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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2022-001175

Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin.....Appellant,

v.

Pilgrim's Pride Corporation, Mary McBride, and Susan Jones.....Respondent.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court erred in finding that the dual persona doctrine would not apply to the facts and circumstances of this case.

II. Whether the Circuit Court's July 28, 2022 Order ("the Reconsideration Order"), without the benefit of a factual record, erroneously applied the Rule 56, SCRCP standard and reversed the Circuit Court's April 7, 2022 Order ("the Summary Judgment Order") which found that there was a genuine dispute of material fact as to whether Samel Ragin's injury was accidental and arose out of employment.

III. Whether the Reconsideration Order fails to consider the issue of whether Appellant's action is barred by the exclusivity provision and instead, erroneously ruled it was ultimately a question for the South Carolina Workers' Compensation Commission and not the Circuit Court.

STATEMENT OF THE CASE

This Appeal arises from a heart attack suffered by the Decedent, Samel Ragin, which occurred while she was at her place of employment, a chicken processing facility owned by Respondent Pilgrim's Pride Corporation in Sumter, South Carolina.[1] (*See generally* Compl.). Appellant Hunsten B. Ragin, as Personal Representative for the Estate of Samel Ragin, has brought an action for numerous allegedly negligent acts and omissions against Pilgrim's as well as Respondents Mary McBride and Susan Jones, two nurses working at Pilgrim's in-house nursing clinic. (*Id.*). These were not ordinary negligible acts or omissions akin to issues with the premises or the care undertaken by employees as one would expect to arise in the workplace. Rather, Appellant believed that these specific negligent acts and omissions were violations of the nursing standard of care, and because of these violations, Appellant complied with the Notice of Intent requirements in S.C. Code § 15-79-125. Appellant contended that Respondents breached their professional nursing standard of care by not providing basic nursing care to Ms. Ragin, despite her presentation to their clinic with symptoms of a life-threatening condition. (Notice of Intent - Aff. of Merit at 1).

After completing the Notice of Intent requirements, Appellant proceeded with the Complaint which specifically alleges that Ms. Ragin had complained of chest pain at Pilgrim's nursing clinic prior to losing consciousness and passing away, and that Pilgrim's nursing clinic failed to meet the nursing standard of care in treating

[1] Respondents have conceded on the record that Ms. Ragin died of a heart attack. (Hr'g Tr. 15:9-13, Jan. 31, 2022).

Ms. Ragin. (Compl. ¶¶ 6-10). After receiving a letter from a third-party administrator informing Appellant that the Estate's claim for workers' compensation benefits was not compensable, Appellant filed a Complaint against Respondents on February 23, 2021, in the Sumter County Court of Common Pleas. (*See generally* Compl.; Jan. 27, 2020 Letter).

On April 7, 2021, Respondents filed an Answer, specifically denying that Ms. Ragin visited the nursing clinic or reported her chest pains, and specifically denying that Ms. Ragin continued to work with chest pains. (Answer ¶ 4). On September 17, 2021, Respondents filed a Motion for Summary Judgment. In their Motion, Respondents argued that the exclusivity provision of the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-540, barred Appellant from suing Respondents because Appellant had not produced any evidence that the subject incident involved intentional acts on behalf of Respondents. (Mot. Summ. J. at 4-5; Resp'ts' Mem. Supp. Mot. Summ. J. at 7-9). Counsel for Appellant submitted briefing containing arguments that the heart attack was not a compensable injury as defined by the Act and therefore would not be barred by the Act's exclusivity provision. (Appellant's Mem. Opp. Mot. Summ. J. at 7-8). Appellant's brief also argued that Ms. Ragin's heart attack was idiopathic in nature and unrelated to her employment. (*Id.* at 8-9).

The Circuit Court heard the Respondents' Motion for Summary Judgment on January 31, 2022. (*See generally* Hr'g Tr., Jan. 31, 2022). At the hearing, counsel for Respondents argued that without going beyond the allegations of the Complaint,

the exclusivity provision would bar Appellant's action because Ms. Ragin was an employee at the time of the accident, her injury occurred while she was working, and Appellant had not alleged any sort of intentional conduct on behalf of Respondents. (Hr'g Tr. 11:23-12:20, Jan. 31, 2022). Counsel for Respondents also argued that whatever occurred at the nursing clinic was irrelevant to the analysis of whether the exclusivity provision applied to Appellant's lawsuit. (*Id.* at 12:21-13:5). Additionally, Respondents argued that McBride and Jones as co-employees were immune to suit under the Act, and that Appellant's tort action would be barred even if Ms. Ragin's injury was not compensable. (*Id.* at 13:6-17; 14:22-16:11).

