

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 18 2014

Appeal from the Administrative Law Court

SC Court of Appeals

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No.: 2014-001484

Stephanie Stewart,
Appellant,

v.

**South Carolina Department of Employment & Workforce,
and Oconee County, South Carolina,**
Respondents.

**MEMORANDUM IN SUPPORT OF APPELLANTS' RETURN IN OPPOSITION TO
RESPONDENTS' JOINT MOTION TO DISMISS WITH APPELLANTS' MOTION TO
ENLARGE TIME FOR FILING A RETURN**

Stephanie Stewart, Pro-Se
2142 Toccoa Highway
Westminster, South Carolina 29693
Phone: 864-647-2216

E.B. McLeod III, Esquire
S. C. Dept. of Employment & Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-2666

4. On August 2, 2014, Stewart filed a “Motion for Extension of Time to File Initial Brief” with a Proof of Service certifying delivery of the same to the Respondents by depositing such in U.S. Mail with sufficient postage affixed for delivery.

5. On August 6, 2014, this Court granted Stewarts’ Appeal by way of an Order dated August 6, 2014. On August 7, 2014, the Respondent forwarded a Memorandum to the clerk of this court stating non-receipt of Stewarts’ Motion and requesting Stewart comply with Rule 262(B), SCACR. Stewart received a copy of the Memorandum from the clerk on August 15, 2014 after returning from an absence of her residence for an excess of one week.

6. On August 25, 2014, Stewart forwarded a Memorandum to the clerk informing that Rule 262(B) had been adhered to in each of her Pleadings and the Respondent historically had committed recurring administrative errors.

7. On August 29, 2014, Stewart filed a second Motion for extension of time to file her initial brief. On September 6, 2014, Stewart received the Respondents’ Return Opposition dated September 4, 2014. Such referenced the Respondents’ Motion to Dismiss and was the first knowledge Stewart received of the Pleading’s existence.

8. On September 10, 2014, Stewart filed a Reply asserting her non-receipt of the Respondents’ Motion to Dismiss and expressing her adherence to SCACR Rule 203(b)(6) and (d)(2)B) in filing her Notice of Appeal. Stewart requested the Court grant her Motion for an Extension of Time and an opportunity to respond to the Motion to Dismiss.

Subsequently, this appeal follows.

I. **RESPONDENTS’ JOINT MOTION TO DISMISS FOR LACK OF JURISDICTION SHOULD BE DENIED**

The Respondents move this Court to dismiss this appeal for lack of jurisdiction pursuant to S.C. Code Ann. Section 1-23-610 (A)(1) because of their alleged non-receipt of Stewarts’ Notice of Appeal. Notably, the Respondents do not argue that the Notice was untimely, improper, or more importantly, not actually placed in the mail for delivery to each party. The sole argument is non-receipt of such, thus, jurisdiction upon this Court does not confer. Stewart vehemently disagrees. Such a simple proposition by the Respondent would actually confer jurisdictional authority of what can be heard on appeal before this Court to the SCDEW. In any case the Respondent chooses, it could simply allege “non-receipt” of a notice as a procedural defense to dismiss any and every case. Section 1-23-610 (A)(1) explicitly provides:

A notice of appeal by an aggrieved party must be served and filed with the court of appeal as provided in the [SCACR] ... and served on the opposing party and the ALC not more than thirty days after the party receives the final decision ...

As “served on the opposing party” is the issue of contention, Stewart directs this Court’s attention to SCACR Rule 262(a)(2) and (b); such defines service and what constitutes proof of service. The rule in pertinent part states:

(a) Filing, any document filed with the Appellate Court shall be accompanied by proof of service of such document on all parties ‘and’ (b) Service, Service by mail is complete upon mailing.

The text of Rule 262 on its face, resolves this adversely against the Respondents’ position. “Service by mail is complete upon mailing”. Rule 262 does not require Stewart to prove receipt of the notice by the Respondents as a prerequisite to confer jurisdiction upon this Court. Upon mailing the notice of appeal and proof of service, a presumption attached that the addressee received the mail in due course. *Calder v. Commercial Cas. Ins.* 182 S.C., 188 S.E. 864 (1936). See also *Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 395 S.E. 2d 440 (1990). “Because service is complete upon mailing, non-receipt of the [notice] does not affect the validity of service.” In re *Eagle Bus. Mfg. Inc.* 62 F.3d 730, 735 5th Cir (1995), cited by *U.S. v. Wright* U.S. App Lexis 35716 4th Cir (2000). See also Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Section 1148 at 430-31 (1987 & 2000), citing cases holding that service is complete upon mailing regardless of non-receipt. Thus, the central issue in determining whether the notice was served is whether the notice was “actually” placed in the mail and not whether the Respondents received such. Mailing of the notice constitutes service upon Respondent even if the notice was not received. See *Carter v. McGowan* 524 F. Supp. 1119 U.S. Dist. Ct. Nev. (1981).

