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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

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Letonya Sullivan

v.

Alabama Department of Human Resources

**Appeal from Montgomery Circuit Court
(CV-21-900591)**

EDWARDS, Judge.

Letonya Sullivan appeals from a judgment entered by the Montgomery Circuit Court ("the trial court") dismissing her appeal from an administrative order entered by an administrative law judge ("ALJ") for the Alabama Department of Human Resources ("the Alabama DHR"), which affirmed a decision of the Autauga County Department of Human

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Resources ("the Autauga County DHR") to record an "indicated" finding for child abuse or neglect against Sullivan and to share that information with her employer and prospective future employers. See Ala. Code 1975, § 26-14-8(d); Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.09(5)(e).

Sullivan is a teacher employed by the Autauga County Board of Education. The Autauga County DHR investigated allegations that Sullivan had failed to supervise the children in her classroom such that some students were able to perform oral sex acts on each other. See Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.05(4)(k) (discussing the process for a county department of human resources to investigate abuse or neglect reports involving schools but not involving corporal punishment or discipline). After the investigation, the Autauga County DHR concluded that the allegations against Sullivan were "indicated" for child abuse or neglect, and Sullivan was notified of that determination. See Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.05(4)(k)5. Sullivan thereafter requested and received a hearing before the ALJ. See Ala. Code 1975, § 26-14-7.1; Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.08(6)(b) ("The State Department of Human Resources shall

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conduct a hearing to determine by a preponderance of credible evidence that the child has been abused or neglected.").¹ On April 1, 2021, the ALJ issued a final order affirming the Autauga County DHR's determination. Sullivan received that order on April 7, 2021.

On June 3, 2021, Sullivan filed in the trial court a petition for judicial review of the April 2021 order, pursuant to Ala. Code 1975, § 41-22-20. See also Ala. Admin. Code (Dep't of Hum. Res.), r. 660-1-5-.15. According to the allegations in Sullivan's petition, she had filed her notice of appeal with the Alabama DHR on May 4, 2021. Attached to the petition as exhibits were a copy of the April 2021 order entered by the ALJ and a copy of a May 4, 2021, e-mail from one of Sullivan's attorneys

¹See also Ala. Admin. Code (Dep't of Hum. Res.), r. 660-5-34-.08(6)(a) ("Except as indicated below, the hearing procedures outlined in Chapter 660-1-5[, Ala. Admin Code (Dep't of Hum. Res.),] shall apply to child abuse/neglect hearings."); Ala. Admin. Code (Dep't of Hum. Res.), r. 660-1-5-.08.(a) ("The hearing officer is an employee, panel of employees or designee ... of the State Department of Human Resources. ... The hearing officer is the hearing authority entitled to make the final administrative decision for the Department."). See generally Ala. Code 1975, § 38-2-1 et seq. (discussing the relationship between the Alabama DHR and county departments of human resources).

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to Serena Cronier, who was a member of the Montgomery Regional Legal Office of the Alabama DHR and was acting counsel for the Autauga County DHR in the underlying administrative proceedings against Sullivan. The e-mail to Cronier stated: "Please see the attached Notice of Appeal on behalf of ... Sullivan." Attached to that e-mail was a copy of a May 4, 2021, notice of appeal from Sullivan's attorney to the Alabama DHR, "c/o Hon. Serena Cronier," addressed to "P.O. Box 34000, Montgomery, AL 36130." The notice of appeal indicated that it was sent by both e-mail and United States Postal Service ("USPS") overnight delivery. Also attached to the petition as exhibits were a copy of a USPS priority-mail label addressed to "Serena Cronier, Esq., Alabama Department of Human Resources, P.O. Box 34000, Montgomery, AL 36130-0001," and copies of USPS receipt information indicating that the notice of appeal had been sent by priority mail and that delivery of the notice of appeal had occurred on May 6, 2021, at 6:43 a.m. but that "no delivery signature [was] on file for this item." We note that Sullivan's attorney had requested "signature service," and the mail label stated that a signature was required.