Counsel for Appellant in turn argued that Ms. Ragin's heart attack did not arise from her employment, and that the heart attack was not accidental but an idiopathic injury and was therefore not compensable or barred by the exclusivity provision. (*Id.* at 27:12-20, 29:25-31:9). Counsel also argued that any acts and omissions of the nursing clinic would be properly addressed in a civil action, and not under the Act, because the nursing clinic had its own obligations and identity distinct from the scope of Ms. Ragin's relationship with Pilgrim's as her employer. (*Id.* at 28:2-29:6, 31:9-17). In reply, Respondents argued that despite the idiopathic nature of Ms. Ragin's heart attack, it could still be compensable if Ms. Ragin had overexerted herself in performing her work duties, but counsel did not actually produce any evidence demonstrating this circumstance. (*Id.* at 33:2-13).

In an Order filed April 7, 2022, the Circuit Court found that Ms. Ragin's injury did not arise from her employment. (Summary Judgment Order at 6, April 7,

2022). The Circuit Court implied that there was no evidence of any causal connection between the conditions under which Ms. Ragin was required to perform her work and her heart attack, and that Ms. Ragin's heart attack was an idiopathic injury unrelated to her employment. (*Id.*). On April 15, 2022, Respondents filed a Motion to Reconsider the Circuit Court's Summary Judgment Order. (Mot. Reconsider).

The Motion rehashed Respondent's argument that the Act would bar Appellant's negligence action because Ms. Ragin was working at the time of her injury, and because Respondents were Ms. Ragin's employer and co-employees. (*Id.* at 2). Respondents also argued that the injury was causally connected to Ms. Ragin's employment because she would not have been exposed to the risk of negligent medical treatment but for her employment at Pilgrim's. (*Id.*). Lastly, Respondents argued that there was no intentional behavior exempting Appellant's claim from the Act, and that the question of whether the heart attack related to Ms. Ragin's employment should be resolved by the South Carolina Workers' Compensation Commission. (*Id.* at 2-3). Appellant filed a Memorandum in Opposition to the Motion on April 26, 2022, arguing that the Motion failed to raise any new arguments or evidence.

On May 17, 2022, the Circuit Court heard Respondents' Motion to Reconsider. (*See generally* Hr'g Tr., May 17, 2022). Respondents once again argued that since Respondents were Ms. Ragin's employer and co-employees, and she was working at the time of her heart attack, that her injury arose from her employment.

(*Id.* at 6:11-19). Respondent also argued without citing authority that the Workers' Compensation Commission had jurisdiction over the question of whether the injury arose in the course and scope of Ms. Ragin's employment. (*Id.* at 7:9-12). Respondents did not argue that there were work conditions present under the circumstances such that Ms. Ragin's idiopathic heart attack would be compensable under the Act.

On July 28, 2022, the Circuit Court filed an Order reversing the Summary Judgment Order. (Reconsideration Order, July 28, 2022). The Reconsideration Order only provided four grounds for granting summary judgment: (1) the dual capacity doctrine does not provide an exception to the exclusivity provision for injuries caused by company-employed health care providers, (2) Ms. Ragin was at work at the time she suffered her heart attack, (3) Respondents were Ms. Ragin's employer and co-employees, and (4) the question of whether Ms. Ragin's heart attack was an employment injury was a question for the Workers' Compensation Commission. This Appeal followed on August 19, 2022. (Notice of Appeal).

STANDARD OF REVIEW

While South Carolina authorities do not address the standard of review when determining whether a claim is subject to the exclusivity provision, multiple other states have. The general consensus is that the issue is a question of law which should be reviewed *de novo* after a circuit court grants summary judgment. *See Peterson v. Arlington Hospitality Staffing, Inc.*, 276 Wis. 2d 746, 750, 689 N.W.2d 61, 63 (Wis. Ct. App. 2004); *Buck v. Freeman*, 619 N.W.2d 793 (Minn. Ct. App.

