

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

Case No.: 18-ALJ-22-0275-AP

Appellate Case No. 2018-002107

Adrian Wilson,

Appellant,

v.

South Carolina Department of Employment
and Workforce & Wateree Community Actions, Inc.,

Respondents.

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MAR 13 2020
SC Court of Appeals

RETURN TO APPELLANT'S MOTION TO RECALL THE REMITTITUR

Respondent South Carolina Department of Employment and Workforce (the Department) submits this return to Appellant Adrian Wilson's motion to recall the remittitur. Based on the following grounds, the Department respectfully requests this Court deny Appellant's motion.

I. Procedural History

Appellant filed this appeal on November 26, 2018, following a final decision from the Administrative Law Court (ALC), and on February 1, 2019, the Court granted Appellant's motion to proceed in forma pauperis. However, Appellant failed to prosecute her appeal by filing her initial brief and designation of matter, and the Court dismissed the appeal on May 21, 2019. On

June 3, 2019, Appellant filed a motion to reinstate her appeal. The Department did not oppose Appellant's motion, and the Court granted Appellant an additional thirty days from July 31, 2019, to file her initial brief and designation of matter. The Court explained it would rule on Appellant's motion upon the expiration of thirty days. Despite the Court allowing Appellant additional time to pursue her appeal, Appellant did not file her initial brief and designation of matter. Indeed, Appellant did not take any action in response to the Court's July 31, 2019 order.

Subsequently, on November 14, 2019, the Court issued an order construing Appellant's June 3, 2019 motion as a petition for rehearing and denying the petition. The Court explained it was "unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing." Appellant took no action following the Court's November 14, 2019 order. On December 30, 2019, the Court remitted the appeal pursuant to Rule 221(b), SCACR. Approximately two months later, on February 27, 2020, Appellant filed a motion to recall the remittitur, claiming she "received some communications [from the Court] but not all of them." Appellant admits in her motion she received the Court's December 30, 2019 remittitur, but she fails to explain why she waited almost two months to file the motion seeking to recall the remittitur.

II. The Court should deny Appellant's motion to recall the remittitur because this Court properly sent the remittitur pursuant to Rule 221(b), and thus, this Court no longer has jurisdiction to hear motions.

This Court properly sent the remittitur relating to this appeal, and thus, the Court no longer has jurisdiction over this appeal. The Court lacks jurisdiction to hear motions relating to this appeal. When this Court denies a petition for rehearing, it subsequently sends the remittitur after the time for filing a petition for a writ of certiorari has expired. Rule 221(b). "When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion

can be heard thereafter." *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007). "The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court." *Id.* Once this Court issues the remittitur, the circuit court or administrative tribunal "acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 351–52, 559 S.E.2d 348, 385 (Ct. App. 2001).

In *Wise*, this Court dismissed the appeal and issued the remittitur. 372 S.C. at 174, 642 S.E.2d at 551. Later, the appellant filed a motion with our supreme court seeking an "enlargement of time." *Id.* The supreme court denied the motion after finding this Court's issuance of the remittitur "ended appellate jurisdiction over the matter." *Id.* The appellant then filed a motion to alter or amend with the supreme court. *Id.* The supreme court explained this Court did not send the remittitur by mistake, error, or inadvertence of the court and, instead, correctly sent the remittitur pursuant to Rule 221(b). *Id.* Thus, our supreme court found, it did not have jurisdiction over the appeal and could not entertain any motions. *Id.*; see also *State v. Barnes*, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) ("In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer" (quoting *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893))).

Here, this Court properly sent the remittitur, and thus, the Court no longer has jurisdiction over this appeal. The Court denied Appellant's petition for rehearing on November 14, 2019, and Appellant did not file a petition for writ of certiorari with the supreme court. After the time for filing a writ of certiorari expired, this Court properly issued the remittitur on December 30, 2019, pursuant to Rule 221(b). The Court did not issue the remittitur due to mistake, error, or

inadvertence of the Court, and Appellant has not alleged any mistake or error by the Court associated with issuing the remittitur. Because this Court properly issued the remittitur and it was not due to the Court's mistake or error, this Court no longer has appellate jurisdiction to entertain motions. *See Wise*, 372 S.C. at 174, 642 S.E.2d at 551 ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter."). Accordingly, the Court should deny Appellant's motion to recall the remittitur.

