

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Case No. 2012-CP-23-04203

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MAY 16 2013

SC Court of Appeals

James A. Grant and Curtis D. Richardson,
Next Friend/Guardian Ad Litem, Claimant,.....Appellant

v.

PACA, Employer, and S.C. Property & Casualty Insurance
Guaranty Association on behalf of Park Avenue Insurance Co.
in Liquidation, Carriers,.....Respondents.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY GRANT DEFENDANTS’ /RESPONDENTS’ MOTION TO DISMISS DUE TO LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO THE SOUTH CAROLINA WORKERS’ COMPENSATION ACT?

- II. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS’ MOTION TO DISMISS IN RELIANCE OF S.C. CODE ANN. §42-3-180?

- III. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS’ MOTION TO DISMISS, BY FAILING TO CONSIDER THE CLAIMANT’S/APPELLANT’S ADDITIONAL MOTIONS? TO WIT:
 - A) APPELLANT’S OBJECTIONS TO RESPONDENTS’ MOTION TO DISMISS;

 - B) APPELLANT’S MOTION FOR PERMISSIVE JOINDER OF PARTY AND IN THE ALTERNATIVE, A MOTION FOR INTERVENTION;

 - C) NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND AND SUPPLEMENTAL PLEADING.

STATEMENT OF THE CASE

The underlying action in this appeal involves a workers' compensation claim. This claim arose when the Claimant/Appellant James A. Grant sustained injuries on or about May 15, 2007, while on a work assignment as an employee of the Respondents Employer/Carriers. The Claimant/Appellant alleged he was pushing a lawnmower up a hill and sustained injuries when he lost control of the mower and fell. The Claimant/Appellant was transferred by ambulance to the emergency room where he initially received treatment for his injuries. The Claimant/Appellant was provided certain medical benefits by the Defendants/Respondents in 2007 in compliance with the South Carolina Workers' Compensation Act. The Claimant/Appellant was represented by Attorney Ernest Hamilton until December 13, 2010, when he was relieved as counsel for the Claimant/Appellant. The Claimant/Appellant subsequently obtained Attorney Joshua D. Christian as counsel. On August 27, 2012, Attorney Joshua D. Christian requested to be released as counsel for the Claimant/Appellant and his request was granted by Form Order of the S.C. Carolina Workers' Compensation Commission on October 25, 2012. Since that time, the Claimant/Appellant has proceeded as a *pro se* litigant.

On June 29, 2012, the Claimant/Appellant filed a civil action for damages against the Defendants/Respondents in the Court of Common Pleas for the Thirteenth Judicial Circuit in Greenville County requesting the relief of \$300,000.00 plus court costs and filing fees for his injury at work in 2007. The Claimant/Appellant filed amended pleadings and a motion for leave to amend his complaint on October 8, 2012. In the amended pleadings the Claimant/Appellant stated that his two former attorneys had previously requested hearings before the Workers' Compensation Commission as early as October 8, 2009, to no avail and that both attorneys

refused to continue as the Claimant/Appellant's counsel due to the Claimant/Appellant's incarceration at that time.

In response to the *pro se* Complaint of Mr. James Grant, the Defendants/Respondents filed a Motion to Dismiss on August 3, 2012. Of note, these Defendants/Respondents do not concede that they were ever properly served with the Complaint nor the supplemental motions and pleadings of the Claimant/Appellant to the Circuit Court in Greenville County. Instead, Defendants/Respondents received some, but not all, of the filings of the Claimant/Appellant to the Circuit Court in response to a subpoena the Defendants/Respondents had filed with the Greenville County Department of Corrections in relation to a standing discovery request with that institution in association with Claimant/Appellant's workers' compensation claim. On October 12, 2012, the Honorable Letitia H. Verdin of The Court of Common Pleas for the Thirteenth Judicial Circuit granted the Defendant's motion to dismiss the case for lack of subject matter jurisdiction via Form Order. The Claimant/Appellant filed a Rule 59(e) motion for reconsideration to alter or amend judgment to the Circuit Court on October 26, 2012. This motion to reconsider was denied on November 26, 2012, via Form Order of the Circuit Court. This appeal to the South Carolina Court of Appeals followed. Claimant/Appellant James A. Grant, *pro se*, filed a Notice of Appeal on January 2, 2013.

