion is that the legislature intended to apply the appellate court rules beyond their original scope insofar as they govern the requirements for filing and serving the notice of an administrative appeal.

If the phrase in Rule 203(b)(6) limiting its application to the Supreme Court and Court of Appeals meant the General Assembly could not borrow these requirements and apply them to circuit court appeals, the express mandate of section 1-23-380(1) would be negated for an entire class of appeals. This would mean, in addition, that no statute or rule governs filing and service in circuit court appeals. This is inconsistent with the legislative direction in §1-23-380(1), and it

⁷ The 2006 Administrative Procedures Act amendments included an effective date section providing in part:

This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act.

could not be what the General Assembly intended. I conclude that the jurisdictional requirement that an appellant timely serve the administrative agency with its notice of appeal applies to circuit court appeals after August 15, 2006, and therefore applies here.

Because the appellants did not serve the Commission with their notice of appeal within 30 days after they received its decision, neither this court nor the Court of Appeals could acquire jurisdiction of this appeal.

FAILURE TO PERFECT OR PROSECUTE APPEAL

An appeal from the an administrative agency decision is not a de novo hearing but instead is a review on the record made before the agency. S.C. Code Ann. § 1-23-380(4). For this reason, it is critical to the prosecution of an appeal that the appellant ensure the record below is certified to the reviewing court. The burden is on the appellant to prove convincingly that the agency's decision is unsupported by the evidence. *Tennis v. South Carolina Dep't of Soc. Serv.*, 355 S.C. 551, 558, 585 S.E.2d 312, 316 Ct. App. 2003).

The rules of civil procedure require that, after an appeal to the circuit court, the lower court or administrative agency must certify its record to the clerk of court within 30 days. Rule 75, SCRCF. When the record is filed, the clerk of the circuit court must notify the parties in writing of that filing. *Id.* If the appellant does not receive such a notification, it is on notice that the record has not been certified. *Joyner v. Glimcher Properties*, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002). The appellant must then act with due diligence and take the action necessary to compel the lower court or agency to certify the record. *Id.*, 356 S.C. at 463, 589 S.E.2d at 763-64. It is not the obligation of the circuit court to direct certification of the record *sua sponte*. *Id.* If the appellant does not act, the circuit court may dismiss for failure to

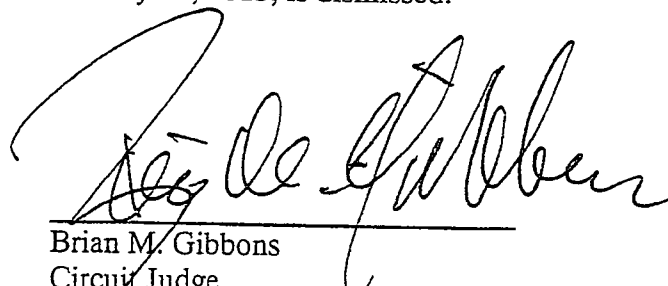


prosecute. *Id.* The language of the *Joyner* opinion suggests dismissal is discretionary with the circuit court.

This appeal was scheduled on the November 14, 2013, non-jury roster for a hearing on the merits as well as a hearing on the present motion to dismiss. The appeal was transferred to this court over three months before, and the case was scheduled on a prior roster but continued. Nevertheless, the appellants did not move to compel the Commission to certify its record. As a result, the court was unable to hear the merits of the appeal as scheduled. I conclude that these facts, independent of the jurisdictional defect discussed above, justify dismissal of this appeal.

IT IS THEREFORE ORDERED that the appellants' appeal of the decision of the Workers Compensation Commission dated February 20, 2013, is dismissed.

AND IT IS SO ORDERED.



Brian M. Gibbons
Circuit Judge

Chester, South Carolina

November 25, 2013

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FAIRFIELD COUNTY
CLERK OF COURT
LETTY J. BLOOM

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE CIRCUIT COURT FOR
THE SIXTH JUDICIAL CIRCUIT

C.A. #: 2013-CP-20-305

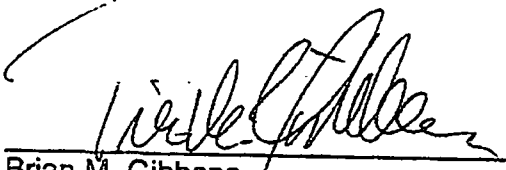
Gloria Parker
Claimant/Respondent,
vs.
Fairfield County School District,
Employer/Appellant,

**ORDER DENYING MOTION
FOR RECONSIDERATION**

After having reviewed Appellant's motion to reconsider the Court's Order to Dismiss the Appeal, and after reviewing the file and the Court's extensive notes, and considering the applicable statutory law, case law and evidence presented, the Court respectfully denies Appellant's motion.

AND IT IS SO ORDERED.

Chester, SC
January 9, 2014



Brian M. Gibbons
Circuit Court Judge