2000); *Boulware v. Quiktrip Corp.*, 226 Ga. App. 399, 486 S.E.2d 662 (Ga. Ct. App. 1997). "When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact . . . ." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 524, 787 S.E.2d 485, 489 (2016). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). Summary judgment is a drastic remedy that should be cautiously granted. *BPS, Inc. v. Worthy*, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

"In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). Once the moving party carries its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The Supreme Court of the United States, in explaining the moving party's initial burden on a motion for summary judgment, has described it as follows:

> Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,

> if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).[2] "In order to withstand a motion for summary judgment 'in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.'" *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 308 (2012)) (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

ARGUMENT

The Reconsideration Order grants summary judgment to Respondents based on its conclusion that the exclusivity provision of the Workers' Compensation Act would bar Appellant's action. The exclusivity provision states that

> The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee . . . as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

S.C. Code Ann. § 42-1-540. This provision makes the Act the exclusive means of settling all claims for "personal injury" as defined under the Act, unless some exception to the exclusivity provision would apply. *Edens v. Bellini*, 359 S.C. 433,

[2] The Court may rely on federal precedent in interpreting any state Rules which are substantially similar to the Federal Rules of Civil Procedure. *See Unisun Ins. v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 561-62 (Ct. App. 2000). The Supreme Court of South Carolina has relied on *Celotex*'s articulation of the moving party's burden on a motion for summary judgment. *See Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

445, 597 S.E.2d 863, 869-70 (Ct. App. 2004); *Doe v. S.C. State Hosp.*, 285 S.C. 183, 186, 328 S.E.2d 652, 654 (Ct. App. 1985).

The Reconsideration Order finds that the exclusivity provision would apply because (1) the "dual capacity exception" is antithetical to the workers' compensation scheme and should not apply to company-employed health care providers, and (2) Appellant's alleged misdiagnosis and subsequent heart attack arose from a compensable, accidental employment injury as defined under the Act. Both findings are in error and independently establish sufficient grounds for the Court to reverse the Order. Additionally, to the extent that the Reconsideration Order states that the issue of whether the Decedent's injury arose out of her employment is solely a question for the Workers' Compensation Commission, this finding is also in error as far as the question relates to the applicability of the exclusivity provision to this action. For these and the following reasons, the Appellant respectfully requests that the Court either reverse the Circuit Court's Reconsideration Order or vacate it for further findings of fact.

I. Statement of facts.

On November 24, 2017, Samel Ragin arrived at her shift at Respondent Pilgrim's Pride's chicken processing facility. (Mem. Supp. Mot. Summ. J. at 1-2, Mem. Opp. Mot. Summ. J. at 1-2). Ms. Ragin was employed by Pilgrim as a pallet mover who would transport pallets and bins of product throughout Pilgrim's facility. (Hr'g Tr. 28:9-14, Jan. 31, 2022). Around 10:30 a.m., Ms. Ragin reported to Pilgrim's nursing clinic complaining of chest pains, shortness of breath, and dizziness.

(Compl. ¶ 6). The nursing staff did not provide any care or treatment to Ms. Ragin, and she returned to work where she continued to experience her symptoms. (Compl. ¶¶ 7-8). Sometime later in her shift, Ms. Ragin was found unconscious in a restroom at Pilgrim's facility and subsequently died from a heart attack.[3] (*Id.* at ¶ 9). The autopsy report reflects that she died from underlying natural causes: cardiac arrythmia and cardiomyopathy. (Mem. Supp. Mot. Summ. J. at 1-2; Mem. Opp. Mot. Summ. J. at 1-2).

Appellant contends, and has submitted the affidavit of Audrey Holmes, demonstrating that Respondents breached their professional nursing standard of care by not providing basic nursing care to Ms. Ragin, despite her presentation to their clinic with symptoms of a life-threatening condition. (Notice of Intent - Aff. of Merit at 1). This affidavit also establishes the pertinent fact that Defendants were acting as professionals bound by a nursing standard of care as opposed to ordinary workplace negligence. *Id.*

II. The Circuit Court erred in determining that South Carolina law does not embrace the dual persona doctrine and in failing to find that it would act as an exception to the exclusivity provision.

The Reconsideration Order states that:

> While the Court recognizes that other jurisdictions have adopted a "dual capacity exception" to the immunity provided by worker's compensation when it comes to company-employed physicians, the vast majority of states have refused to recognize such an exception, finding that doing so would be antithetical to the overall purpose of worker's compensation. The majority of states further recognize that it is a

[3] Respondents appear to concede in support of their Motion to Reconsider that Ms. Ragin was seen by McBride and Jones at Pilgrim's nursing clinic; however, Respondents denied this fact in their Answer and appeared to contest it in the January 31, 2022 hearing. (*Compare* Mot. Reconsider at 2 *with* Answer ¶ 4; Hr'g Tr. 25:12-26:12, Jan. 31, 2022).

