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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1012533
Appellate Case No. 2017-001732
Opinion No. 2022-UP-002
(Substituted October 1, 2021 - Filed January 5, 2022
Withdrawn, Substituted, and Refiled June 21, 2022)

Timothy Causey,Appellant,

v.

Horry County, Self-insured Employer,
through the S.C. Counties Workers'
Compensation Trust, Respondents.

RETURN TO MOTION FOR ADDITIONAL RELIEF FROM JUDGMENT

This return is filed pursuant to Rule 240(e) of the South Carolina Appellate Court Rules.
Rule 240(e) governs returns to motions generally.

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STATEMENT OF THE CASE

This matter is before the Court of Appeals to review the July 19, 2017, Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel. The Court issued its decision January 5, 2022. In that decision, the Court found that the Appellate Panel erred as a matter of law in recounting and analyzing the medical and circumstantial evidence which anchored its causation analysis. The Court reversed the Appellate Panel decision and reinstated the Single Commissioner's award of death benefits for Appellant's 2013 death.

A petition for rehearing was filed by Respondents on January 20, 2022. By order dated May 11, 2022, the Court of Appeals "grant[ed] the petition in part, den[ied] the accompanying request for oral argument, and substitute[d]" a new opinion "for the original opinion, which is withdrawn." The Order and Substituted Opinion were provided to Appellant and Respondents by e-mail on May 11, 2022. The content of the substituted May 11, 2022, Opinion emailed to the parties and posted on the Court's website was identical to the January 5, 2022, Decision and Order.

Neither party appealed nor objected to the substituted opinion within the deadline to appeal. On June 13, 2022, the Chief Deputy Clerk for the South Carolina Court of Appeals remitted the Court of Appeals' opinion to the Workers' Compensation Commission as required by Rule 221(b), SCACR. The remittitur was mailed to the Commission and the remittitur contained the judgment of the appellate court and was sealed with the seal and signature of the clerk of the court. The remittitur was provided to Appellant and Respondents by e-mail on June 13, 2022.

On June 21, 2022, the Deputy Clerk of Court signed and issued an order—for the Court of Appeals—recalling the remittitur. On June 21, 2022, the Clerk of Court notified counsel by

letter that an “updated substituted opinion” was filed after the remittitur was recalled. The letter and the newly substituted opinion were provided to Appellant and Respondents by e-mail that same day. The third opinion was refiled June 21, 2022. The third opinion reversed the Appellate Panel and remanded to the Appellate Panel to further analyze and address circumstantial evidence of causation.

Appellant filed a Petition for Rehearing on July 6, 2022, in which Appellant argued, *inter alia*, that the Court of Appeals lacked jurisdiction to recall the remittitur. The Court has yet to rule on Appellant’s Petition. On July 7, 2022, Respondents filed a “Motion for Additional Relief from Judgment.” In that Motion, Respondents “seek a declaratory judgment by the Court of Appeals and an order compelling equitable restitution.” Resp’t. Mem. Of Law in Supp. of Mot., pg. 2. This Return follows.

ARGUMENT

Respondents’ Motion states the motion was filed pursuant to 1) Rule 240, SCACR; 2) Rule 57 of the SCRCPC; 3) Rule 60(b) of the SCRCPC; and 4) S.C. Code Ann. Sec. 15-53-20. The Motion and supporting Memorandum asks the Court of Appeals for A) declaratory judgment and B) equitable restitution on a theory of unjust enrichment.¹ No amount of contrivance should distract from the fatal flaw that Respondents have no basis in the law to support any of their requests before this Court. For the reasons discussed below, Respondents’ Motion for Additional Relief from Judgment must be denied. Therefore, Appellants move for an order of this Court dismissing the Respondents’ Motion in its entirety due to the absolute absence of authority

¹ Respondents’ Memorandum in Support of Motion for Additional Relief from Judgment also engages in extensive discussion of the Court’s authority to recall the remittitur. Appellant stated his position on the Court’s jurisdiction to recall the remittitur in detail in the July 6, 2022, Petition for Rehearing and incorporates the same arguments herein.

supporting Respondents' prayer for relief. Second, the request for restitution due to alleged unjust enrichment must be dismissed because this Court does not have subject matter jurisdiction to hear matters of equity.

