

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Durden, Administrative Law Judge
18-ALJ-22-0409-AP

Appellate Case No. 2019-001033

Cortez M. Jiles,

Respondent,

v.

South Carolina Department
Of Employment and Workforce and
House of Raeford Farms, Inc.,

Appellants,

Of Which South Carolina Department of Employment and Workforce is the Appellant.

MOTION FOR REHEARING

Benjamin T. Cook, Esquire
Paul Famolari, Esquire
P.O. Box 8597
Columbia, SC 29202
(803) 737-0395
Attorneys for Appellant

This court has dismissed the appeal of the South Carolina Department of Employment and Workforce (Department) from an order of the Administrative Law Court (ALC) which reversed an order of the Department's Appellate Panel (Panel). The basis of this court's dismissal is a finding that the Department's appeal is interlocutory and not immediately appealable because the ALC's order is not "a final decision" pursuant to S.C. Code Ann. § 1-23-610(A)(1). The Department hereby moves for a rehearing of this issue because the ALC's order, from which the Department has appealed, is final as to the Department because the Department will no longer be a party to the case on remand. So far as the Department is concerned, the ALC's order leaves nothing to be done but enforce by execution the ALC's decision.

S.C. Code Ann. § 41-35-740 provides:

A decision of the department, in the absence of an appeal from it as provided in this article, becomes final ten days after the date of notification or mailing of it, and judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided in Chapters 27 through 41 of this title. **The [D]epartment must be considered to be a party to a judicial action involving a decision** and may be represented by a qualified attorney employed by the department and designated by the [D]epartment for that purpose or, at the department's request, by the Attorney General.

(emphasis added). S.C. Code Ann. § 41-35-750 provides:

Within thirty days from the date of mailing the [D]epartment's decision, **a party to the proceeding whose benefit rights or whose employer account may be affected by the department's decision may initiate an action in the [ALC] against the department** for the review of its decision, in which action every other party to the proceeding before the [D]epartment must be made a defendant.... **An appeal may be taken from the decision of the administrative law court pursuant to the South Carolina Appellate Court Rules and Section 1-23-610.... Upon the final determination of the**

judicial proceeding, the [D]epartment must enter an order in accordance with the determination.

(emphasis added).

The Department's decision from which Jiles originally appealed to the ALC was a final decision of the Department in the matter of *Cortez M. Jiles v. House of Raeford Farms, Inc.*. The Department was not a party to that matter. When Jiles appealed the Department's decision to the ALC, the Department became a party, by operation of law, to the new case of *Cortez M. Jiles v. South Carolina Department of Employment and Workforce and House of Raeford Farms, Inc.* See § 41-35-740. The ALC's order, if it stands, represents the "final determination of the judicial proceeding" for the Department and permits the Department only to appeal the ALC order or "enter an order in accordance with the determination." S.C. Code Ann. § 41-35-750. On remand, the proceedings before the Department's Tribunal or Panel following the ALC's order would be between Jiles and House of Raeford. The Department would not be involved as a party and would have no rights as a party in that case.

Our Supreme Court most recently addressed the appealability of an ALC decision that includes a remand in *Torrence v. South Carolina Department of Corrections*. The Court noted that "[i]t is often challenging to determine when a seemingly interlocutory order is, in fact, a final decision and thus appealable." *Torrence v. S.C. Dep't. of Corr.*, 433 S.C. 224, 227, 857 S.E.2d 549, 550 (2021). The Court stated the "general proposition that where an ALC order includes a remand to an administrative agency there is no final judgment in the vast majority of situations." *Id.* However, the Court went on to say that

one exception to that general proposition is where “the ALC’s decision was, in fact, final.” *Id.* Because the ALC’s order disposes of the Department as a party in its entirety, the decision is final as to the Department and, therefore, appealable by the Department.

Further, it is notable that the *Torrence* Court included a detailed discussion explaining generally that an agency would not lose the right to challenge an ALC decision if the agency permitted the remand to conclude before appealing. *Id.* at 227-28, 857 S.E.2d at 550. In this case, this court’s dismissal order would forever foreclose the Department’s ability to challenge the ALC’s decision. The Department will not be a party to the proceedings between Jiles and House of Raeford before the Department’s Tribunal or Panel and only “a party to the proceeding whose benefit rights or whose employer account may be affected by the department’s decision may initiate an action in the [ALC] against the [D]epartment....” § 41-35-750. Thus, the Department has no statutory authority to appeal a decision of the Panel and would be unable to ever challenge the ALC’s decision after a remand. *Id.* Because the ALC decision would prevent the Department from further defending its rights and interests in this case, the decision represents a final, appealable judgment. *See* 4 Am. Jur. 2d Appellate Review § 82 (2021) (“To constitute a final, appealable judgment, the trial court’s determination must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding. An order that has the effect of putting a party out of court is a final appealable judgement....”).

For all the foregoing reasons, most notably the fact that the ALC’s decision under appeal is a final decision as it relates to the Department as a party, the Department

respectfully requests that the court grant this motion for rehearing and reinstate the Department's appeal.

Respectfully Submitted,



Benjamin T. Cook (SC Bar # 102216)

Paul Famolari (SC Bar # 076723)

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**Attorney for Appellant SC Department of
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November 22, 2021

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Appellant (s).

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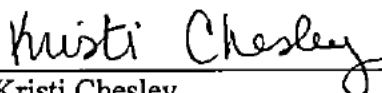
I certify that I have served the Appellant's Motion for Rehearing on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on November 22, 2021, addressed to the parties at their addresses of record:

Jack E. Cohoon
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PO Box 21456
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November 22, 2021



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VIA EMAIL AND US MAIL

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

RE: Cortez M. Jiles v. South Carolina Department of Employment and
Workforce and House of Raeford Farms
Appellate Case No: 2019-001033

Dear Ms. Kitchings:

Enclosed is the Appellant South Carolina Department of Employment and Workforce's Motion for Rehearing in the above referenced case. A proof of service is also included in this mailing.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Ben Cook
Attorney for Respondent South Carolina
Department of Employment and Workforce



**P.O. Box 995
Columbia, S.C. 29202**

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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