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On July 7, 2021, the Alabama DHR filed in the trial court a motion to dismiss Sullivan's petition for lack of subject-matter jurisdiction.² Specifically, the Alabama DHR alleged that Sullivan had failed to timely file her notice of appeal with the Alabama DHR as required by Ala. Code 1975, § 41-22-20(d), and, thus, it asserted, she had failed to invoke the jurisdiction of the trial court. See also Ala. Admin. Code (Dep't of Hum. Res.), r. 660-1-5-.15. The Alabama DHR alleged that the post-office box used for purportedly filing the notice of appeal was "not associated with" the Alabama DHR, that the zip code used was incorrect for mail to be delivered to the Alabama DHR, and that sending the e-mail to Cronier could not serve as the filing of a notice of appeal under pertinent precedent.³ See L.C. v. Shelby Cnty. Dep't of Hum. Res., 293 So. 3d 912,

²The Alabama DHR also argued that the trial court lacked personal jurisdiction over it based on insufficiency of service of process as to the petition for judicial review. That argument was eventually resolved based on subsequent service of process on the Alabama DHR.

³Although the matter is not discussed by the parties, the service information on the ALJ's April 2021 order used "P.O. Box 34000, Montgomery, AL 36130" as the mailing address for Cronier, as attorney for the Autauga County DHR and as an assistant attorney general at the "Montgomery Regional Office." The April 2021 order indicated that it

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915 (Ala. Civ. App. 2019). Accordingly, the Alabama DHR argued, it had not timely received the notice of appeal and the trial court was without jurisdiction to consider the petition.

Attached to the Alabama DHR's motion to dismiss was a supporting affidavit from Kelly Lever, the director of personnel for the Alabama DHR. Lever averred that she had reviewed the documents attached to Sullivan's petition, that "Post Office Box 34000, Montgomery, Alabama is not an address associated with the [Alabama DHR]," and that "Serena Cronier is an employee of the Department of Human Resources assigned to the Montgomery Regional Legal Office. She is not located at Post Office Box 34000, Montgomery, Alabama" Attached to Lever's affidavit were most of the documents that Sullivan had attached to her petition. The Alabama DHR subsequently supplemented its supporting documents with an affidavit from Cronier. Cronier averred that she was

was also sent "via email only" to the Administrative Hearings Division of the Alabama DHR and stated that the address for that Division was "50 Ripley Street, Room 2333, Montgomery, AL 36130-4000." The record does not disclose the source that the ALJ used for the foregoing information.

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an assistant attorney general for "the Montgomery Legal Office of the Department of Human Resources"; that she had "never received by certified mail a copy of any notice of appeal or petition for judicial review"; and that she was "not in any way associated with Post Office Box 34000, Montgomery, Alabama, nor have I ever received mail at that address."

Sullivan filed a response to the Alabama DHR's motion to dismiss. Sullivan argued that her e-mail to Cronier had satisfied the filing requirement for a notice of appeal and that, unlike the appellant in L.C., she had served Cronier with the notice of appeal by mail, although she admitted that a typographical error had occurred as to the proper post-office box. Specifically, Sullivan admitted that the proper post-office box for the Alabama DHR was P.O. Box 304000 instead of P.O. Box 34000. We note that the former post-office box was used by the Alabama DHR's legal office in various filings in the trial court in this case.

The trial court conducted a hearing on the motion to dismiss on July 29, 2021, after which it ordered the parties to file briefs regarding the issues raised in the Alabama DHR's motion to dismiss and certain issues discussed during the hearing. On July 30, 2021, in response to an

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order from the trial court, the Alabama DHR filed a revised affidavit from Cronier. Cronier averred that she was "[a]n Assistant Attorney General for the Montgomery Legal Office of the Department of Human Resources"; that she had "never received any notice of appeal in the mail in this matter"; and that she was "not in any way associated with Post Office Box 34000, Montgomery, Alabama, nor ha[d she] ever received mail at that address."

On August 23, 2021, Sullivan filed an amended petition for judicial review and her posthearing brief. In her amended petition, Sullivan reasserted the allegations in her original petition and further alleged that the Alabama DHR had received her notice of appeal on May 7, 2021, based on a delivery receipt executed by Fredreke Riley, who she alleged was an agent working for the State Department of Finance. The State Department of Finance includes within its divisions the Central Mail Office for the departments and agencies of the State ("the central mail office"). See Ala. Code 1975, § 41-4-180. Section 41-4-180 states:

"There shall be in the Department of Finance the Division of Service. The functions and duties of the Division of Service shall be as follows:

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"(1) To provide for the stamping and mailing for each state department, board, bureau, commission, agency, and office located and operating in the City of Montgomery and to operate a central mailing room or rooms and service for the departments, boards, bureaus, commissions, agencies, and offices. ..."

See also Ala. Admin. Code (Dep't of Fin.), r. 355-1-1-.01(7). Sullivan attached to her amended petition the same exhibits that she had included with her original petition, but Sullivan also added documents purporting to support her allegations as to Riley, including a USPS tracking report for her notice of appeal. Those documents reflected that Riley was employed by the State Department of Finance and that, on May 7, 2021, he had executed a delivery receipt in the "state mail room" for the package containing the notice of appeal.

