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Jun 20 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Commissioners T. Scott Beck, R. Michael Campbell, II, and Gene McCaskill

WCC File No. 1514359
Appellate Case No. 2021-000633

Rachel J. Turner, Employee,..... Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrual, Inc.;
Guarantee Insurance Company; Countrywide Staffing Solutions
Group, Inc.; South Carolina Department of Corrections; State
Accident Fund; and South Carolina Uninsured Employer's Fund,..... Respondents

of which Condustrual, Inc. f/k/a Medustrial Healthcare Staffing
Service, Employer, is the Respondent-Appellant.

**APPELLANT-RESPONDENT'S RETURN TO MOTION OF RESPONDENTS SOUTH
CAROLINA DEPARTMENT OF CORRECTIONS AND STATE ACCIDENT FUND TO
STRIKE PORTIONS OF INITIAL RESPONDENT'S BRIEF OF APPELLANT-
RESPONDENT**

Appellant-Respondent Rachel Turner hereby files her Return to Respondents South Carolina
Department of Corrections and State Accident Fund's Motion to Strike Portions of Initial
Respondent's Brief of Appellant-Respondent.

As to the allegation by SCDC that the Initial Brief of Appellant Respondent contains an
inadvertent misstatement of fact, Turner acknowledges that SCDC is correct. In the haste to

complete the initial brief, counsel for Turner mistakenly wrote that the Commission “also held in the alternative that Turner was a direct employee of SCDC.” This was not accurate. Turner raised the issue at trial but the Commission did not rule on the issue.¹

Turner disagrees that the Appellate Court Rules prohibit SCDC from filing a brief. Even if they do, SCDC could petition the Court for leave to file a brief as the Shatto issue potentially creates direct liability without a statutory right of indemnity against SCDC.

As to the relief that should be granted, SCDC states that “the undersigned is filing the present Motion to correct the brief prior to the filing of final briefs in this matter.” Turner agrees a correction is the appropriate remedy. Striking the entire argument is too extreme a sanction for an inadvertent misstatement. See Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990)(sanction imposed should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.”). Cf. In re Nov. 4, 2008 Bluffton Election, 686 S.E.2d 683, 385 S.C. 632 (2009)(“we are guided by the principle that courts should not interpret procedural rules to create a trap for unwary lawyers.”)

Therefore, Turner requests that the Court permit her to file an Amended Brief deleting the inaccurate statement, replacing it with a simple statement that the issue is raised as an additional

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At the opening of the hearing, Turner’s counsel argued:

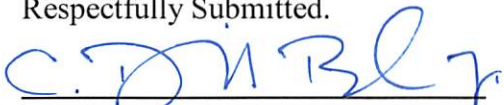
The primary issue in the case is whether Ms. Turner is and employee or an independent contractor. If she is found to be an independent contractor, then her claim fails altogether. If she is found to be an employee, then she would be an employee of Condustrual, and as Condustrual may be uninsured, she could also proceed equally against the Department of Corrections as a statutory employer. Frankly, as Mr. Harbison pointed out in pretrial, **per the Shatto case she could actually be the direct employee of Condustrual [sic] – Department of Corrections.** [Tr. 1, page 10, lines 7-18 (emphasis added)].

sustaining ground, and amending Issue on Appeal 2 to conform with the argument. The second paragraph of the initial brief should remain untouched as it goes to the merits of whether Shatto applies to the instant case.²

Turner further requests as a matter of fundamental fairness that the South Carolina Department of Corrections and State Accident Fund be granted leave to file a brief in response to the additional sustaining ground.

In the alternative, should the Court grant SCDC's Motion to Strike, the Court should limit the order to striking the first – admittedly inaccurate – paragraph. As the second paragraph is wholly accurate and proper, it should remain.

Respectfully Submitted.



for: Stephen B. Samuels
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Attorney for Appellant-Respondent

June 20, 2022

Columbia, South Carolina

²To avoid further delay and in the event the Court grants this relief, Turner is filing and serving an Amended Initial Respondent's Brief of Appellate-Respondent.

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of which Conustrial, Inc. f/k/a Medustrial Healthcare Staffing
Service, Employer, is the Respondent-Appellant.

PROOF OF SERVICE

I certify that I, Stephen B. Samuels, Attorney for the Appellant, have caused the **Appellant-Respondent's Return to Motion of Respondents South Carolina Department of Corrections and State Accident Fund to Strike Portions of Initial Respondent's Brief of Appellant-Respondent** to be served on the parties below clearly marked on the date indicated below, addressed as follows

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Wanda Powell

June 20, 2022



STEPHEN B. SAMUELS
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ATTORNEYS AT LAW

June 20, 2022

Via email: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: Rachel J. Turner v. Medustrial Healthcare Staffing Service and
Condustrual, Inc.
Appellate Case No.: 2021-000633

Dear Ms. Kitchings:

Enclosed for filing please find a copy of our **Appellant-Respondent's Return to Motion of Respondents South Carolina Department of Corrections and State Accident Fund to Strike Portions of Initial Respondent's Brief of Appellant-Respondent and Proof of Service** in the above case.

Please have your staff file the **Appellant-Respondent's Return to Motion of Respondents South Carolina Department of Corrections and State Accident Fund to Strike Portions of Initial Respondent's Brief of Appellant-Respondent and Proof of Service** and return to us a clocked copy. Feel free to contact us with any questions or if further information is needed from our office.

Sincerely,

Wanda Powell
Paralegal to Stephen B. Samuels

SBS

Enclosure(s) as stated

cc w/encl.: Erin Farthing, Esquire
Gregory M. Alford, Esquire
Lisa C. Glover, Esquire
T. Jeff Goodwyn, Esquire
Beth Richardson, Esquire
Grady L. Beard, Esquire
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