An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-738

No. COA22-103

Filed 1 November 2022

Buncombe County, No. 21 CVS 1281

HEIDI WILLIAMS, Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF COMMERCE, DIVISION OF EMPLOYMENT SECURITY, Respondent.

Appeal by petitioner from order entered 22 July 2021 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 8 June 2022.

Heidi M. Williams, pro se, for petitioner-appellant.

North Carolina Department of Commerce, Division of Employment Security, by Chief Counsel R. Glen Peterson and David J. Adinolfi II, for respondent-appellee.

DIETZ, Judge.

¶ 1 Heidi Williams petitioned for judicial review of a state agency decision denying her claim for unemployment benefits. Although Williams timely filed the petition, she did not serve the agency within the time required by the statute.

¶ 2 As explained below, our case law holds that the statutory service requirement

is a jurisdictional deadline, meaning that compliance is necessary to confer subject matter jurisdiction on the reviewing court. Because Williams did not timely serve the petition, the trial court did not acquire jurisdiction over the matter and properly dismissed the petition. We therefore affirm the trial court's order.

Facts and Procedural History

¶ 3 In May 2020, Petitioner Heidi Williams filed an unemployment claim with the North Carolina Department of Commerce, Division of Employment Security. The agency denied the claim, and Williams appealed through several layers of administrative review before reaching a final decision. That decision included a notice that it would "become final thirty (30) days after mailing unless a timely petition for judicial review is filed with the superior court pursuant to N.C. Gen. Stat §§ 96-15(h) and (i)."

¶ 4 The agency decision also included an "Appeal Rights" section stating that copies of "any Petition for Judicial Review filed with the Clerk of Superior Court must be served upon the Division of Employment Security ("Division") and upon all parties of record to the proceedings within ten (10) days of the filing of the petition. Copies of the petition must be served by personal service or by certified mail, return receipt requested." The "Appeal Rights" section also provided the name and mailing address for the agency's registered agent for service of process.

¶ 5 Williams timely filed a petition for judicial review of the agency decision with

the trial court. Williams also served a copy of the petition on the agency's registered agent by certified mail, but the agency did not receive it until after the ten-day statutory deadline for service expired.

¶ 6 The agency then moved to dismiss the action for lack of subject matter jurisdiction. After a hearing, the trial court entered an order dismissing the petition for judicial review for failure to timely serve the agency under N.C. Gen. Stat. § 96-15(h). Williams appealed.

Analysis

¶ 7 The crux of this case is whether the trial court lacked jurisdiction over the petition for judicial review because Williams failed to timely serve the petition on the agency. The applicable statute, N.C. Gen. Stat. § 96-15(h), required Williams to serve the petition within ten days after she filed the petition with the trial court. This statutory service requires "actual delivery"—meaning receipt by the agency—not merely depositing the service paperwork in the mail before the deadline. *Isenberg v. N.C. Dep't of Com., Div. of Emp. Sec.*, 241 N.C. App. 68, 70–71, 772 S.E.2d 97, 99 (2015).

¶ 8 This statutory deadline for service falls within a narrow category of deadlines known as "jurisdictional" deadlines. *Id.* Broadly speaking, there are two categories of rules governing deadlines in the court system: "jurisdictional rules, which affect a court's power to hear the dispute, and procedural rules, which ensure that the legal

system adjudicates the claim in an orderly way." *Tillett v. Town of Kill Devil Hills*, 257 N.C. App. 223, 225, 809 S.E.2d 145, 147 (2017). Failure to comply with a jurisdictional deadline deprives the reviewing court of jurisdiction, leaving the court with no authority to act other than to dismiss the matter for lack of subject matter jurisdiction. *Pfouts v. N.C. Div. of Emp. Sec.*, 276 N.C. App. 146, 2021-NCCOA-52, ¶ 9.

¶ 9 Here, the record on appeal demonstrates that Williams did not serve the petition on the agency within the ten-day jurisdictional time frame. To be sure, Williams *attempted* to serve the agency by certified mail in a timely manner. But the return receipt in the record indicates that the agency did not *receive* service within the required time.

¶ 10 Although this sort of technical error might be excusable in a case involving a non-jurisdictional deadline, the trial court had no authority to extend the service deadline because, as a jurisdictional deadline, it is a prerequisite to confer any power on the court at all. As a result, because actual delivery did not occur within the required time frame, the trial court properly dismissed the petition for lack of subject matter jurisdiction.

¶ 11 We acknowledge, as we have in the past, that this jurisdictional deadline "provides little room for mistakes in service" and thus can lead to harsh results when, as happened here, a mistake that caused no real prejudice prevents the court system

from reaching the merits of a case. *Isenberg*, 241 N.C. App. at 72, 772 S.E.2d at 99. Nevertheless, this is the law today, and we are bound to follow it. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). We thus affirm the trial court's order.

AFFIRMED.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).