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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the South Carolina Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No: 2020-000950

Dr. Agnes Slayman,

Appellant,

vs.

South Carolina Department of Education

Respondent.

MOTION TO DISMISS APPEAL

In an Order dated June 3, 2020, the South Carolina Administrative Law Court affirmed the South Carolina State Board of Education's Order of Public Reprimand in Appellant's case. Appellant subsequently filed a notice of appeal to this Court on July 2, 2020, and an Initial Brief of Appellant on August 4, 2020. Prior to appealing to this Court, Appellant did not make a Motion for Rehearing to the Administrative Law Court. Appellant's failure to make a Motion for Rehearing denied the administrative law judge an opportunity to review and correct any alleged error. Accordingly, Appellant failed to preserve any issue related to the administrative law judge's ruling for further review by this Court.

The South Carolina Administrative Law Court Rules require a motion for rehearing as a prerequisite to filing a notice of appeal from the administrative law judge's decision. See SCALC Rule 40, 2019 Revised Notes ("The 2019 amendments deleted the last sentence of the rule, which provided that a motion for rehearing was not a prerequisite to filing a notice of appeal from the

administrative law judge’s decision.”).¹ This revision is consistent with other aspects of South Carolina appellate procedure. See Rule 242(c), SCACR (“A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals.”); State v. Bailey, 368 S.C. 38, 626 S.E.2d 898 (Ct. App. 2006) (circuit court’s appellate error must be called to its attention by petition for rehearing in order to be preserved for further appellate review); Holly Hill Lumber Co. v. McCoy, 210 S.C. 440, 442, 43 S.E.2d 143, 144 (1947) (holding issue not raised in petition for rehearing is the law of the case, and the question attempted to be raised is res judicata).

“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Appellant’s failure to comply with the applicable appellate procedures precludes review by this Court. The SCDE therefore moves that this Court dismiss Appellant’s case with prejudice.

WHEREFORE, Respondent prays the Court dismiss this appeal due to Appellant’s failure to make a Motion for Rehearing before the South Carolina Administrative Law Court; hold the matter in abeyance pending a ruling on Respondent’s motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



V. Henry Gunter, Jr.
S.C. Bar No. 102259
1429 Senate Street, Suite 1015
Columbia, South Carolina 29201
(803) 734-8105
ATTORNEY FOR RESPONDENT

August 14, 2020

¹ Interestingly, the South Carolina Administrative Law Court also revised SCALC Rule 29(D) in 2019, noting, “In accordance with applicable case law on issue preservation, the last sentence of subsection (D) which stated a motion for reconsideration is not a prerequisite to filing a notice of appeal, has been deleted.” This shows a broad recognition by the ALC that a motion for rehearing is in fact required to preserve any issue for further review.

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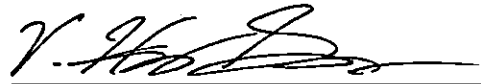
Respondent.

PROOF OF SERVICE

I, V. Henry Gunter, Jr., certify I have served the within Motion to Dismiss Appeal on Appellant by sending two copies of the same to:

Shannon M. Polvi, Esquire
Cromer Babb Porter & Hicks, LLC
PO Box 11675
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of August, 2020.



V. Henry Gunter, Jr.
Deputy General Counsel
South Carolina Department of Education
1429 Senate Street, Suite 1015
Columbia, SC 29201
(803) 734-8105



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**STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION**

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

August 14, 2020

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

RE: Dr. Agnes Slayman v. South Carolina Department of Education – Appellate Case
No. 2020-000950

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "V. H. Gunter, Jr.", with a long horizontal flourish extending to the right.

V. Henry Gunter, Jr.
Deputy General Counsel
South Carolina Department of Education
Bar Number 102259

cc: Shannon Polvi, Esquire



AUG 19 2020

S.C. Department of Education
Office of General Counsel
1429 Senate St.
Columbia, SC 29201

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