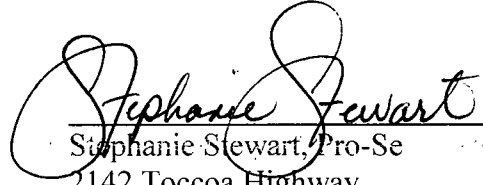
The Notice of Appeal and its Proof of Service evidences that the Notice was in fact mailed. The proof of service being valid, signed, and certified, shows such was accomplished pursuant to SCACR procedure. Respondents’ Affidavits contradicting Stewarts’ proof of actual mailing by attesting non-receipt does not affect the validity of service. “Accepting counsel’s mere denial of receipt as conclusive evidence that the [notice] was not mailed ... would implicitly rewrite Rule 262 to require [proof of receipt] to validate service”. See *Wright*, U.S. App lexis 33122. See Rule 262(b) (“Service by mail is complete upon mailing”). See also *Eagle*, 62 F.3d at 735-36 (Stating that a denial of receipt is insufficient to rebut a presumption that actual mailing occurred). *Timmons v. U.S.* 194 F.2d 357, 361 4th Cir. (1952) (Holding that ... [proof of service] is sufficient to establish service in the absence of any requirement as to the form of proof and of a seasonable objection). This Court should decline to extend Rule 262s’ service requirement “proof of receipt” and offset the Respondents’ Affidavits evidentiary value by Stewarts’ valid proof of service and her Sworn Affidavit (Exhibit A).

CONCLUSION

In conclusion, this Court should grant Stewarts' request and DENY the Respondents' Motion to Dismiss

Dated this 16th day of September, 2014

Respectfully Submitted,


Stephanie Stewart, Pro-Se
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Westminster, South Carolina 29693
Phone: 864-647-2216

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

SWORN AFFADAVIT

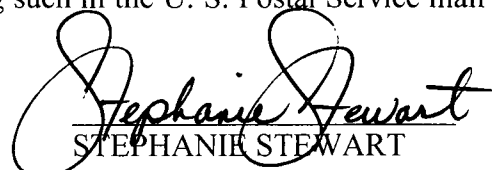
PERSONALLY came and appeared before me, the undersigned Notary, the within named Stephanie Stewart, who is a resident of Oconee County, 2142 Toccoa Highway, State of South Carolina, 29693, and makes her statement and Sworn Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. On July 8, 2014, I, Stephanie Stewart, submitted a Notice of Appeal in the matter of *Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County*, Case No.: 2014-001484 to the South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina, 29211, by depositing such in the U. S. Postal Service mail with sufficient postage for delivery.


2. On July 8, 2014, I, Stephanie Stewart, served a Notice of Appeal in the matter of *Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County*, Case No.: 2014-001484 to the South Carolina Administrative Law Court, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, 29201, by depositing such in the U. S. Postal Service mail with sufficient postage for delivery.

3. On July 8, 2014, I, Stephanie Stewart, served a Notice of Appeal in the matter of *Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County*, Case No.: 2014-001484 to South Carolina's Department of Employment and Workforces' Counsel of Record E.B. McLeod, III, Post Office Box 8597, Columbia, South Carolina, 29202, by depositing such in the U. S. Postal Service mail with sufficient postage for delivery.

4. On July 8, 2014, I, Stephanie Stewart, served a Notice of Appeal in the matter of *Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County*, Case No.: 2014-001484 to Oconee County's Counsel of Record Reginald M. Gay, III, Post Office Box 447, Greenville, South Carolina, 29602, by depositing such in the U. S. Postal Service mail with sufficient postage for delivery.


STEPHANIE STEWART
AFFIANT

Dated and sworn to before me this the
16 day of September 2014.


Notary Public of South Carolina
My Commission Expires: _____

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Stephanie Stewart,
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v.

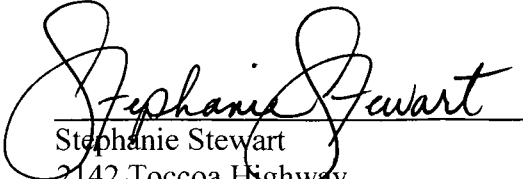
**South Carolina Department of Employment & Workforce,
and Oconee County, South Carolina,**
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CERTIFICATE OF SERVICE

I certify that I have served the above Memorandum in Support of Appellants' Return in Opposition to Respondents' Joint Motion to Dismiss with Appellants' Motion to Enlarge Time for Filing a Return, along with attached Sworn Affidavit (Exhibit A), by fax on September 16, 2014 to each parties' address of record listed in the above captioned case, and by depositing the same in the United States mail, postage prepaid, on September 16, 2014 to each parties' address of record listed in the above captioned case.

Dated this 16th day of September 2014.


Stephanie Stewart
2142 Toccoa Highway
Westminster, South Carolina 29693
Phone: 864-647-2216
Pro-Se

September 16, 2014

Stephanie Stewart
2142 Toccoa Highway
Westminster, South Carolina 29693

Clerk of Court, Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Stewart v. SCDEW et. al., Case No.: 2014-001484

Ms. Kitchings:

Please find enclosed for filing a Memorandum in Support of Appellants' Return in Opposition to Respondents' Joint Motion to Dismiss with Appellants' Motion to Enlarge Time for Filing a Return, along with attached Sworn Affidavit (Exhibit A). Should you have any questions or need additional information, please do not hesitate to contact me.

Respectfully Submitted,



Stephanie Stewart
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South Carolina Court of Appeals
Attn: Clerk of Court Jenny Abbott Kitchings
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Columbia, South Carolina 29211

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