A. DECLARATORY JUDGMENT

I. Respondents are unable to identify authority granting this Court the authority to issue a declaratory judgment.

Respondents' request for declaratory judgment and for relief from judgment under Rules 57, SCRPC, and S.C. Code Ann. § 15-53-20 *et seq.* must be dismissed because this Court does not have the authority to grant such relief. Respondents even concede in their Motion that the Rules of Civil Procedure are inapplicable to the Court of Appeals. Resp't. Mem. Of Law in Supp of Mot., pg. 8. Respondents' Motion further fails as a matter of law because there are no grounds for this Court to issue an Order providing the relief sought by Respondents in general, and specifically under S.C. Code Ann. § 15-53-20, *et seq.*

Judicial power is vested by the South Carolina Constitution "in a unified judicial system, which shall include a . . . Court of Appeals." S.C. Const. art. V, § 1. The South Carolina Constitution is clear: "The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. art. V, § 9. "[J]udges of the Court of Appeals . . . shall have such additional powers at chambers as the General Assembly may provide." S.C. Const. art. V, § 20. The General Assembly has spoken resolutely that the Court of Appeals "**may reverse, affirm, or modify the judgment . . . appealed from in whole or in part . . . and the judgment shall be remitted to the court below.**" S.C. Code Ann. § 18-9-270 (emphasis added).

The Supreme Court is vested with the authority to "make rules governing the administration of all the courts of the State" and to "make rules governing the practice and procedure in all such courts." S.C. Const. art. V, § 4. The South Carolina Supreme Court has adopted a set of rules for the trial courts—the SC Rules of Civil Procedure—and another set of rules for appellate practice—the SC Appellate Court Rules.

The Rules of Civil Procedure "**shall apply to every trial court of civil jurisdiction** within this state, within the limits of the jurisdiction and powers of the court provided by law." Rule 81, SCRCF (emphasis added). Compare Rule 101(a), SCACR, ("Part II governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals."), with Rule 81, SCRCF. The rules for appellate practice do not offer the relief sought by Petitioners under Rules 57 and 60, SCRCF, because the rules governing the Court of Appeals are limited to those made by the Supreme Court.

Respondents' motion fails to identify authority granting the Court of Appeals jurisdiction to issue a declaratory judgment because the procedure for obtaining a declaratory judgment is limited to "trial court[s] of civil jurisdiction." See Rule 81, SCRCF. The "Uniform Declaratory Judgments Act" is designed to allow "[c]ourts of record within their respective jurisdiction" to declare rights. S.C. Code Ann. § 15-53-20. To obtain a declaratory judgment under S.C. Code Ann. § 15-53-20, *et seq.*, "[t]he procedure . . . **shall be in accordance with these rules [of civil procedure].**" Rule 57, SCRCF (emphasis added). There is no ambiguity or discretion to the clear mandate in both the statute and the rules of civil procedure.

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying

the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent.

Laurens Cty. Sch. Dists. 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992) (quoting *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1957)).

There is no waivable provision in the Uniform Declaratory Judgments Act that would invalidate the mandate contained in Rule 57, SCRPC. Any contrary interpretation of the Act would frustrate the clear legislative purpose of the Act and the clear meaning of Rule 57, SCRPC. See *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”)). By adopting the clear mandate in Rule 57, SCRPC, the General Assembly has agreed with the Supreme Court’s interpretation of the Act to limit declaratory judgment proceedings to only a “trial court of civil jurisdiction.” Rule 57, SCRPC. Altering this scheme fouls the South Carolina Constitution by allowing judicial power to override the legislative power enshrined in the division of judicial powers. S.C. Const. art. I, § 8; S.C. Const. art. V, § 1. *Ex parte McCardle*, 74 U.S. 506, 515 (1869) (“[J]udicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.”).