III. Even if the Court had jurisdiction to entertain Appellant's motion, the Court should still deny it because Appellant had over a year to file her initial brief while the appeal was pending and her history of dilatory prosecution of this appeal shows future prolonged delays and missed deadlines would be inevitable.

Even if the Court had jurisdiction to entertain Appellant's motion, the Court should still deny the motion because she had ample opportunity to pursue her appeal and failed to do so. Appellant filed and served the notice of appeal on November 26, 2018. Because there was no transcript to order for the appeal, Appellant's initial brief was due within thirty days after serving the notice of appeal. *See* Rule 208(a)(1), SCACR ("Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal . . ."). Thus, Appellant's initial brief was due December 26, 2018. When the Court issued the remittitur on December 30, 2019, *over a year* had passed since Appellant's initial brief was due and Appellant had failed to file a brief. Appellant failed to file her initial brief and failed to respond to motions and orders throughout the appeal process. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("There would be no purpose in establishing deadlines if failure to meet them was of no consequence." (brackets removed)).

To the extent Appellant claims she did not receive notice from the Court indicating the timeframe for filing her initial brief, Appellant had an obligation to familiarize herself with the

rules and comply with them. *See Goodson v. Am. Bankers Ins. Co. of Flo.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) ("[A] party has a duty to monitor the progress of his case."); *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003) (explaining a pro se litigant is responsible "for complying with substantive and procedural requirements of the law"); *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[T]he court will hold a layman to the same standard as an attorney."). Moreover, Appellant admits she received the December 30, 2019 remittitur but offers no explanation as to why she waited two months to file this motion seeking to recall the remittitur. The Court has already granted Appellant ample opportunity to pursue her appeal, and she has failed to do so.

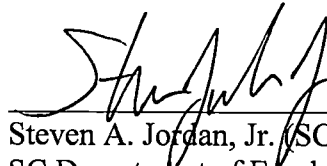
Further, Appellant's repeated failures to prosecute her appeal reveal, at most, a passing interest in her appeal and show future prolonged delays and missed deadlines would result if the Court granted Appellant's motion. Thus, even if the Court had jurisdiction to do so, it should not rescue Appellant's failure to prosecute her appeal by rewarding her with another bite at the apple. Accordingly, the Court should deny Appellant's motion to recall the remittitur. *See Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) ("There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties.").

IV. Conclusion

Based on the foregoing, the Department respectfully requests this Court deny Appellant's motion to recall the remittitur. This Court properly sent the remittitur relating to this appeal, and thus, the Court no longer has jurisdiction over this appeal. Under *Wise*, this Court can no longer hear any motions relating to this appeal.

Further, even if the Court had jurisdiction to entertain Appellant's motion, the Court should still deny the motion because no good cause exists to grant the motion. By the time the Court issued the remittitur, over a year had passed since Appellant's initial brief was due, and Appellant failed to file the brief. The Court has already allowed Appellant ample opportunity to pursue her appeal, and she failed to do so. Based on Appellant's dilatory approach to this appeal, another opportunity for her to pursue this appeal would result in additional prolonged delays and missed deadlines. For all of the reasons discussed above, the Court should deny Appellant's motion to recall the remittitur.

Respectfully Submitted,



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**Attorney for Respondent SC Department of
Employment and Workforce**

March 11, 2020

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PROOF OF SERVICE

I certify that I have served the Return to Appellant's Motion to Recall Remittitur on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on March 11, 2020, addressed to the parties at their addresses of record:

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3739 Oakleaf Rd, Apt B
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Wateree Community Actions Inc
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March 11, 2020



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SC Court of Appeals

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

RE: Adrian Wilson v. South Carolina Department of
Employment and Workforce and Wateree Community Actions Inc.
Appellate Case No: 2018-002107

Dear Ms. Kitchings:

Enclosed are the original and six copies of the Return to Appellant's Motion to Recall Remittitur of Respondent SC Department of Employment and Workforce in the above referenced case. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

Kristi Chesley
Administrative Legal Assistant for
Steven Jordan
Attorney for Respondent South Carolina
Department of Employment and Workforce

DEPARTMENT OF WORKFORCE

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