

The South Carolina Court of Appeals

Hugh Allen Palmer, Appellant,

v.

Richland County Assessor, Respondent.

Appellate Case No. 2015-000514

ORDER

On September 11, 2014, the Administrative Law Court (ALC) filed a final order in Respondent's favor in a contested case brought by Appellant. Thereafter, Appellant filed a "Motion to Alter or Amend or for a Rehearing." On October 2, 2014, Respondent filed a response to that motion. On February 11, 2015, having not received a ruling on the motion, Appellant contacted the ALC to inquire about the motion. In response, the ALC originally scheduled a hearing on the motion; however, on March 6, 2015, the ALC sent the parties notice that it cancelled the hearing. The ALC issued no additional orders in the case. Appellant then served his notice of appeal on March 11, 2015. Respondent has now filed a motion to dismiss, contending Appellant failed to timely serve the notice of appeal.

Rule 203(b)(6) of the South Carolina Appellate Court Rules provides that appeals from the ALC must be served within thirty days after receipt of the ALC's decision. "If a timely petition for rehearing is filed with [the ALC], the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion." Rule 203(b)(6), SCACR. Rule 29(D) of the Rules of Procedure for the ALC addresses motions for reconsideration.¹ Rule

¹ Although Appellant argues he made a motion for rehearing pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, this Court believes that Rule 29(D) of the Rules of Procedure for the ALC governs. Rule 69 of the ALC Rules provides that the ALC Rules shall govern procedural aspects of a case once the ALC acquires jurisdiction. Rule 68 allows the ALC, in its discretion, to apply the South Carolina Rules of Civil Procedure when there are "questions not addressed by" the

29(D) allows any party to "move for reconsideration of a final decision of the administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP" Rule 29(D) further provides that the ALC shall act on the motion for reconsideration within thirty days of any responsive filing, and "[i]f no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion."

Respondent's response to Appellant's "Motion to Alter or Amend or for a Rehearing" was filed on October 2, 2014. The ALC took no action on the motion; accordingly, the motion was "deemed denied" thirty days after the filing of the response. Appellant did not serve his notice of appeal until March 11, 2015, which is more than thirty days after his motion was deemed denied. Accordingly, because Appellant failed to timely serve his notice of appeal and this Court cannot extend the time for service, Respondent's motion to dismiss is granted. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof." (emphasis added)). The remittitur will be sent down as required by Rule 221(b), SCACR.



FOR THE COURT



Columbia, South Carolina

cc:

Kenneth B. Wingate, Esquire
Matthew Joseph Myers, Esquire
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Jana E. Shealy

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ALC Rules; however, here, there is no question not addressed by the ALC Rules. Accordingly, this Court does not believe Rule 59 of the South Carolina Rules of Civil Procedure is applicable.