STANDARD OF REVIEW

The standard of review in this Court regarding all questions of law is *de novo*. See *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). This Court reviews questions of law *de novo*; therefore, this Court should conduct a *de novo* review of the Circuit Court's Order granting Defendant/Respondents' Motion to Dismiss. See *Southeast Toyota Distributors, LLC v. Jim Hudson Superstore, Inc.*, 387 S.C. 508, 512, 693 S.E.2d 33, 35 (Ct.

App. 2010). Issues presented by a Claimant/Appellant in the appellate brief in conclusory fashion without proper supporting authority are abandoned as they are not preserved for appellate review. *See Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993).

ARGUMENTS

I. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS DUE TO LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO THE SOUTH CAROLINA WORKERS' COMPENSATION ACT?

The lower court's decision should be affirmed because the Circuit Court does not have jurisdiction over this matter pursuant to Rule 12(b)(1), SCRCF because the Appellant's sole and exclusive remedy for this action against his employer is by and through a worker's compensation claim pursuant to S.C. Code Ann. §42-1-540. *See* S.C. Code Ann. § 42-1-540 (Supp. 2011). The lower court properly dismissed this case because it lacked subject matter jurisdiction over the alleged case in controversy which was a claim for benefits for a work related injury, pursuant to Rule 12(b)(2), SCRCF. Note, this action was not appellate in nature. Defendants/Respondents contend subject matter jurisdiction is proper and appropriate only before the S.C. Workers' Compensation Commission as provided by law under the Workers' Compensation Act. *See Generally* "The South Carolina Workers' Compensation Law". Also, see paragraph numbered "2" at page 3 of the Plaintiff's filing which specifically alleges, "...both the employer and employee were subject to the Workers' Compensation Act at the time in question." That is, even the Claimant's/Appellant's own brief concedes his complaint to the Circuit Court was pertaining to a workers' compensation claim.

II. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS IN RELIANCE OF S.C. CODE ANN. §42-3-180?

The lower court properly granted Respondent's motion to dismiss because pursuant to S.C. Code Ann. § 42-3-180, jurisdiction for this action resides solely within the Workers' Compensation Commission. *See Generally* "The South Carolina Workers' Compensation Law"; *see also* S.C. Code Ann. § 42-3-180 (Supp. 2011). South Carolina Courts have construed this Title to mean that the original jurisdiction for such actions resides with the S.C. Workers' Compensation Commission. *See Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003) (noting that, "[w]e are further bound by precedent to strictly construe statutes in derogation of the common law) (Citing *Gilfillin v. Gilfillin*, 344 S.C. 407, 544 S.E.2d 829 (2001)). Workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights. *See Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948).

III. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS' MOTION TO DISMISS, BY FAILING TO CONSIDER THE CLAIMANT'S/APPELLANT'S ADDITIONAL MOTIONS? TO WIT:

A) APPELLANT'S OBJECTIONS TO RESPONDENTS' MOTION TO DISMISS;

B) APPELLANT'S MOTION FOR PERMISSIVE JOINDER OF PARTY AND IN THE ALTERNATIVE, A MOTION FOR INTERVENTION;

C) NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND AND SUPPLEMENTAL PLEADINGS.

The lower court properly granted Defendants'/Respondents' motion to dismiss despite Claimant/Appellant's objections/motions because Claimant/Appellant did not properly provide notice to the Defendants/Respondents or proof of service for those objections. Regarding Appellant's motion for permissive joinder and intervention in the alternative,

Defendants/Respondents were not given proper notice or service of process. Nonetheless, if the Court properly determined that it did not have subject matter jurisdiction over the case-in-chief, a permissible joinder of parties or intervention by parties would be inappropriate in the first instance to a tribunal which lacked subject matter jurisdiction.

In addition, Claimant/Appellant did not provide proper notice or service to the Defendants/Respondents concerning Appellant's "Notice of Motion and Motion for Leave to Amend and Supplemental Pleading." Although Defendants/Respondents were not provided with proper service or notice of Appellant's foregoing motions, Defendants/Respondents did address all arguments raised before the Circuit Court Judge once Defendants/Respondents were made aware of those motions and objections.

