

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 27 2022
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP

Appellate Case No. 2021-001462

Katrina Daniels,

Appellant

v.

South Carolina Department of Employment and Workforce and 4056
LLC,

Respondents

**REPLY TO APPELLANT'S RESPONSE TO MOTION TO
DISMISS FOR LACK OF APPELLATE JURISDICTION**

Respondent the South Carolina Department of Employment and Workforce (the Department) hereby respectfully reiterates its request for this Court to dismiss Appellant's appeal for lack of jurisdiction. Appellant has failed to properly and timely serve the Respondents in this case and has raised no issues or objections which would overcome that jurisdictionally fatal lapse. Respondent writes here to point out a few specific issues with Appellant's Response to Respondent's Motion.

I. Appellant Improperly Conflates Filing and Service

In support of Appellant's Response, she argues that she "properly filed the appeal, by e-mail, to DEW..." (Appellant's Response p.6). However, filing and service are not the same thing. They are handled under different rules and have different requirements. The relevant Rule for electronic filing is found under Rule 262(a)(3), SCACR:

(a) Filing. Except for petitions for rehearing (Rule 221) and motions for reinstatement (Rule 260), filing may be accomplished by:

...

(3) Filing the document by electronic means in a manner provided by order of the Supreme Court of South Carolina.

The Supreme Court's Order dated August 25, 2021, provided detail on when and how documents may be filed by e-mail:

(b) Electronic Methods of Filing. Filings with an appellate court may be made electronically using the methods listed below.

...

(2) Filing by E-mail. Filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to suptcfilings@sccourts.org; for the Court of Appeals, the e-mail shall be sent to ctappfilings@sccourts.org. This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4). A document filed by this method must be in an Adobe Acrobat file format (.pdf).

RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30). Notably, the only two email addresses specified in the Order as proper for filing are an address for the Supreme Court and an address for the Court of Appeals. There is no support in the rules for "filing"

on a party by e-mail. As discussed in detail in Respondent's initial motion to dismiss, that very same August 25, 2021, Order from the Supreme Court detailed the rules regarding electronic service, under subsection (d). Respondent has never challenged Appellant's ability to file with the Court by electronic means and does not do so now. However, the requirements for service and filing are separate and distinct and Appellant's arguments that she was permitted to file electronically are irrelevant to her jurisdictional failure to properly serve Respondents in this case.

II. Appellant Deliberately Misrepresents the Relationship Between the Department and 4056 Main, LLC, in an Attempt to Excuse her Failure to Timely Serve All Parties to the Appeal

The Department is a party to this case pursuant to statute. S.C. Code Ann. § 41-35-740 ("The department must be considered to be a party to a judicial action involving a decision and may be represented in the judicial action by a qualified attorney employed by the department and designated by the department for that purpose or, at the department's request, by the Attorney General."). Appellant argues that the Department was acting as legal representative for 4056 Main, LLC, Appellant's former employer and a separate party to this case. (Appellant's Response p.6). In support of this argument, Appellant cites a portion of the signature block at the bottom of Respondent's original motion to indicate that counsel for the Department was representing himself as "Attorney for Respondent" and that "Respondent" indicated 4056 Main, LLC. *Id.* However, Appellant deliberately leaves off the second line from that identifying phrase. The complete section of the signature block, all bolded, reads "Attorney for Respondent SC Dept. of Employment and Workforce" and is, aside from a changed date, the same signature block which has been

included at the bottom of this reply. (Appellant's Response p.66). At no time has the Department or Counsel for the Department indicated they were representing 4056 Main, LLC. Appellant is attempting to use this misleading partial passage to excuse her prior failure to serve 4056 Main, LLC, with the notice of appeal in this case even though prior to her filing with the Court of Appeals, Appellant had routinely served 4056 Main, LLC, with documents related to this case. (Appellant's Response p.94; p.106). Appellant failed to timely serve 4056 Main, LLC, with the notice of appeal in this case, her failure deprived this Court of jurisdiction, and this Court should not be misled by Appellant's deliberately misleading attempt to persuade this Court otherwise.

Appellant's remaining arguments and citations are irrelevant to the subject of the Department's Motion to Dismiss for lack of jurisdiction and should be disregarded by this Court. Appellant has failed to put forward any argument which would overcome her failure to timely and properly serve the Respondents in this case. As a result, the Department once again respectfully requests that this Court dismiss Appellant's appeal for lack of jurisdiction.

Respectfully Submitted,

s/ Benjamin T. Cook
Benjamin T. Cook (Bar # 102216)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
(803) 737-0395 (phone)
(803) 737-0124 (fax)
Legal@dew.sc.gov

January 25, 2022

Attorney for Respondent
SC Dept. of Employment and Workforce

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
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Appellate Case No. 2021-001462

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Respondent(s)

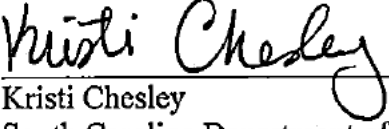
PROOF OF SERVICE

I certify that I have served the Reply to Appellant's Response to Motion to Dismiss for Lack of Appellate Jurisdiction on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on January 25, 2022, addressed to the parties at their addresses of record:

Katrina Daniels
3439 Fallowbrook Forest
York SC 29745

4056 Main LLC
104 Oak St
Clemson SC 29631

January 25, 2022


Kristi Chesley
South Carolina Department of Employment and
Workforce
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Columbia, South Carolina 29202
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Henry McMaster
Governor

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SC Court of Appeals

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

RE: Katrina Daniels v. South Carolina Department of Employment and
Workforce and 4056 LLC
Appellate Case No: 2019-001462

Dear Ms. Kitchings:

Enclosed is the Respondent's Reply to Appellant's Response to Motion to Dismiss for Lack of Jurisdiction 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,

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



P.O. Box 8597
Columbia, S.C. 29202

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SC Court of Appeals



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