

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

67618

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
Gene McCaskill, Commissioner

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MAR 14 2013

W.C.C. 0816749

SC Court of Appeals

Alexander Michau, Employee, Claimant,

Respondent,

v.

Georgetown County, Self-Insured Employer, Through
S.C. Counties Workers Compensation Trust, Defendants,

Appellants.

MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

The Respondent, by and through his attorneys, move this Court for an Order dismissing Appellants' appeal on grounds of insufficiency of the Notice of Appeal.

MEMORANDUM IN SUPPORT

FACTUAL BACKGROUND

1. Appellants filed and served its Notice of Appeal (Exhibit A) on or about February 15, 2013.
2. The Order appealed was dated and filed by the Workers' Compensation Commission on January 28, 2013.
3. The Notice of Appeal (Exhibit A) contains no statement, of any kind, putting the Court or Respondent on notice of the grounds for the appeal or alleged errors of law.

LEGAL ARGUMENT

1. On an appeal from the Commission to the Court of Appeals, §42-17-60 sets forth certain requirements. Most importantly it states: "Notice of Appeal must state the grounds of the

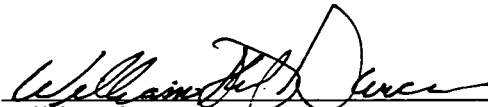
appeal or the alleged errors of law.” (Emphasis added). The Notice of Appeal states neither “grounds of the appeal” nor “alleged errors of law.” Exhibit A)

2. The word “must” denotes an absolute requirement. §42-17-60. In Solomon v. W.B. Easton, Inc., 307 S.C. 518 (Ct. App. 1992), this Court upheld the requirement of stating grounds for appeal. In Solomon, the Circuit Court had dismissed certain assignments of error on appeal because the Notice of Appeal did not “adequately specify grounds for appeal.” Id at 522. This Court affirmed. Id. Citing Pringle v. Builders Transport, 298 S.C. 494 (1989), the Supreme Court ruled, “the circuit court (and by extension the Court of Appeals) lacks jurisdiction of the appeal if the notice is insufficient.” Solomon at 522. In another case, this Court found the Notice of Appeal did contain sufficient though vague reference to grounds for appeal. White v. MUSC, 355 S.C. 560 (Ct. App. 2003). Here, the Notice of Appeal (Exhibit A) does not even hint of any grounds for appeal.

3. Solomon gives further instruction that the insufficiency of the notice of appeal may not be cured by amendment. “Moreover, the policy of liberally allowing amendments of pleadings does not apply to amendment of a notice of appeal requested after the expiration of the thirty-day statutory period for filing the appeal.” Id. More than thirty days have elapsed since the Commission Order of January 28, 2013.

CONCLUSION

This Court should dismiss Appellants’ Appeal, with prejudice, as the Court lacks jurisdiction due to Appellants’ failure to conform its Notice of Appeal with requirements of §42-17-60, S.C. Code.



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PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal and Memorandum in Support on the Appellants by depositing a copy of it in the United States Mail, postage prepaid, on March 12, 2013, addressed to their attorneys of record, Kirsten L. Barr, Esquire and Jamie C. Guerrero, Esquire, Trask & Howell, LLP, Post Office Box 2167, Mt. Pleasant, SC 29465

March 12, 2013



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