Respondents’ motion also conflates this Court with a trial court and ignores the pendency of the petition for rehearing. *State v. Hallock*, 277 S.C. 413, 414, 288 S.E.2d 398, 398 (1982) (“Appellant filed a Petition for Rehearing which was granted, thereby staying the remittitur of the opinion and deferring final disposition in the initial appeal until a decision was reached.”). Petitioners’ motion asks this Court to ignore the deferred final disposition of the appeal by acting

improperly as a trial court. Resp't. Mot. For Additional Relief, p.4. *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) ("After the remittitur is sent down from an appellate court, the trial court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling."). See also, *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993) (citing *Hamm v. Southern Bell*, 305 S.C. 1, 406 S.E.2d 157 (1991); *State v. Wise*, 33 S.C. 582, 12 S.E. 556 (1891); *Brooks v. Brooks*, 16 S.C. 621 (1881)) ("Once the remittitur is sent down from this Court, Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.") After petitioning the appropriate trial court for a declaratory judgment, review of the *trial court's decision* would only then be available in this Court. S.C. Code Ann. § 15-53-110.

A petition for declaratory judgment in this Court would require a circuitous logic whereby a prior judgment is declared the prior judgment because Respondents failed to avail themselves of the right of review in Rule 221, SCACR. *Wash. Bridge Co. v. Stewart*, 44 U.S. 413, 426 (1845) ("Appellate power is exercised over the proceedings of inferior courts, not on those of the appellate court. Both are conclusive of the rights of the parties thereby adjudicated."). Allowing collateral attack upon the validity of a judgment through a declaratory judgment petition undermines the conclusive purpose of a final judgment. *Martin v. Hunter's Lessee*, 14 U.S. 304, 355 (1816) ("A final judgment of this court is supposed to be conclusive upon the rights which it decides."). Respondents' Motion for relief under the Declaratory Judgment Act and Rule 57, SCRCF fails as a matter of law and should be denied.

II. Respondents are unable to identify authority granting this Court the authority to consider a motion made under Rule 60, SCRCP.

Respondents mislead this Court in their argument that “it is widely held that the authority to recall a remittitur or mandate to correct a clerical mistake is an 'inherent power' of the judiciary.” Resp’t. Mem. Of Law in Supp of Mot., pg. 6. First, the "'inherent power' of the judiciary” cited by Respondents in footnote 3, is limited entirely and strictly to discussion of motions under Rule 60, SCRCP, which are manifestly inapplicable to the Court of Appeals under Rule 81, SCRCP, and Rule 101, SCACR. Second, the authority to recall a remittitur is distinct from the authority to grant relief from judgment. Compare Rule 60, SCRCP, with Rule 221, SCACR. Third, this Court must dismiss the Respondents’ request for relief under Rule 60, SCRCP, because the Court of Appeals is bound by the Supreme Court’s promulgation of rules as discussed above, which explicitly makes a Rule 60, SCRCP, motion moot in front of this Court, an appellate court.

Professor James F. Flannagan's treatise on South Carolina Civil Procedure is clear: "Rule 60(a) permits the **trial court** to correct clerical errors in judgments, orders or other parts of the record, even after the case has ended. **This is an inherent power of courts.**" James F. Flanagan, et al, South Carolina Civil Procedure, at 479 (2d Ed. 1996) (emphasis added). The 4th edition of Professor Flannagan's treatise compounds Respondents' failure to illustrate the appropriate authority upon which Respondents' motion is predicated: "Rule 60(a) permits the **trial court** to correct clerical errors in judgments, orders, or other parts of the record." James F. Flanagan et al., South Carolina Civil Procedure § 60.B, at 717 (4th Ed. 2019) (emphasis added).

