

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Panel

RECEIVED

Case No. 2019-000661

MAY 06 2019

SC Court of Appeals

Susie Henley, Employee,

Appellant,

v.

Otis Spunkmeyer, Employer, and
Trumbull Insurance Company c/o
The Hartford, Carrier

Respondents.

JEANNETTE PADGETT, JOEL PADGETT, AND MAURICE PADGETT'S
MOTION TO DISMISS

The Padgetts hereby move before the Court that David Henley's current appeal be dismissed for a jurisdictional defect based upon David Henley's failure to timely serve notice of the appeal on the South Carolina Workers' Compensation Commission.

This case revolves around determining the proper beneficiaries to receive the death benefits of Susie Henley, who died in 2012 while acting in the course and scope of her employment with Otis Spunkmeyer. The Single Commissioner and Appellate Panel initially determined she had no surviving spouse or dependents so her three adult children, Jeannette Padgett, Joel Padgett, and Maurice Padgett, were her proper beneficiaries pursuant to S.C. Code Ann. Sec. 42-9-140(A). David Henley appealed that order to the Court of Appeals, which remanded the case "to the Appellate Panel to make specific findings on whether David [Henley] qualifies as a dependent under section 42-9-120." Henley v. Otis Spunkmeyer, Op. No. 2018-UP-188 (S.C. Ct. App. filed

May 9, 2018). On March 19, 2019, the Appellate Panel issued an order finding that David Henley was not a dependent of Susie Henley. The order contained specific, express findings of fact on that issue. The S.C. Workers' Compensation Commission sent notice to the parties of this order by e-mailing a copy of the order to counsel for all parties Mar. 19, 2019. (Exhibit A – E-mail from S.C. Workers' Compensation Commission.) David Henley then filed a notice of appeal with the Court of Appeals on Apr. 18, 2019, and served it on Otis Spunkmeyer's counsel and the Padgetts' counsel that same day. David Henley did not serve the notice of appeal on the S.C. Workers' Compensation Commission until Apr. 25, after being notified of that deficiency by the Court of Appeals.

A party appealing a decision from an administrative tribunal must serve the other parties and the administrative tribunal with the notice of appeal within thirty days after receiving the decision. Rule 203(b)(6), SCACR (“When a statute allows a decision of the ... 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 ... within thirty (30) days after receipt of the decision.”); see also Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 668 S.E.2d 795, 797-98 (2008) (“Rule 203, as it now reads, provides a jurisdictional requirement to serve the agency within thirty days.”). David Henley did not comply with this required timeframe. He received the decision Mar. 19, 2019, but did not serve the notice of appeal on the S.C. Workers' Compensation Commission until Apr. 25, which was thirty-seven days after receiving the agency's decision.

Timely service of the notice of appeal is a jurisdictional requirement that cannot be extended by the Court. The appellate court rules state that the time required by the rules to perform “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....” Rule 263(b), SCACR (emphasis added). “This Court has

consistently stated that service of the notice of appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of appeal must be served.” Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zonning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383 (2000). “The requirement of service of the notice of appeal is jurisdictional, i.e. if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14, 602 S.E.2d 772 (2004).

The Court of Appeals lacks jurisdiction to hear this appeal because David Henley failed to serve the notice of appeal on the S.C. Workers’ Compensation Commission within thirty days of receiving the decision as required by Rule 203(b)(6). The Court of Appeals, therefore, should dismiss David Henley’s appeal.

Respectfully submitted,



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Attorney for Jeannette Padgett, Joel
Padgett, and Maurice Padgett

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May 2, 2019

**Exhibit A – E-mail from S.C. Workers’ Compensation
Commission**



Jamison Tinsley <tinslerj@gmail.com>

Full Commission Order - WCC#:1212974 - HENLEY

appeals@wcc.sc.gov <appeals@wcc.sc.gov>

Tue, Mar 19, 2019 at 12:59 PM

To: HEATHER.CULLUM@mgclaw.com, JOYCECHEEKS@gmail.com, MGEORGE@mgclaw.com, TINSLERJ@gmail.com, WATSONLAWFIRM@sc.twcbc.com, APPEALS@wcc.sc.gov

Attached is the Full Commission Order for WCC#: 1212974

R08 ORD - Full Commission Order - 3/19/2019 - ORDER#: 80393 - WCC #: 1212974

 **OB7FD5.pdf**
232K

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PROOF OF SERVICE

I certify that I have served the original and six (6) copies of Jeannette Padgett, Joel Padgett, and Maurice Padgett's Motion To Dismiss on the S.C. Court of Appeals and counsel for the Respondent by U.S. Mail Delivery, postage pre-paid on May 2, 2019, addressed to S.C. Court of Appeals, at 1220 Senate Street, Columbia, South Carolina 29201 and to Joyce Farr Checks, Esquire, at Post Office Box 881, Columbia, SC 29202 and A. Mundi George, Esquire, at Post Office Box 12519, Columbia, SC 29211.

May 2, 2019



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May 2, 2019

Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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re: Appellate Case No.: 2019-000661

SC Court of Appeals

Dear Court of Appeals:

Enclosed please find the original and six (6) copies of Jeannette Padgett, Joel Padgett, and Maurice Padgett's Motion To Dismiss in the above-referenced case along with Proof of Service for filing. Also enclosed is check number 2553 in the amount of fifty dollars (\$50.00) for the filing fee.

Please contact me should you have questions or concerns.

Yours truly,



R. Jamison Tinsley, Jr.

RJTJr/cct

Enclosures as indicated

cc: Joyce Farr Cheeks, Esquire
Mundy George, Esquire

Tinsley & Tinsley, PC
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