> function of the legislature to create any such exceptions; had they intended for a dual capacity exception to apply to company physicians, they would have done so. I find the rationale of the majority to be compelling in this matter as well.

(Order, July 28, 2022 at 2-3). The Order is in error (1) because it fails to recognize that South Carolina has already created this exception to the exclusivity provision (referred to as the "dual persona doctrine" by South Carolina authorities), and (2) the Order fails to correctly apply the factual circumstances underlying this action to determine if such an exception provided by the doctrine would apply. Therefore, the Court should either reverse the Order or vacate it for further factual determinations as to the applicability of the dual persona doctrine.

A. South Carolina has adopted the dual persona doctrine as an exception to the exclusivity provision.

The "dual capacity doctrine" referred to by the Circuit Court allows an employee to pursue a tort action against her employer if the employer "occupies, in addition to his capacity as employer, a second capacity that confers on him obligations independent of those imposed on him as an employer." *Parker v. Williams & Madjanik*, 275 S.C. 65, 75, 267 S.E.2d 524, 529 (1980). As noted by the Circuit Court, some jurisdictions have applied the dual capacity doctrine in situations like Ms. Ragin's where an employee suffers an aggravated injury caused by an employer-health provider's negligence. *See Tatum v. Med. Univ. of S.C.*, 335 S.C. 499, 507-08, 517 S.E.2d 706, 710-11 (Ct. App. 1999) (*Tatum I*) (collecting cases). While South Carolina has adopted a dual capacity doctrine in some contexts, it has

not been used to address scenarios involving co-employee health care providers. *Willis v. Aiken Cnty.*, 203 S.C. 96, 104-05, 26 S.E.2d 313, 316 (1943).

Because many jurisdictions in applying the doctrine ignored its requirement of a second distinct capacity assumed by the employer, commentators, particularly Arthur Larson, advocated for changing the name of from the "dual capacity doctrine" to the "dual persona" doctrine to emphasize the requirement of a second distinct capacity or persona assumed by the employer in connection to the employee's injury. *Tatum I*, 335 S.C. at 508, 517 S.E.2d at 711. In *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251 (2013), South Carolina adopted the dual persona doctrine as an exception to the exclusivity provision of the Act. The dual persona doctrine is "applicable only where the second set of obligations that forms the basis of the tort suit is entirely independent of the defendant's obligations as an employer." *Id.* at 563-64, 738 S.E.2d at 254.

> If the dual persona doctrine is to apply, it must be possible to say that the duty arose *solely* from the *nonemployer* persona . . . . For only in such a case can the second persona be really distinct from the employer persona. In other words, it is not enough . . . that the second persona impose *additional* duties. They must be totally separate from and unrelated to those of the employment.

Id. at 564, 738 S.E.2d at 254. In other words, "whether the dual persona doctrine applies in a particular case turns on whether the duty claimed to have been breached is distinct from those duties owed by virtue of the employer's persona as such." *Id.* at 565, 738 S.E.2d at 254. Thus, if the duty owed by Pilgrim's in failing to provide adequate medical care is distinct from those duties that were owed to Ms.

Ragin by Pilgrim's by virtue of its persona as employer, then the dual persona doctrine applies, and Appellant's action is not barred by the exclusivity provision.

B. The dual persona doctrine applies to the factual circumstances of this case because as an employer, Pilgrim's had no legal obligation to provide medical treatment or referrals for an idiopathic injury, and Pilgrim's nursing staff had a duty of care in treating a non-employment injury separate and distinct from Pilgrim's obligations as an employer.

The Supreme Court of South Carolina has described the duty of care of a medical provider as a professional standard of care for rendering medical aid arising from the provider's professional capacity, which is distinct from the ordinary duty to exercise reasonable care and requires expert testimony. *See Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014). An employer, on the other hand, only has a duty to use reasonable care in providing a safe place to work. *See Simmons v. Tuomey Reg. Med. Ctr.*, 341 S.C. 32, 42, 533 S.E.2d 312, 317 (2000). Moreover, in order to bring a suit against a medical provider, South Carolina requires compliance with Notice of Intent procedure and an affidavit of merit from another similar professional attesting to the existence and violation of such standard of care. *See* S.C. Code Ann. § 15-79-125.

