

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-320

SEPTEMBER TERM, 2006

Penny Shaw	}	APPEALED FROM:
	}	
	}	Department of Labor and Industry
v.	}	
	}	No. S-04913, 21A-06 WC
Ethan Allen, Inc.	}	
	}	

In the above-entitled cause, the Clerk will enter:

Appellee has moved to dismiss this appeal of a workers= compensation award, contending that under 21 V.S.A. ' 672 this Court is without jurisdiction when a party takes an appeal to superior court Awithin the time limited therefor.@ Appellee took a timely appeal to the superior court in this case. In opposing dismissal, appellant argues that its appeal should not be dismissed because it fully complied with the rules of appellate procedure by bringing timely notice and because it gave notice of its appeal to this Court prior to appellee=s appeal to superior court. Appellant requests, in the alternative, that we direct any certified questions we receive from the Commissioner of Labor and Industry to the superior court to be included in that appeal.

Either party may appeal a workers= compensation award directly to this Court, but only if an appeal is not taken to the superior court within the time allowed for such appeal. 21 V.S.A. ' 672. We have construed ' 672 as providing two Amutually exclusive@ avenues for review. Roethke v. Jake=s Original Bar & Grill, 172 Vt. 555, 556 (2001) (mem.) (dismissing appeal when same party also took appeal to superior court). By the terms of ' 672, appeal to the superior court leaves this Court without jurisdiction regardless of whether notice of appeal to this Court was made first or whether all rules of appellate procedure were followed. See id. (dismissing appeal to this Court even though it was brought first). Nor is there any distinction in ' 672 for instances when opposing parties appeal to different courts rather than the same party bringing both appeals as was the case in Roethke. The statute plainly gives jurisdiction exclusively to the superior court when either party takes a timely appeal there. Absent jurisdiction in this Court, we decline to direct certified questions brought here to the superior court, and leave appellant to pursue certification to that court of any desired questions as may be provided for by law.

In the event of dismissal, appellee has requested that attorney=s fees be awarded. A workers= compensation claimant is entitled to reasonable attorney fees if he or she prevails in appeals to the superior or supreme court. 21 V.S.A. ' 678(b). We read the section to entitle appellee to attorney=s fees only in the event that she ultimately prevails in her appeal of the workers= compensation award. Given that the basis for dismissal of the present appeal is appellee=s having brought an appeal in another court, we determine that costs for the present appeal should be considered as part of the overall litigation. The issue of attorney=s fees for this appeal is thus reserved for consideration after final disposition of all appeals of the workers= compensation award.

Appeal dismissed for lack of jurisdiction. The awarding of attorney=s fees is reserved for consideration after final disposition of all appeals.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice