

ANGELA JACKSON * **NO. 2017-CA-0712**
VERSUS * **COURT OF APPEAL**
FAMILY DOLLAR STORES * **FOURTH CIRCUIT**
OF LOUISIANA INC., S&S *
JANITORIAL SERVICES, LLC * **STATE OF LOUISIANA**
SMS ASSIST, LLC

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APPEAL FROM
THE OFFICE OF WORKERS' COMPENSATION
NO. 2015-03662, DISTRICT "08"
HONORABLE Catrice Johnson-Reid, THE OFFICE OF WORKER'S
COMPENSATION

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JUDGE SANDRA CABRINA JENKINS

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(Court composed of Judge Roland L. Belsome,
Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew Woods)

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APPEAL DISMISSED; CASE REMANDED WITH ORDER

JANUARY 5, 2018

In this workers' compensation case, claimant Angela Jackson sustained an ankle injury on October 22, 2014 when a shelf full of packaged water fell on top of her leg and ankle while she was allegedly cleaning the floor of a Family Dollar Store in New Orleans, Louisiana. Defendants Family Dollar Stores of Louisiana, Inc.; S&S Janitorial Service, L.L.C.; and SMS Assist, L.L.C. (collectively, "Appellants") appeal a decision of the Worker's Compensation Judge ("WCJ") finding that Ms. Jackson was a direct employee of Becky Tolito and Tolito Services Co., L.L.C., and a statutory employee of the Appellants. The WCJ concluded that Ms. Jackson was injured in the course and scope of employment, and awarded Ms. Jackson her medical expenses, total temporary disability, and supplemental earnings benefits, and assessed penalties and attorney's fees against the Appellants. The WCJ signed a judgment on January 30, 2017. Appellants filed a timely motion for new trial, which the WCJ denied on March 22, 2017. On March 28, 2017, Appellants filed a motion for devolutive appeal. The WCJ signed the order of appeal on May 4, 2017.

On August 28, 2017, Ms. Jackson filed a Motion to Dismiss Appeal pursuant to La. R.S. 23:1310.5(C), which provides:

When there has been an award of benefits by the workers' compensation judge, no appeal by an employer shall be entertained by the appellate court unless the employer secures a bond with one or more sureties to be approved by the workers' compensation judge, guaranteeing that the employer will pay the amount of the award rendered therein together with interest thereon as otherwise provided by law, and all costs of the proceeding. The time limits for perfecting the bond shall be as provided in the Code of Civil Procedure, but shall not commence to run against the appellant until the appellant is notified by the workers' compensation judge as to the amount of the bond fixed in accordance with law.

"Thus, in workers' compensation matters, appeal bonds are required in both

suspensive and devolutive appeals where the claimant has been awarded benefits and the employer seeks an appeal.” *Coolidge v. Butler*, 16-937 (La. App. 3 Cir. 11/22/17), -- So.3d --, 2017 WL 5623856, *2. The delay for posting the bond, however, does not begin to run until the appellant gets notification of the amount of the bond.

Ms. Jackson seeks to have the appeal dismissed because it is undisputed that Appellants did not post an appeal bond in this case. It is also undisputed that no bond was set by the WCJ. We agree with Ms. Jackson that we cannot entertain this appeal. But because the time limits for perfecting the bond do not begin to run until the Appellants are notified by the WCJ of the amount of the bond, we remand the case for compliance with La. R.S. 23:1310.5(C). *See Hurst v. Arabi Taxi and Delivery Serv.*, 96-108, pp.2-3 (La. App. 5 Cir. 5/28/96), 675 So.2d 1210, 1211.

CONCLUSION

Accordingly, we hereby grant Ms. Jackson’s motion, and dismiss this appeal as premature. We remand this matter to the WCJ for the setting of a bond in compliance with La. R.S. 23:1310.5(C).

APPEAL DISMISSED; CASE REMANDED WITH ORDER