

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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NOV 29 2016

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Carmen T. Mullen

SC Court of Appeals

Case No: 2015-CP-07-02946

Carlos Kinlaw,Appellant;

v.

South Carolina Workers' Compensation Commission,Respondent.

MOTION TO DISMISS APPEAL

Pursuant to Rules 203(b)(1), and 240, SCACR, Respondent the South Carolina Workers' Compensation Commission moves this Court to dismiss Appellant's appeal based on lack of jurisdiction, where service of notice of intent to appeal was untimely.

Appellant received written notice that the order of the Court of Common Pleas had been entered on September 16th, 2016. *See* Appellant's Notice of Appeal, November 8th, 2016. Appellant served written notice of the appeal on the undersigned counsel for Respondent on November 8th, 2016. *Id.* Appellant attempted to file a Notice of Appeal with the Court of Appeals on October 21st, 2016. *See* Appellant's Notice of Appeal, October 21st, 2016. However, this

Notice of Appeal was deficient and returned to Appellant for correction by the Court on October 27th, 2016. *See* Deficiency Letter, October 27th, 2016. The Deficiency Letter clearly stated “All parties are advised that service of the amended notice of appeal does not affect the timelines for the appeal.” *Id.*


Under Rule 203(b)(1) “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. “Service of the notice of appeal is a ‘jurisdictional requirement, and [the appellate court] has no authority to extend or expand the time in which the notice of intent to appeal must be served.’” *Camp v. Camp*, 386 S.C. 571, 574-75, 689 S.E.2d 634, 636 (2010) (quoting *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)).

Regardless of whether Appellant’s Notice of Appeal was effectively filed and served in accordance with Rule 262, SCACR, on October 21st, 2016, or on November 8th, 2016, it is untimely and therefore must be dismissed. By Appellant’s own admission, he received notice that the order of the Court of Common Pleas had been rendered on September 16th, 2016. Therefore, the latest he could have served his Notice of Appeal pursuant to Rule 203(b)(1) was October 16th, 2016. Both Notices of Appeal, dated October 21st, 2016 and November 8th, 2016, fall outside of that timeframe. Accordingly, the Court of Appeals does not have jurisdiction to consider the appeal and it should be dismissed.

CONCLUSION

Based on the authorities cited above, Respondent moves the Court to dismiss Appellant's appeal as untimely based on lack of jurisdiction, where service of notice of intent to appeal was not completed in the time period provided for by law.

November 29th, 2016



J. Keith Roberts, S.C. Bar No.: 100735
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(803) 737-5701

*Attorneys for Respondent South Carolina
Workers' Compensation Commission*

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2015-CP-07-02946

Carlos Kinlaw,.....Appellant,

v.


South Carolina Workers' Compensation Commission,.....Respondent.

PROOF OF SERVICE

I, the undersigned counsel for Respondents, hereby certify that I have served a copy of the MOTION TO DISMISS by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, address to the *pro se* Appellant on this the 29th day of November, 2016:

Carlos Kinlaw
2 Taylor Court
Bluffton, SC 29910

11/29/, 2016



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Workers' Compensation Commission

November 29th, 2016

South Carolina Court of Appeals
The Hon. Jenny Abbott Kitchings, Clerk of Court
1220 Senate St.
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Carlos Kinlaw, Appellant v. S.C. Workers' Compensation Commission,
Respondent.
Appellate Case No.: 2016-002182

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent the South Carolina Workers' Compensation Commission's Motion to Dismiss, which I would appreciate your filing with the court. Respondent understands that, as an agency of the State of South Carolina, it is exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted.

By copy of this letter to the last known address for Mr. Carlos Kinlaw, Appellant *pro se*, I am hereby serving him with a copy of our Motion. Please see the attached Certificate of Service.

If there is anything further the court requires from the Respondent at this time, please do not hesitate to ask.

With warmest regards,

Sincerely,

A handwritten signature in cursive script that reads "J. Keith Roberts".

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure

Cc: Mr. Carlos Kinlaw
2 Taylor Court
Bluffton, SC 29910

South Carolina Workers' Compensation Commission

1333 MAIN STREET, SUITE 500

P.O. Box 1715

COLUMBIA, SOUTH CAROLINA 29202-1715

RETURN SERVICE REQUESTED

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