

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

Appellate Case No. 2019-001254  
WCC File No. 1506114

**RECEIVED**  
OCT 25 2019  
SC Court of Appeals

Frankie Padgett, ..... Respondent/Appellant,

v.

Cast and Crew Entertainment Services, Inc., Employer,  
and American Zurich Insurance Company, Carrier, ..... Appellants/Respondents.

RETURN TO MOTION TO DISMISS APPEAL

Respondent/Appellant, by and through undersigned attorney, hereby files his Return to Motion to Dismiss Appeal. Respondent/Appellant received the motion on October 15, 2019.

Appellant/Respondents' timeline does contain one error, but is otherwise correct. The timeline is as follows:

- Decision and Order served on the parties on July 3, 2019.
- Appellants/Respondents served their Notice of Appeal on by mail on July 25, 2019,
- Respondent/Appellant served his Notice of Appeal as a cross-appeal on August 2, 2019, with filing complete on August 5, 2019. Due to a clerical error, the Notice of Appeal was mailed to the wrong address and wrong law firm (as shown by comparing the address on the Notice of Appeal and the Certificate of Service).
- On August 16, 2019, the paralegal to Mr. Dunbar sent an email to the paralegal for

Mr. Samuels stating: “Will you please send me a copy of Mr. Samuels’s appeal for the above-referenced claim? I hope you have a great weekend.”

- On September 4, 2019, a second email was sent by Mr. Dunbar to Ms. Samuels and his paralegal stating: “Please send me a copy of your appeal. I never received such.”
- On September 12, 2019, Appellant/Respondent filed and served the Notice of Appeal with a corrected Certificate of Service on Respondents/Appellants. The letter stated: “Enclosed please find a **Notice of Appeal** in the above reference case. Service was previously attempted, but due to a clerical error was sent to the wrong address.”

The above shows that the Cross-Appeal was timely filed and that service was *timely attempted*. However, actual service was not completed until September 12, 2019, which is admittedly well outside the date required by the Rule 203, SCRAP (“the notice of appeal shall be served on the agency, . . . and all parties of record within thirty (30) days after receipt of the decision.”).

The dispositive issue here is whether the Court has jurisdiction over the cross-appeal. The general rule is that “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. South Carolina Department of Transportation, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). If this is the controlling rule, then Respondent/Appellant concedes the cross-appeal should be dismissed.

The difference here is that this is a cross-appeal. The Court already had jurisdiction over the matter due to the initial appeal from Appellants/Respondents. Furthermore, Appellant/Respondents had notice of the cross-appeal no later than August 16, 2019. As such, this is no longer a jurisdictional issue, such that the Court may have authority to forgive the clerical error. Indeed,

while Rule 263 provides the “time for serving the *notice of appeal* under Rules 203 and 243 may [not] be extended by the appellate court,” under a liberal construction the rule could be read to reference the *initial* notice of appeal, rather than a notice of cross-appeal. The logic here is that the issue is no longer jurisdictional as the appellate court now has exclusive jurisdiction over the matters on appeal.

Should the Court apply this liberal construction, Respondent/Appellate requests that (1) the motion to dismiss be denied; and (2) the time for filing the Initial Brief of Respondent/Appellant be extended until 10 days after issuance of the Order granting or denying the Motion to Dismiss. Should the Court hold that Rule 263 applies to cross-appeals the same way it applies to initial appeals, Respondent/Appellant acknowledges that his Notice of Appeal was untimely served and must be dismissed.

Respectfully Submitted:



Stephen B. Samuels  
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October 25, 2019  
Columbia, South Carolina

Counsel for Respondent/Appellant

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**PROOF OF SERVICE**

I certify that I, Wanda Powell, paralegal for the Samuels Law Firm, LLC, have served the **Respondent/Appellant's Return to Motion to Dismiss Appeal** upon counsel for the Appellants/Respondents and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage paid, addressed as follows:

Vernon F. Dunbar, Esquire  
McAngus Goudelock & Courie, LLC  
P.O. Box 2980  
55 East Camperdown Way, Suite 300  
(29601)  
Greenville, SC 29602

October 25, 2019



Wanda Powell  
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(803) 779-4000



STEPHEN B. SAMUELS  
P. JASON REYNOLDS  
ATTORNEYS AT LAW

October 25, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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OCT 25 2019  
SC Court of Appeals

RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American  
Zurich Insurance Company c/o Zurich North America  
W.C.C. File Number: 1506114

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the **Respondent/Appellant's Return to Motion to Dismiss Appeal and Proof of Service**, in the above case.

Please have your staff file the Respondent/Appellant's Return to Motion to Dismiss Appeal and Proof of Service and return a clocked copy in the enclosed self-addressed stamped envelope.

Respectfully,

Stephen B. Samuels

Enclosure(s) as stated

cc: Vernon F. Dunbar, Esq.

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