In Sullivan's posthearing brief, she argued that, despite the erroneous address that she had used on the notice of appeal, she had nevertheless demonstrated that the Alabama DHR had timely received the notice of appeal based on the mail receipt executed by Riley as part of the operations of the central mail office. Sullivan attached to her posthearing brief a copy of each of the Riley-related documents that she

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had attached to her amended petition. Sullivan contended that she had satisfied the filing requirements of § 41-22-20 and that, in addition, to the extent that the service-of-process provisions of Rule 4(i)(2)(C), Ala. R. Civ. P., might be deemed pertinent to filings under § 41-22-20, Riley was an agent with authority to receive mail addressed to the Alabama DHR. Sullivan conceded that electronic filing of a notice of appeal had not been available to her.

On September 7, 2021, the Alabama DHR filed a motion to dismiss the amended petition and a response to Sullivan's posthearing brief. The Alabama DHR argued, in part, that, based on Sullivan's allegations in her amended petition, her notice of appeal had not been delivered to the Alabama DHR or to a specified officer of the Alabama DHR as described in L.C. but, instead, had been delivered to an agent of the Department of Finance, who had signed for the notice of appeal. According to the Alabama DHR, that agent was not employed by the Alabama DHR and was not "able to accept service of process for DHR," as averred by Lever in an affidavit that was attached in support of the motion to dismiss the amended petition. The Alabama DHR continued:

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"A document cannot be 'filed' until it is in the hands of a specified officer for permanent keeping in the place where official records and papers are kept. First, a Department of Finance employee is not a 'specified officer' of [the Alabama] DHR who is able to permanently keep this notice 'in the place where official records are kept,' [quoting L.C., 293 So. 3d at 915]. Also, as [Sullivan] notes, this notice was received at Central Mail Operations. [The offices of the Alabama] DHR [are] located at Gordon Persons Building, 50 N. Ripley Street, Montgomery. Generally speaking, [the] Alabama DHR's 'official records and papers' are kept at this location. There is no indication that the notice [of appeal] was received at Gordon Persons Building, much less at [the offices of the Alabama] DHR, which is where [its] official records and papers are kept. Therefore, this notice of appeal was not timely filed."

In support of its arguments, the Alabama DHR submitted, in part, an affidavit from Lever stating that Riley was not an agent of the Alabama DHR and that he had "never been given any authority to accept service of process on behalf of [the Alabama DHR]." The Alabama DHR presented no evidence in support of its statement that the Alabama DHR kept its official records and papers at the Gordon Persons Building, and it presented no evidence that would support the conclusion that mail directed to the Alabama DHR at 50 N. Ripley Street would not be routed through the central mail office.

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Sullivan filed a reply in opposition to the Alabama DHR's motion to dismiss her amended petition. In her reply, she made the additional argument that, although she had not used certified mail for sending the notice of appeal, her priority-mail request for overnight delivery with a signature requirement and delivery confirmation should be deemed to have satisfied any certified-mail requirement in § 41-22-20(d), particularly in light of the COVID-19 pandemic. Thus, according to Sullivan, she should be entitled to rely on the postmark date, rather than the delivery date, for purposes of filing her notice of appeal. Sullivan also noted that, because the notice of appeal had been delivered to the central mail office and she had no control over the internal mail-handling procedures of the State, she should not be penalized for any delay that might have occurred between the time of that delivery and the actual day and time that the central mail office might have delivered the notice of appeal to the Alabama DHR's office. (It is not clear from the record when that might have occurred.) Sullivan further noted that the Alabama DHR had published no regulations governing where and with whom a notice of appeal should be filed.

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On September 23, 2021, the trial court entered an order granting the Alabama DHR's motion to dismiss Sullivan's amended petition. On October 22, 2021, Sullivan filed a postjudgment motion, and the Alabama DHR filed a response to that motion. The trial court denied Sullivan's postjudgment motion on October 29, 2021. Sullivan timely filed a notice of appeal to this court on December 8, 2021.