The latter, employer duty to use reasonable care has no such requirement and as such, is clearly distinct under South Carolina law because an employer is under no statutory obligation to provide medical services to employees for injuries unrelated to work; nor is an employee required to accept medical treatment or evaluation from her employer for such injuries. *Contra* S.C. Code Ann. § 42-15-60. However, once an employer undertakes to provide medical care, for injuries related

or unrelated to work, it and its company medical providers should be held to an elevated, professional standard of care to avoid causing harm to the co-employees they treat. *See Tatum I*, 335 S.C. at 510-11, 517 S.E.2d at 712.

In *Tatum I*, this Court dealt with a similar set of circumstances to those presented by this case. In *Tatum I*, an animal care technician was directed by her employer, the Medical University of South Carolina, to seek medical treatment for injuries she sustained at work while transporting a pig. *Id.* at 501, 517 S.E.2d at 707. MUSC referred her to an assistant professor and neurological surgeon who also was employed by MUSC for a surgical fusion of her vertebrae. *Id.* During the procedure, someone on the surgeon's team drilled through the vertebrae, damaging the co-employee's spinal cord and nerves. *Id.* After the employee collected an award through workers' compensation, she filed a complaint against MUSC for medical malpractice and failure to warn. *Id.* at 502, 517 S.E.2d at 708. The lawsuit was dismissed after the trial court found that the workers' compensation exclusivity provision precluded any tort claims. *Id.*

This Court reversed the trial court's finding, holding that once MUSC began providing medical treatment for its employee, "its role as her employer ended, and it took on the legally distinct persona of her treating hospital." *Id.* at 511, 517 S.E.2d at 713. Echoing the arguments of Appellant's counsel and the Circuit Court's musings at the January 31, 2022 hearing, the Court noted that MUSC was not required to direct the employee to be treated at its own facilities, that its treatment of the employee bore no relation to its persona as an employer, and that public

policy supported permitting the employee to pursue a tort action for medical malpractice. *Id.*

> Tatum was not working in the capacity for which she was hired by MUSC when she was injured by Dr. Patel's alleged malpractice. Once MUSC began to treat Tatum for her injury, the duties it owed her transmuted from those of an employer into those of a hospital treating a patient, including a duty to ensure against malpractice. Thus, this secondary relationship "created obligations to the employee independent of its obligations as employer," and the secondary relationship was so "completely independent as to create a separate legal person."

Id. at 510-11, 517 S.E.2d at 712. This finding accords with the decisions of other jurisdictions which have determined that an employee's remedy lies in tort when she is injured by an employer negligently providing preventative medical services for an injury, whether it arose from an accident at the workplace or not. *See Dyke v. Saint Francis Hosp., Inc.*, 861 P.2d 295, 302 (Okla. 1992); *Wright v. Dist. Ct.*, 661 P.2d 1167, 1168-71 (Colo. 1983); *Guy v. Arthur H. Thomas Co.*, 55 Ohio St. 2d 183, 184-90, 378 N.E.2d 488, 489-92 (Ohio 1978).[4]

Here, the facts of this case indicate that Respondents' duties and obligations at the time of Appellant's misdiagnosis were even more tenuous than those presented by *Tatum I*. Appellant, unlike the plaintiff in *Tatum I*, was suffering from an idiopathic injury that was unrelated to the workplace at the time she was misdiagnosed by Respondents. (Hr'g Tr. 15:9-17:14, Jan. 31, 2022). Respondents were not obligated by the workers' compensation statutory scheme to provide

[4] While the South Carolina Supreme Court reversed the *Tatum I* decision in *Tatum v. Med. Univ. of S.C.*, 364 S.C. 194, 552 S.E.2d 18 (2001) (*Tatum II*), finding that the dual persona theory was inapplicable to the facts, *Tatum II* was abrogated by *Mendenall*, in which the Supreme Court stated that the *Tatum II* court's application of the dual persona doctrine to the facts was erroneous. *Mendenall*, 401 S.C. at 563 n.4, 738 S.E.2d at 254 n.4.

treatment to Appellant. Respondent was not working at the time she was misdiagnosed but was resting and awaiting treatment in the facility's nursing clinic. Appellant's workers' compensation claim was denied by the third party administering the claim. (Mem. Opp. Mot. Summ. J. Ex. A). In undertaking to provide medical services for all employees at the facility, regardless of whether the injuries were idiopathic or workplace related and covered by workers' compensation, Respondents assumed obligations and a professional duty of care entirely distinct from its persona as Appellant's employer. In doing so, Respondents have subjected themselves to tort liability for any breaches of their medical duties which are entirely distinct and separate from the general employer's duty of care to provide a safe work environment. This factual distinction is further supported by the procedural notice of intent requirement that Appellant had to undertake and complete in order to proceed with the Complaint alleging Respondents' deviations from the standard of care.