Protection of the administration of justice is a necessary power inherent to the judiciary, and Appellants do not challenge the existence of that power. Respondents cite to David

Seykora's Cornell law review article to support its contention that the Court of Appeals can recall a remittitur. However, a cursory inspection of his work reveals that Seykora's entire article is limited to federal civil litigation and the recalling of mandates by federal courts under the Federal Rules of Civil Procedure. Seykora states that *district courts* have "carefully delineate[d] circumstances" to recall judgments under Rule 60, FRCP, and the rule guides application of these principles. David G. Seykora, *Recall of Appellate Mandates in Federal Civil Litigation*, 64 Cornell Law Review 4, 704 (1979) (citations omitted). "[A federal] *appellate court*, however, has no such guidance and must chart its own course when asked to reconsider one of its final judgments." Seykora, 704-05 (emphasis added). As it pertains to South Carolina appellate courts, that course is clearly set forth in Rule 221, of the South Carolina *appellate* rules, and not in Rule 60 of the federal or state rules of *civil* procedure.

Secondly, there is no authority to support the conflation of Rule 60, SCRCPP, with the lineage of authority defining the Court of Appeal's authority to recall a remittitur.² *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162, 375 S.E.2d 321, 322-23 (Ct. App. 1988) ("Rule 60(b)(1) authorizes relief from a final judgment on grounds of mistake, inadvertence, surprise or excusable neglect. Relief under this section is **within the sound discretion of the trial judge.**") (emphasis added). Accord, *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (2013); *Ammons v. Hood*, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986). The Court of Appeals is not the trial court in the schema adopted by the General Assembly.

² While the Respondents' Memorandum of Law cites to Rule 60(a), SCRCPP, the Motion cites Rule 60(b), SCRCPP. Neither Rule is applicable in the Court of Appeals. See Rule 81, SCRCPP; Rule 101, SCACR.

The motion fails as a matter of law by failing to identify any grounds upon which relief may be granted because Rule 60, SCRCR, is inapplicable to the Court of Appeals. See Rule 240(c), SCACR ("All motions . . . filed in an appellate court shall . . . state the grounds thereof.").

B. EQUITABLE RESTITUTION

I. Respondents motion must be dismissed in its entirety as there is no justiciable controversy.

The Court of Appeals is prescribed by the General Assembly and the South Carolina Constitution to "reverse, affirm, or modify the judgment." See S.C. Const. art. V, § 20; S.C. Code Ann. § 18-9-270. These limits upon this Court's judicial power resolve the question in favor of dismissal as to Respondents' prayer for relief under a theory of unjust enrichment because this Court may not try a quasi-contract case in lieu of the trial court. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011).

An action seeking "recovery for unjust enrichment" is "an equitable doctrine." Michael G. Sullivan & Douglas S. MacGregor, *Elements of Civil Causes of Action* § 41.A, at 607 (6th Ed. 2022). Unjust enrichment is an "implied by law contract." *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). Accord, *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000) ("[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.").

Respondents' motion is fundamentally and fatally flawed because the motion would require this Court, a court of *appeals*, to act as a trial court and as a court of equity.

In order to prove the three elements of unjust enrichment, the Respondents would have to make counsel for the Appellants a party to the case, take testimony, and seek this Court's

findings of fact. It is well settled that "appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Oblachinski v. Reynolds*, 391 S.C. 557, 564, 706 S.E.2d 844, 847 (2011) (quoting *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (1984), *rev'd*, 286 S.C. 85, 332 S.E.2d 100 (1985)). The South Carolina Constitution need not be ignored. The relief Respondents are requesting is not a matter for the appellate courts but rather for the trial courts. The Court of Appeals can only answer those questions as posed under the appropriate rules and statutes. The question asked by Respondents in its Motion is not one the appellate court can answer.

Additionally, Respondents do not have standing to even seek this relief because the harm is purely conjectural or hypothetical. There is no dispute that the funds Respondents remitted when they accepted the May 11, 2022, judgment of this Court are being held in trust pending the Petition for Rehearing. Counsel for Respondents admitted that he was aware the funds were in trust and Appellant's counsel is aware and compliant with obligations under RPC 1.15, to hold the funds in trust pending resolution of the dispute. *Aff. in Supp. of Motion*, p.4. As a result, Respondents do not have standing because they have not suffered an injury in fact while the matter is pending. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992) (citations omitted) (holding that standing requires an injury be concrete and particularized, actual or imminent, and redressable by a favorable decision). The money will remain in a separate interest-bearing trust account until the dispute is resolved and, once resolved, the principle and interest will go to the prevailing party. (Exhibit 1). Respondents seek to circumvent the process prescribed by Rule 221, SCACR, by fabricating a harm for which redressability is already pending in this Court. Therefore, Respondents' motion must fail as a matter of law.