The trial court dismissed Sullivan's amended petition for lack of subject-matter jurisdiction based on her purported failure to timely file a notice of appeal with the Alabama DHR pursuant to § 41-22-20. The pertinent facts are not in dispute; therefore, we review the trial court's September 2021 order de novo. See Hill v. Hill, 89 So. 3d 116, 118 (Ala. Civ. App. 2010)

"Appeals from decisions of administrative agencies are purely statutory, and the time periods provided by the statute must be strictly observed." Ex parte Crestwood Hosp. & Nursing Home, Inc., 670 So. 2d 45, 48 (Ala. 1995). "A failure to appeal in the manner prescribed by statute, results in there being no appeal taken at all." Ex parte State Dep't of Hum. Res., 548 So. 2d 176, 178 (Ala. 1988); see also Ex parte

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Alabama Medicaid Agency, 298 So. 3d 522, 525-26 (Ala. Civ. App. 2020)

(noting that, generally, the failure to timely file a notice of appeal with the agency under § 41-22-20 deprives the circuit court of subject-matter jurisdiction over the corresponding petition for judicial review).

Section 41-22-20 states, in pertinent part:

"(b) All proceedings for review may be instituted by filing of notice of appeal or review and a cost bond with the agency to cover the reasonable costs of preparing the transcript of the proceeding under review, unless waived by the agency or the court on a showing of substantial hardship.

...

"....

"(d) The notice of appeal or review shall be filed within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner or, if a rehearing is requested under [Ala. Code 1975, §] 41-22-17, within 30 days after the receipt of the notice of or other service of the decision of the agency thereon. The petition for judicial review in the circuit court shall be filed within 30 days after the filing of the notice of appeal or review. Copies of the petition shall be served upon the agency and all parties of record. ... Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the reviewing court may extend the time for filing, not to exceed an additional 30 days, or, within four months after the issuance of the agency order, issue an order permitting a review of the agency decision under [the Alabama Administrative Procedure Act, § 40-22-1 et seq., Ala.

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Code 1975,] notwithstanding such waiver. Any notice required herein which is mailed by the petitioner, certified mail return receipt requested, shall be deemed to have been filed as of the date it is postmarked."

Sullivan argues that the trial court erred by granting the Alabama DHR's motion to dismiss because, she says, her notice of appeal was timely filed with the Alabama DHR. Specifically, she argues that, because the Alabama DHR has no regulation directing the filing of a notice of appeal with a particular officer or in a particular office, the timely delivery of her notice of appeal to the central mail office, which is authorized to receive mail for the Alabama DHR under § 41-4-180, satisfied the filing requirement of § 41-22-20. We agree.⁵

This court has stated that § 41-22-20 "does not set forth the manner in which a notice of appeal may be filed, and no regulation promulgated by the Alabama DHR specifically addresses the method for perfecting the filing of a notice of appeal with that agency or any of the county departments of human resources." L.C., 293 So. 3d at 914. In L.C., we

⁵Sullivan's argument that her e-mail to Cronier should be deemed to have satisfied the filing requirement under § 41-22-20(d) is without merit. See L.C., 293 So. 3d at 915.

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also acknowledged that, "[g]enerally speaking, the term 'file,' in the legal context, refers to the 'delivery of a document to a specified officer for permanent keeping as a notice or record in the place where his official records and papers are kept.'" Id. at 914-15 (quoting Turner v. Alabama State Tenure Comm'n, 523 So. 2d 401, 403 (Ala. Civ. App. 1987), aff'd, Ex parte Turner, 523 So. 2d 403 (Ala. 1988))."

In L.C., we assumed, without deciding, that an attorney who represented the agency as to the underlying agency proceedings could be an appropriate person to receive the notice of appeal for the agency. 293 So. 3d at 915. Nevertheless, we held that electronically forwarding a notice of appeal to such an attorney did not satisfy the requirements of § 41-22-20 because neither that statute nor any pertinent agency regulation authorized electronic filing of a notice of appeal.

In contrast to the circumstances in L.C., § 41-22-20(d) implicitly authorizes the filing of a notice of appeal by mail because the last sentence of that section provides for the presumption attending the mailbox rule when a petitioner mails the notice of appeal by "certified mail return receipt requested." That section is silent, however, as to the

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person or office within an agency that certified mail, or any other type of mail, must be directed. We assume, without deciding, that the commissioner of the Alabama DHR would be a proper person to direct such mail to because the commissioner may "exercise all the rights, powers, duties and authority vested in [that agency]," see Ala. Code 1975, § 38-2-3(b). However, the Alabama DHR has directed us to no statute or regulation requiring such delivery to the commissioner or to any other specific office or agent of the Alabama DHR. Thus, the filing of a notice of appeal differs from the service of a complaint, which is governed by Rule 4(c)(7), Ala. R. Civ. P.; that rule states that service of process must be served upon "the officer responsible for the administration of the department" and "the attorney general of this state."

