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Jan 05 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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

Andrew Davis Desilet, Appellant,

v.

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

MOTION TO STAY ORDER PENDING APPEAL

Appellant hereby respectfully moves before this Honorable Court to grant an Order to Stay the Decision of the Administrative Law Court to grant Respondents' Motion to Dismiss, pending the resolution of the appeal filed with this Court January 5, 2021.

On or about August 5, 2020, the Office of Motor Vehicle Hearings (OMVH) issued its Final Order and Decision on a contested case hearing regarding the suspension of Appellant's driving privileges.

On or about August 17, 2020, Appellant timely filed a Notice of Appeal with the South Carolina Administrative Law Court.

Notice of the Appeal was also timely mailed to the South Carolina Department of Motor Vehicles, the South Carolina Department of Public Safety, and the State Trooper. However, the South Carolina Department of Motor Vehicles notice, while clearly

addressed to the South Carolina Department of Motor Vehicles, was inadvertently mailed to 1205 Pendleton Street in Columbia, which is the Office of the South Carolina Administrative Law Court.

Both the South Carolina Department of Public Safety and the South Carolina Department of Motor Vehicles share the same location at 10311 Wilson Boulevard, Blythewood, South Carolina 29016.

Appellant is informed and believes the South Carolina Department of Motor Vehicles received the Notice of Appeal as evidenced by the Assistant Legal Counsel of the South Carolina Department of Motor Vehicles is whom filed of Motion to Dismiss.

Because Appellant filed the Notice of Appeal less than two weeks of the Final Order, Appellant is informed and believes if the Notice of Appeal to the South Carolina Department of Motor Vehicles would have been returned to sender, as normally the procedure with incorrect or wrong address, the clerical mistake could have been cured well within the time period required under the rules.

However, the Notice of Appeal was never returned to Appellant and therefore Appellant was not aware of the inadvertent mistake. Appellant did not become aware of the clerical mistake until the Department of Motor Vehicles filed the Motion to Dismiss months later.


Appellant is informed and believes the Department of Motor Vehicles cannot show prejudice as to the Appellant's clerical error, as they obviously were in receipt of the Notice of Appeal as they were the party that filed the Motion to Dismiss.

Appellant is informed and believes the inadvertent mistake as to the address of the South Carolina Department of Motor Vehicle's Notice of Appeal was a clerical error and did not warrant the dismissal of the Appeal.

In *Weatherford v. Price*, 532 S.E. 2d 310 (Ct. app. 2000), the Court held that a clerical error in the Notice of Appeal does not warrant dismissal of the appeal, especially where counsel demonstrates no prejudice as a result.

Furthermore, the South Carolina Department of Motor Vehicle also made an inadvertent mistake when they incorrectly mailed their Motion to Dismiss to the wrong address, sending it to the Richland County Courthouse at 1701 Main Street, instead of Appellant Counsel's correct address of 1720 Main Street.

Wherefore, the Appellant asks this Honorable Court to Stay the Order of the Administrative Law Court to Dismiss Appellant's Appeal of the Final order and Decision by the Office of Motor Vehicles until such time as this Court has made a final decision on this case. This Motion will be supported by subsequent filings, memoranda of law, statutory and case law as well as any oral argument to be presented by counsel at a hearing in this matter.

s/Larry C. Marchant, Jr., SC Bar 102071 
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ATTORNEY FOR APPELLANT

January 5, 2021
Columbia, South Carolina

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PROOF OF SERVICE

I certify that I served the Motion to Stay Order Pending Appeal on the Respondents, and the Administrative Law Court, by depositing a copy of it in the United States Mail, postage prepaid, on January 5, 2021, addressed as follows:

The Honorable S. Phillip Lenski
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Jana E. Shealy, Clerk
SC Administrative Law Court
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