Issues III(a) – (c) listed above, even if addressed on the merits, are moot points and a meritless basis for potentially overturning the Order of the Circuit Court; therefore, the Court did not need to consider those issues. That is, even considering each of the three motions/objections made by the Claimant/Appellant listed in III(a) – (c), none of those items could or would have been able to bestow subject matter jurisdiction upon a court that did not otherwise have such jurisdiction.

Of note, the original case to the Circuit Court was not appellate in nature. The Claimant/Appellant, for this same date of injury, has filed a claim with the S.C. Workers' Compensation Commission, under SCWCC File No. 0713141. However, the claim for benefits before the Circuit Court was not an appeal of that ongoing action. An action is currently scheduled before the S.C. Workers' Compensation for a hearing before Commissioner Beck in Greenville County on the date of this appellate filing by the Defendants/Respondents on May 14,

2013, for the exact same facts which gave rise to the Claimant's/Appellant's Complaint filed in the Circuit Court of Greenville County.

Employer/Respondent S.C. Property & Casualty Insurance Guaranty Association is the worker's compensation insurance carrier for PACA under the Guaranty Association Act, acting as the re-insurance carrier for the liquidated insurance carrier, Park Avenue Insurance, pursuant to S.C. Code Ann. §38-31-60(b). *See* S.C. Code Ann. § 38-31-60 (b) (Supp. 2011). Neither of these carriers would be a proper party in interest to this action if the Claimant/Appellant were requesting damages sounding in tort, contract, equity or other benefits aside from such that could be available for a covered work related injury under the Workers' Compensation Act or S.C. Code Ann. §42-1-160 et. seq. *See* S.C. Code Ann. § 42-1-160 et. seq. (Supp. 2011). Therefore, any additional parties were properly dismissed by the lower court pursuant to Rule 17(a), SCRCP and 17(b), SCRCP.

Moreover, in his Complaint to the Circuit Court, the Claimant/Appellant makes no allegations against the Defendants/Respondents sounding in tort, contract, equitable recovery, or any other legal theory – aside from, the universal no-fault coverage he may potentially be entitled to pursuant to Title 42 of the S.C. Code Annotated (the South Carolina Worker's Compensation Act), which may only be adjudicated through the South Carolina Workers' Compensation Commission; thereby, Claimant/Appellant fails to state a claim against these Defendants/Respondents pursuant to Rule 12(b)(6) under any civil cause of action that would not have constituted an administrative remedy before the S.C. Workers' Compensation Commission.

Lastly, while Curtis D. Richardson consistently and continuously has listed himself as *Guardian Ad Litem*, Defendants/Respondents have received no such Order or approved motion naming him as such by any Court nor the Commission. In fact, on June 29, 2012, the Circuit

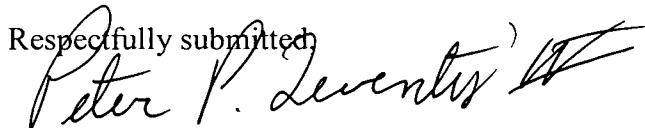
Court of Greenville County issued a Form Order specifically denying the motion to make Mr. Curtis Richardson a *Guardian Ad Litem* for Mr. Grant in this claim.

Lastly, the Complaint stated on page numbered "2" of his original Complaint that it was filed for the purposes of preserving the applicable statute of limitations for such an action "established under S.C. Code Ann. 15-3-550." The alleged date of injury is in 2007. Under the Workers' Compensation Act, the applicable date for filing would be within two years of this date. *See Generally* S.C. Code Ann. 42-15-40 (Supp. 2011). The statute cited by the Claimant/Appellant is also two years from the date of incident (but deals specifically with the following: libel; slander; false imprisonment; or action upon a statute for a forfeiture or penalty – of note, none of these causes of actions was listed or alleged in the Complaint).

CONCLUSION

For the foregoing reasons, these Defendants'/Respondents' request that the Order of the Circuit Court dismissing the Claimant's/Appellant's Complaint for lack of subject matter jurisdiction be fully affirmed.

Respectfully submitted,



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May 14, 2013