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Aug 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

2022-000864

William D. Downes, Employee Respondent,

v.

Bon Secours Mercy Health, Inc., Employer,
Safety National Casualty Corporation, Carrier, Appellants.

**RETURN IN OPPOSITION
TO MOTION TO COMPEL**

Pursuant to Rule 240(e), SCACR, Appellants Bon Secours Mercy Health, Inc. and Safety National Casualty Corporation hereby oppose Respondent Williams D. Downes' Motion to Compel surgery. Appellants are filing a Petition for Writ of Supersedeas simultaneously with this Return, given the unique factual and procedural posture of this case. If granted, the Writ of Supersedeas will resolve the issue raised in Respondent's Motion during the pendency of this appeal.

Moreover, this Court does not have either the jurisdiction or the authority to grant Respondent's Motion. The South Carolina Constitution grants the General Assembly the power to prescribe the jurisdiction of this Court. S.C. Const. Art. 5, § 9 ("The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law"). Section 14-8-200 provides, in pertinent part, that this Court "has jurisdiction over

any case in which an appeal is taken from ... the final decision of the Workers' Compensation Commission. *This jurisdiction is appellate only[.]*" S.C. Code Ann. § 14-8-200 (emphasis added). In other words, this Court's jurisdiction is limited to appellate matters. Unlike the circuit courts, this Court lacks the authority to grant Respondent's Motion to Compel Appellants to provide a surgery.

Respondent's reliance on *McLeod v. Piggly Wiggly Carolina Co.*, 280 S.C. 466, 313 S.E.2d 38 (Ct. App. 1984), which involved an appeal of a pre-2007 South Carolina Worker's Compensation Commission case, is misplaced. At the time *McLeod* was decided, worker's compensation cases were appealed to the circuit court prior to being elevated to this Court. Sections 13-5-310, *et seq.*, set forth the powers of the circuit courts which include the power to grant motions such as the instant Motion. *See* S.C. Code Ann. §§ 13-5-350 to 13-5-390; *see also* S.C. Const. Art. 5, § 11 (granting broad powers to the circuit courts). Clearly, a circuit court has the inherent power to grant a motion compelling a party to take some action, such as provide surgery, whereas this Court does not. Furthermore, granting Respondent's Motion to Compel would effectively pre-empt and moot the issues on appeal, leaving Appellants with no adequate remedy, which likely is Respondent's underlying goal.

Finally, Respondent requested this very same relief from this Court, in his July 5, 2022 Memorandum on Appealability. That relief was implicitly denied in this Court's August 3, 2022 Order allowing this appeal to go forward. As was explained in Appellants' Memorandum on Appealability, also filed July 5, 2022, back surgery always carries a certain amount of risk, particularly where, as is the case here, it is not medically necessary. Requiring Appellants to provide Respondent a back surgery that has little

likelihood of relieving his symptoms is not only foolhardy but incredibly risky. Under the Commission Decision on appeal here, Appellants will be on the hook for the negative consequences that may arise from the unnecessary back surgery performed by Dr. Esce, with no adequate remedy after a final determination of benefits. Once the back surgery is performed, there is no “undoing” it. As a result, this Court should deny Respondent’s Motion.

CONCLUSION

For the reasons stated herein, this Court should deny Respondent’s Motion to Compel.

Respectfully submitted,

MCANGUS GOUDELICK & COURIE, LLC

August 22, 2022

s/Helen F. Hiser

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Appeal No.: 2022-000864

William D. Downes, Employee Respondent,

v.

Bon Secours Health System, Inc., Employer,
Safety National Casualty Corporation, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the **Appellants' Return In Opposition to Motion to Compel** on William D. Downes, by emailing it to his attorneys of record as follows:

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August 22, 2022

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Reply To

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SC Court of Appeals

Via S.C. Courts E-filing

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: William Downes v. Bon Secours Mercy Health and Bon Secours Health System, Inc. c/o Cannon Cochran Management Services, Inc.
Date of Accident: April 17, 2018
WCC File No.: 1809996
Our File No.: 2024.22054
Claim No.: 18J28K142496
Appeal No.: 2022-000864

Dear Ms. Kitchings:

Enclosed please find the original of Appellants' Return in Opposition to Motion to Compel, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email only. Pursuant to the Supreme Court's Order, 2021-08-25-03, Reduced Number of Copies Required in Appellate Matters, and Rule 267(f), SCACR, only one copy of Appellants' Return is being submitted.

Please let us know if you have any questions. Thanking you in advance for your assistance.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Donald E. Kamb, Jr., Esq.
Joe Mooneyham, Esq.

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