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**Jan 05 2021**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Andrew Davis Desilet,

Appellant,

vs.

South Carolina Department of Motor  
Vehicles and South Carolina Department of  
Public Safety,

Respondents.

Docket No. 20-ALJ-21-0213-AP

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed by Andrew Davis Desilet (Appellant) on August 17, 2020. On October 5, 2020, the South Carolina Department of Motor Vehicles (Department) filed an Amended Notice of Motion and Motion to Dismiss (Amended Motion) for the Appellant's failure to serve the Notice of Appeal on the Department in accordance with Rules 33 and 38 of the Rules of Procedure for the Administrative Law Court (SCALC Rules).<sup>1</sup>

Rule 33 directs that a party appealing from the decision of an agency must file and serve on each party with a copy of the notice of appeal within thirty (30) days of receipt of the decision from which the appeal is taken. SCALC Rule 33(E). In this case, the Office of Motor Vehicle Hearings (OMVH) issued its Final Order and Decision on August 5, 2020, therefore, the Appellant had until September 4, 2020, to properly serve the Department with his Notice of Appeal. The Appellant timely filed his appeal with the court on August 17, 2020, however, according to the Department's Amended Motion, the Appellant failed to serve his Notice of Appeal on the Department.

The Appellant's Proof of Service filed with the court on August 17, 2020, asserts that the Notice of Appeal was served on the Office of General Counsel, South Carolina Department of Motor Vehicles, 1205 Pendleton Street, Suite 325, Columbia, South Carolina, 29201. While that addressee is correct, the address itself corresponds to the Office of Motor Vehicle Hearings, not

<sup>1</sup> The Department originally filed a Notice of Motion and Motion to Dismiss for the same grounds on September 28, 2020. That notice, that contained a typographical error pertaining to the date the agency decision was rendered. The Amended Motion merely corrects that error.

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SC ADMIN. LAW COURT

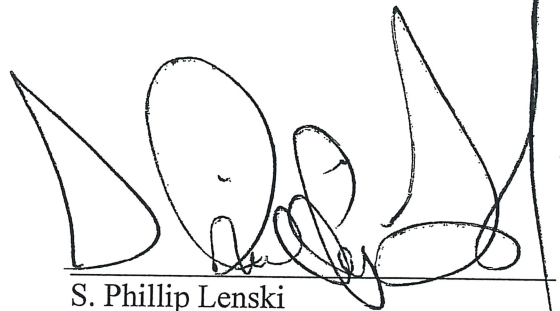
the South Carolina Department of Motor Vehicles. The Department and OMVH are separate state agencies. S.C. Code Ann. §§ 1-23-660 (Supp. 2019); 56-1-5 (2018).

Timely filing and service of a notice of appeal is a jurisdictional requirement, and this court has no authority to extend or expand the time in which the notice of intent to appeal must be served.<sup>2</sup> See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985). Here, while the court understands that the error was inadvertent and that there was no intent by the Appellant to subvert or disregard the rules, the Notice of Appeal was not served on the Department. Therefore, because the Appellant did not serve his Notice of Appeal on the Department, this court is without jurisdiction to adjudicate his underlying appeal, and must dismiss this action. See SCALC Rule 38 (providing that, upon motion of any party or on its own motion, the court may dismiss an appeal for failure to comply with any of the rules for appeals, including those pertaining to service of a notice of appeal).

**ORDER**

**IT IS THEREFORE ORDERED** that the Department's Amended Motion to Dismiss is **GRANTED** and this appeal is hereby **DISMISSED**.

**AND IT IS SO ORDERED.**



S. Phillip Lenski  
Administrative Law Judge

December 18, 2020  
Columbia, South Carolina

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<sup>2</sup> The Appellant cites to *Weatherford v. Price* for the proposition that mere clerical errors in a notice of appeal are not fatal, particularly where opposing counsel demonstrates no prejudice as a result. See *Weatherford v. Price*, 340 S.C. 572, 577-78, 532 S.E.2d 310, 313 (Ct. App. 2000). In that case, the notice of appeal in question referred to an order denying a motion for reconsideration but included an attached copy of the original merits order with the notice. *Id.* The South Carolina Supreme Court determined that it had jurisdiction to hear the appeal, finding that, under those circumstances, the error was merely clerical in nature and that counsel demonstrated no prejudice as a result of the error. *Id.*; see also *Charleston Lumber Co., Inc. v. Miller Hous. Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995) (rejecting an attempt to have an appeal dismissed on jurisdictional grounds when the appellant neglected to appeal one of a series of cases tried and appealed together). *Weatherford*, however, is distinguishable from the present case. Here, the Department asserts that it never received a copy – in whole or in part – of the Appellant's Notice of Appeal. Unlike *Weatherford* and *Charleston Lumber*, therefore, where counsel for the parties were served with incomplete or incorrect notices of appeal, counsel for the Department received no notice of the Appellant's challenge. While the court acknowledges that the error in this case may have been clerical in nature, the resulting lack of notice to the Department gives the error substance and heightens it beyond what could be considered a clerical error.