

COURT OF APPEALS OF THE STATE OF GEORGIA

Aretha A. Townsend v. Mark Butler, Commissioner, Georgia Department of Labor

Townsend v. Butler · No. A16A1326 · Decided April 25, 2016

SUMMARY

The Georgia Court of Appeals dismissed Townsend's appeal from a Cobb County Superior Court order reviewing a Georgia Department of Labor decision. The court held that the appeal required an application for discretionary review under OCGA § 5-6-35(a)(1), and further noted that the appeal would have been untimely even if direct appeal were available.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	April 25, 2016
DOCKET	A16A1326
DISPOSITION	dismissed
PROCEDURAL POSTURE	Townsend appealed the Cobb County Superior Court's dismissal of her petition for judicial review of an administrative ruling and the denial of her motion for reconsideration.
PRECEDENTIAL VALUE	published
PARTIES	Aretha A. Townsend v. Mark Butler, Commissioner, Georgia Department of Labor, Georgia Department of Labor

TOPICS

appellate procedure

appellate jurisdiction

judicial review of agency action

administrative law

PRACTICE AREAS

appellate procedure

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction over a direct appeal from a superior-court order reviewing a state administrative agency decision when the appellant did not file an application for discretionary

review.

2. Whether, assuming a direct appeal were available, the appeal was timely when the notice of appeal was filed within 30 days of the denial of a motion for reconsideration but more than 30 days after the underlying judgment.

HOLDINGS

1. An appeal from a superior-court order reviewing a decision of a state administrative agency must be brought by application for discretionary review under OCGA § 5-6-35(a)(1). Because Townsend filed only a notice of appeal, the Court of Appeals lacked jurisdiction and dismissed the appeal.
2. Even if a direct appeal had been available, the appeal would have been untimely because the denial of a motion for reconsideration is not directly appealable and filing that motion does not extend the time for appealing the underlying judgment.

KEY QUOTATIONS

“Townsend’s failure to file a discretionary application deprives us of jurisdiction over this appeal, which is hereby DISMISSED.” (main text)

“Although Townsend filed her notice of appeal within 30 days of the order denying her motion for reconsideration, a trial court’s denial of a motion for reconsideration is not subject to direct appeal, and the filing of such a motion does not extend the time for appealing the underlying judgment.” (footnote 1)

FACTUAL BACKGROUND

Townsend sought judicial review in Cobb County Superior Court of an administrative ruling by the Georgia Department of Labor. The superior court dismissed her petition as untimely, and later denied her motion for reconsideration. She then filed a direct notice of appeal rather than a discretionary-review application.

PROCEDURAL HISTORY

Townsend petitioned the Cobb County Superior Court for judicial review of a Georgia Department of Labor administrative ruling. The superior court dismissed the petition as untimely on May 18, 2015, and denied Townsend’s motion for reconsideration on July 14, 2015. Townsend filed a notice of appeal from the reconsideration ruling, but the Court of Appeals dismissed the appeal for lack of jurisdiction because review of a superior-court order reviewing a state administrative agency decision required an application for discretionary review.

DISPOSITION

dismissed

CASES CITED

- Jamal v. Thurmond, 263 Ga. App. 320, 587 S.E.2d 809 (2003)
- Department of Corrections v. Mack, 217 Ga. App. 862, 459 S.E.2d 573 (1995)

- Bell v. Cohran, 244 Ga. App. 510, 511, 536 S.E.2d 187 (2000)

OPINION

Aretha A. Townsend v. Mark Butler, Commissioner, Georgia Department of Labor
PER CURIAM.

Court of Appeals of the State of Georgia
ATLANTA, _____

April 12, 2016 The Court of Appeals hereby passes the following order:

A16A1326. ARETHA A. TOWNSEND v. MARK BUTLER, COMMISSIONER,

GEORGIA DEPARTMENT OF LABOR et al. Aretha A. Townsend filed a petition in Cobb County Superior Court seeking judicial review of an administrative ruling of the Department of Labor. On May 18, 2015, the court dismissed the petition as untimely. Townsend filed a motion for reconsideration from this ruling, which the court denied on July 14, 2015. Townsend filed a notice of appeal from this ruling. We lack jurisdiction. OCGA § 5-6-35 (a) (1) requires that appeals from orders of superior courts reviewing decisions of state administrative agencies must be made by application for discretionary review. See Jamal v. Thurmond, 263 Ga. App. 320 (587 SE2d 809) (2003); Dept. of Corrections v. Mack, 217 Ga. App. 862 (459 SE2d 573) (1995).

Townsend's failure to file a discretionary application deprives us of jurisdiction over this appeal, which is hereby DISMISSED.¹ 1 Even if Townsend had a right of direct appeal, her appeal is untimely. A notice of appeal must be filed within 30 days after entry of an appealable order. OCGA § 5-6-38 (a). Although Townsend filed her notice of appeal within 30 days of the order denying her motion for reconsideration, a trial court's denial of a motion for reconsideration is not subject to direct appeal, and the filing of such a motion does not extend the time for appealing the underlying judgment. See Bell v. Cohran, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Court of Appeals of the State of Georgia 04/12/2016 Clerk's Office, Atlanta, _____ I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written. , Clerk.