These facts distinguish the present case from prior South Carolina precedents which have found that the dual persona doctrine would not apply to the specific facts of each case. *See Johnson v. Rental Uniform Serv. of Greenville*, 316 S.C. 70, 447 S.E.2d 184 (1994) (finding employee was barred from civil action because she was acting in the capacity for which she was employed at the time of a workplace accident); *Parker v. Williams & Madjanik*, 275 S.C. 65, 267 S.E.2d 524 (1980) (employee's estate was barred from pursuing tort remedy for injury employee sustained while engaged in work directly related to his employment). Once Pilgrim's

undertakes to professionally treat an employee into its nursing clinic, especially when that employee is complaining of an ailment that is not work related, its role as employer ends and it takes on the legally distinct persona of a professional medical provider that is subject to professional standards of care. In erroneously determining that South Carolina would not recognize that the dual persona doctrine applies to co-employee healthcare providers, the Reconsideration Order failed to acknowledge clearly distinct obligations arising from the nursing standards of care that apply to Respondents under these facts and deprived Appellant of a remedy for damages flowing from such deviations. Appellant respectfully requests that the Court reverse the Order, or in the alternative, vacate the Order with instructions for the Circuit Court to correctly apply the dual persona theory to the facts of this case.

C. Issue preservation rules indicate that the Court may review the Reconsideration Order's findings regarding the dual persona doctrine.

Respondents may argue that the dual persona theory is not properly preserved for the Court's review. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). A party is not required to use the exact name of a legal doctrine in order to preserve an issue for appeal. *Id.* at 466, 719 S.E.2d at 642. While the exact name of the dual persona doctrine was not invoked by either Appellant or the Circuit Court, the issue was raised to the Circuit Court in sufficiently clear terms by Appellant, and ruled upon by the Circuit Court, such that the issue of its applicability is preserved for review.

At the January 31, 2022 hearing, counsel for Appellant clearly elucidated the principles of the dual persona doctrine in opposition to Respondents' Motion for Summary Judgment:

> That's significant because in this case Ms. Ragin's employment was to be a pallet mover throughout the factory . . . . Well, clearly, her employment has nothing to do, absolutely nothing to do with a nurse clinic. Her employment has everything to do with moving around the factory and doing her job with her pallets and, you know, processing chicken; that's her job. As Your Honor referenced earlier, if Pilgrim's Pride comes in and opens a nurse clinic, well, yes, they have an obligation and a duty to do that. **It [w]ould be completely separate and distinct from the employment that Ms. Ragin has.** It's almost as if it's a separate subsidiary . . . it's completely distinct from what Ms. Ragin is there to do and her purpose at the factory

(Hr'g Tr. 28:2-29:6, Jan. 31, 2022). Prior to Appellant's argument, the Circuit Court questioned counsel for Respondents as to whether a company-employed nursing clinic would have different obligations and duties from the employer such that exclusivity would not apply. (*See id.* at 16:12-17:14). During the May 17, 2022 reconsideration hearing, the Circuit Court references *Tatum II* (although not by name), the abrogated South Carolina decision regarding the dual capacity and dual persona doctrines, and notes that under *Tatum II* the employee could not sue her hospital-employer for negligence. (Hr'g Tr. 9:4-10, May 17, 2022). However, the Circuit Court does not recognize that *Tatum II* was abrogated by *Mendenall*.

Lastly, in the Reconsideration Order, the Circuit Court clearly contemplates and rejects a dual capacity/dual persona exception to the exclusivity provision, erroneously finding that the doctrine has not been embraced by South Carolina law. Since the issue of dual employer personas was raised and argued by Appellant, and

ruled upon by the Circuit Court, the issue is clearly preserved for the Court's review. The Court should reverse the Circuit Court and find that under the facts of this case, the dual persona doctrine would act as an exception to the exclusivity provision.

