

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2020-001279

Martha Linda Lusk, Ph.D.....Petitioner

v.

Jami L. Verderosa.....Respondent

REPLY TO RETURN TO MOTION TO DISMISS

Now Comes Respondent Jami Verderosa in reply to Petitioner Lusk’s Return to Motion to Dismiss and states as follows:

The South Carolina Court of Appeals denied Petitioner Lusk’s Petition for Rehearing on August 24, 2020. Pursuant to SCACR 242 (c), Petitioner Lusk was required to file and serve her Petition for Writ of Certiorari “within thirty (30) days after the petition for rehearing . . . is finally decided by the Court of Appeals.” Petitioner Lusk waited until Thursday, September 24, 2020, to file her Petition, which was thirty-one (31) days after the Court of Appeals denied her Petition for Rehearing. Petitioner Lusk gives no cause for her late filing other than to argue, without citing to any authority, that SCACR 263 (a) gives her thirty-one (31) days to file. Respondent respectfully contends that SCACR 242 (c) and 263 (a) give a petitioner only thirty (30) days to file a Petition for Writ of Certiorari after the Court of Appeals denies a Petition for Rehearing, and; therefore, Petitioner Lusk’s Petition for a Writ of Certiorari is untimely and should be dismissed.

The South Carolina Appellate Court Rules must be interpreted using the same rules of construction applicable to statutes. *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (citing *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 443 S.E.2d 906 (1994). “If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Id.*

The relevant portion of SCACR Rule 242(c) provides:

A petition for writ of certiorari shall be served . . . and filed . . . within thirty (30) days after the petition for rehearing . . . is finally decided by the Court of Appeals.

There is no dispute that the Court of Appeals denied Petitioner Lusk’s Petition for Rehearing on August 24, 2020. There is also no dispute that, because August has thirty-one (31) days, thirty (30) days after the Petition was denied was September 23, 2020. It is also undisputed that the Petitioner did not file her Petition for Certiorari until September 24, 2020.

Despite these undisputed facts, Petitioner Lusk claims that she was actually entitled to thirty-one (31) days after the Court of Appeals denied her Petition for Rehearing to file her Petition for Certiorari based on her reading of SCACR 263 (a). That provision states in pertinent part:

In computing any period of time prescribed or allowed by these Rules . . . , the day of the act . . . after which the designated period of time begins to run is not to be included.

Without citation to any authority, Petitioner claims this Rule allows her to skip counting the day after the Court of Appeals denied her Petition for Rehearing. The Petitioner contends:

However, under SCRAP Rule 263(a) if you are NOT supposed to count the day of the event, 1 day later (August 25,2020) can NOT be “day 1.” Rather, it would be the day you **start** counting and, thus, August 26, 2020 would be **one day later**. As such, **the 30th day after** was September 24, 2020- the day appellant filed her writ.

Petitioner’s Return to Motion to Dismiss at p. 2 (filed Oct. 13, 2020).

This interpretation contradicts the plain, ordinary meaning of SCACR 263 (a). As applied to this case, the “act” referenced in Rule 263 (a) is the day the Court of Appeals denied the Petition for Rehearing – which was August 24, 2020. That is the act “after which the designated period of time began to run.” Thus, what this Rule requires is that the day the Court of Appeals issued its Order denying the Petition for Rehearing cannot be included in the thirty (30) day calculation. Instead, the day after the Court of Appeals entered its Order is the first day of the calculation. As such, in this case, August 25, 2020 is day one of the calculation. It is beyond dispute that thirty (30) days starting from Tuesday, August 25, 2020 is Wednesday, September 23, 2020.

It appears that Petitioner Lusk is interpreting the word “after” in SCACR 263 (a) to modify the word “day.” Respectfully, it does not. The word “after” modifies the word “act.” The only “day” that is excluded from the start of the calculation under SCACR 263 (a) is day the Court of Appeals entered its Order denying the Petition for Rehearing.

The Respondent has not found any case from any jurisdiction adopting Petitioner Lusk’s interpretation. However, the numerous cases cited below interpret the same language in SCACR 263 (a)¹ to mean that the only day that is excluded from the start of the thirty (30) calculation is the day of the act “after which the designated period of time begins to run.” *See Rivera v. Department of Labor and Indus. Relations*, 100 Hawai’I 348, 60 P.3d 298 (2002) (relying on HRCF 6(a) to find statutory thirty (30) day period commenced one day after pertinent act); *Town of Stow v. Landwest Dev., LLC*, 68 Mass. App. Ct. 1108, 861 N.E.2d 810 (Ct. App. 2007) (“Rule 6(a) clearly provides that any period of time triggered by a notice begins to run from the day following that on which notice is given.”); *Norfolk Fin. Corp. v. Wynn*, No. 0109-CV-0178, 2002

¹ The pertinent language in SCACR 263 (a) is the same language for computing time set out in South Carolina Rule of Civil Procedure 6 (a).

Mass. App. Div. 192, (2002) (“The judgment was entered on November 21, 2001 commencing the count on November 22, 2001, the day following the entry of judgment.”); *Sielski v. Tikellis*, No. Civ.A. 90C-AP-37, 1991 WL 117810 (June 11, 1991) (“According to Plaintiff, the day after which the designated period began to run was May 10, 1990. Since that day is not included, the period began to run on May 11. However, “after” modifies “event,” not “day.” The event after which the designated period began to run occurred on May 9. The day of the event is not included. The designated period began to run on May 10. Since the time period did not begin to run on May 11 as Plaintiff thought, the praecipe for the next writ was filed one day late.”); *Putnam v. Stix, Baer & Fuller*, No. 57751, 795 S.W.2d 620 (Ct. App.1990) (relying on analogous rule to find statute of limitations commenced the day after pertinent act).

There is no dispute Petitioner filed her claim on September 24, 2020. This was one day after the thirty (30) day deadline set out in SCACR 242 (c) and SCACR 263 (a). Therefore, Petitioner Lusk’s Petition for Writ of Certiorari is untimely.

WHEREFORE, Respondent Jami Verderosa respectfully moves the Court to dismiss Petitioner Lusk’s Petition for Writ of Certiorari.

MURPHY & GRANTLAND, P.A.

s/Jeffrey C. Kull
Jeffrey C. Kull, Esq. (SC Bar No. 65449)
4406-B Forest Drive
Columbia, SC 29260
(803)782-4100
(803)782-4140 (Fax)
Jkull@murphygrantland.com
Attorney for Respondent

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