CONCLUSION

This Court should deny Respondents' Motion for Additional Relief from Judgment in its entirety as the motion's failure to identify proper subject matter jurisdiction renders it meritless and the relief it seeks without authority.

Respectfully submitted,



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EXHIBIT 1

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1302588

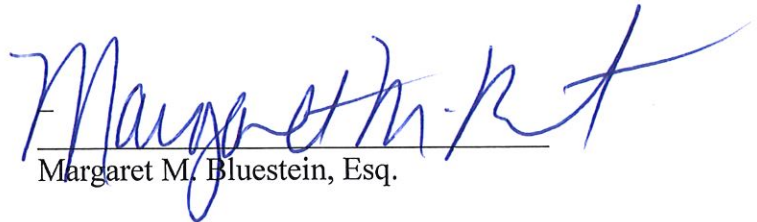
Timothy Causey,)
)
 Claimant/Appellant,)
)
 v.)
)
 Horry County,)
)
 Self-Insured Employer)
 through the)
)
 S.C. Counties Workers' Compensation)
 Trust,)
)
 Defendants/Respondents.)

**AFFIDAVIT OF MARGARET M.
BLUESTEIN, ESQUIRE**

Margaret M. Bluestein, Esquire states that she is under oath, an adult over the age of eighteen, and the following:

1. On May 31, 2022, counsel for the Defendants/Respondents mailed a settlement check to Appellant's counsel for full and final settlement of the above claim.
2. Francis Humphries, Esquire, co-counsel for Appellant, deposited the check into a trust account.
3. The funds have been transferred to a separate interest-bearing trust account and Attorney Humphries has wired the funds into this account. The funds shall remain in this account pursuant to RPC 1.15 or by agreement of all parties to this case. The prevailing party will have full rights to both the principle and the interest.

Further affiant say not.


Margaret M. Bluestein, Esq.

SWORN and subscribed to before me
this 1 day of August, 2022

Valen Reed (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires 2/21/2024.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
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(Substituted October 1, 2021 - Filed January 5, 2022
Withdrawn, Substituted, and Refiled June 21, 2022)

Timothy Causey, Respondent,


v.

Horry County, Self-Insured
through S.C. Counties Workers' Compensation Trust Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Return to Motion for Additional Relief from Judgment* by email only to the following:

Roy A. Howell, III, Esq.
Kirsten L. Barr, Esq.
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Kalen Reed, Paralegal

August 1, 2022

Kalen Reed



From: Kalen Reed
Sent: Monday, August 1, 2022 6:11 PM
To: rhowell@trask-howell.com; kbarr@trask-howell.com
Cc: Allison Sullivan; cchassereau@trask-howell.com
Subject: Timothy Causey v. Horry County 2017-001732
Attachments: Return to Motion for Additional Relief from Judgment.pdf

BLUESTEIN THOMPSON SULLIVAN, LLC
BLUESTEINATTORNEYS.COM

Good afternoon,

Attached please find a *Return to Motion for Additional Relief from Judgment* which is being served upon you in the above matter.

Thank you,



KALEN REED PARALEGAL

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August 1, 2022

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SC Court of Appeals

VIA EMAIL ONLY - ctappfilings@sccourts.org

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201


RE: Timothy Causey (dec.) v. Horry County
Appellate Case No.: 2017-001732

Dear Ms. Kitchings:

Enclosed for filing, please find a *Return to Motion for Additional Relief from Judgment* in reference to this case as well as a Proof of Service for same.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Yours truly,



Allison P. Sullivan

APS/knr
Enclosures

cc: Roy A. Howell, III, Esq.
Kirsten L. Barr, Esq.
Francis A. Humphries, Jr., Esq.
William Henry Monckton, IV, Esq.