The Alabama DHR also has directed us to no statute or regulation governing who has the duty to maintain the official records of administrative proceedings for the Alabama DHR, cf. Ala. Code 1975, § 12-17-94 (describing the duties of the clerks of the circuit courts), and it does not appear that the Alabama DHR has adopted a regulation stating where or with whom a party must file a notice of appeal under § 41-22-

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20(b). See Ala. Code 1975, § 41-22-4(a) (requiring an agency to "(1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may ... make submissions or requests; [and] (2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available"). Thus, we are left only with the plain language of § 41-22-20(b); the notice of appeal must be filed "with the agency."

The Alabama DHR apparently would use its own regulatory silence on where and with whom to file a notice of appeal as a means of avoiding receipt of such a notice when it was timely received by the central mail office. But we cannot fail to consider the impact of such a position on an aggrieved party who, in the absence of a statute or regulation requiring that a notice of appeal be filed with a specific officer or office within an agency, has no ability to determine as a matter of law whether he or she actually has "filed" a notice of appeal following the delivery of the notice to the agency, whether that delivery is by mail or in person.⁶ As Sullivan

⁶We do not address the issue whether, in the absence of a regulation, a state agency may enforce a mere instruction regarding the filing of a notice of appeal, such as directions issued in connection with

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notes, once her notice of appeal was delivered to the central mail office, she had no control over how such mail was processed, just as, we note, she would have had no control over how that mail would have been processed had it been delivered to the Alabama DHR's street address or how her notice of appeal would have been processed had she hand delivered it to the front desk at the Alabama DHR's office. To look at it from Sullivan's point of view, she was required to file a notice of appeal with the Alabama DHR without direction from or restriction by any statute or regulation notifying her where or with whom she must file that notice -- other than with the agency -- and in the absence of any statute or regulation describing which officer of the Alabama DHR maintains the official records of administrative proceedings and where such officer keeps those records. The question is, under such circumstances -- particularly the silence of the Alabama DHR's regulations on the issue of

an administrative order. See Ex parte State Dep't of Hum. Res., 548 So. 2d at 179 ("[W.F.] Hand justifiably relied on the appeal procedure given to him by the agency and was misled as a result. Therefore, it would be unfair to permit the Alabama DHR to now rely on its own wrongdoing in order to deny Hand an appeal."). The record before us includes no such instruction to Sullivan.

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where or with whom to file a notice of appeal -- will the timely delivery of the notice of appeal to the central mail office, which is authorized by statute to receive mail for the Alabama DHR, suffice for filing with the Alabama DHR under § 41-22-20(b)? We believe it must.

Section 41-4-180 expressly provides that the Division of Service for the Department of Finance must operate a "central mailing room" for "each state department" or agency, which includes the Alabama DHR. The Alabama DHR provided no evidence that would support the conclusion that the central mail office where Riley received the mail containing the notice of appeal cannot or does not accept mail on the Alabama DHR's behalf. Based on Sullivan's factual submissions to the trial court, although the post-office box she used for the Alabama DHR was incorrect, the notice of appeal was directed to the Alabama DHR and was delivered to an office that was statutorily required to accept the Alabama DHR's mail. The supreme court has held that, for purposes of filing, actual receipt is the pertinent test in the absence of a statute or regulation providing otherwise. See Ex parte G.L.C., 281 So. 3d 401, 406 (Ala. 2018); see also Holmes v. Powell, 363 So. 2d 760, 762 (Ala. 1978).

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That holding is consistent with Ala. Admin. Code (Dep't of Hum. Res.), r. 660-1-5-.15, which states:

"An aggrieved person still dissatisfied after the final decision shall be entitled to file a notice of appeal and a cost bond of the decision with the State or County Department. The notice and cost bond must be received within 30 days after the receipt of the final decision or within 30 days after receipt of the decision on a request for rehearing. ..."

(Emphasis added.) Because no statute or regulation restricts who may receive a notice of appeal for the Alabama DHR or otherwise directs where or with whom such a notice must be filed, we conclude that the timely receipt of a mailed notice of appeal by a person who is authorized to receive mail for the Alabama DHR satisfies the filing requirement of § 41-22-20(b).

Based on the foregoing, the September 2021 order dismissing Sullivan's petition for lack of subject-matter jurisdiction is reversed, and this case is remanded to the trial court for further proceedings.

REVERSED AND REMANDED.

Thompson, P.J., and Moore, Hanson, and Fridy, JJ., concur.