III. The Circuit Court erred in determining without the benefit of a factual record that Ms. Ragin's injury was compensable and therefore barred by the exclusivity provision.

The Reconsideration Order summarily finds that the exclusivity provision provides Worker's Compensation as the only applicable remedy in this instance simply because Ms. Ragin's heart attack occurred within the workplace and because the employees of Pilgrim's nursing clinic were co-employees of Ms. Ragin. The Order's logic disregards the idiopathic exception to workers' compensation coverage and ignores the fact that Ms. Ragin's heart attack arose out of an undiagnosed health condition, cardiomyopathy. This ruling is contrary the exclusivity provision's inherent purpose of providing a remedy, and the Order narrowly construes and omits any recognition of facts giving rise to the duties of Respondent's employees that transpired from the care provided in the nursing clinic. Furthermore, the Order disregards the facts favorable to the Appellant that this matter did not arise out of employment, but rather, as a result of the Respondents' employees' omissions and deviations in their care provided.

The Act defines "injury" and "personal injury" as **injuries by accident** arising out of and in the course of employment and does not include a disease in any form, except when it results naturally and unavoidably from a workplace accident.

S.C. Code Ann. § 42-1-160. Thus, to recover under the Act, it is imperative that an **accidental** injury arose out of the employment. If an injury is not defined as an "injury" or "personal injury" under the Act, it does not come within the ambit of the Act and is not barred by the exclusivity provision. *Dockins v. Ingles Markets, Inc.*, 306 S.C. 287, 288, 411 S.E.2d 437, 438 (1991). Consequently, if an injury is not accidental, a tort action seeking to recover damages is not barred by the exclusivity provision.

The idiopathic doctrine is a widely recognized exception to workers' compensation coverage. An idiopathic injury is one which is "brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure." *Barnes v. Charter 1 Realty*, 411 S.C. 391, 395, 768 S.E.2d 651, 653 (2015). The doctrine is based "on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere." *Id.*

> The adjective "accidental" qualifies and describes the injuries contemplated by the statute as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected.

Ellis v. Spartan Mills, 276 S.C. 216, 219, 277 S.E.2d 590, 592 (1981). In order to be accidental, the act or event causing the injury must be caused by chance or happen fortuitously. *Hiers v. Brunson Const. Co.*, 221 S.C. 212, 230, 70 S.E.2d 211, 219 (1952).

The idiopathic doctrine has been embraced by the General Assembly in formulating our workers' compensation scheme, and heart attacks are generally excluded from coverage unless there is some evidence the heart attack arose from physical injury at work or an extraordinary and unusual set of work circumstances. S.C. Code Ann. § 42-1-160. Extraordinary and unusual work conditions have been determined by South Carolina courts to involve death threats, high tension confrontations, loss of security, late hours, frigid weather, extreme exertion, and rough terrain. *See Shealy v. Aiken Cnty.*, 341 S.C. 448, 458, 535 S.E.2d 438, 444 (2000); *Kearse v. S.C. Wildlife Resources Dep't*, 236 S.C. 540, 115 S.E.2d 183 (1960).

The Circuit Court's Reconsideration Order does not properly apply the summary judgment standard to Respondent's arguments. The Order does not describe how Respondents have met their initial burden of identifying any portions of the record demonstrating the absence of a genuine issue of material fact concerning whether (1) Ms. Ragin's heart attack was accidental in nature and (2) any unusual or extraordinary conditions accompanied Ms. Ragin's heart attack. The Reconsideration Order also resolves all questions of fact in favor of Respondents.

Under *Celotex* and *Baughman*, the Respondents bore the initial responsibility of identifying those portions of the record which they believe demonstrate the absence of a genuine issue of material fact as to the applicability of the exclusivity provision. Here, Respondents and the Reconsideration Order do not indicate any part of the record showing that it is indisputable that Ms. Ragin's heart attack was a compensable injury such that this action would be barred by the Act's exclusivity

provision. In fact, what the Reconsideration Order has done is to take a motion for summary judgment and convert it into a motion to dismiss, without considering whether Appellant had an avenue for relief under any theory available.

The Reconsideration Order does not consider affidavits, deposition testimony, medical or autopsy records, or other discovery materials. Instead, the Order relies almost exclusively on the allegations of the Complaint to resolve a motion for summary judgment and resolves any inferences that could reasonably be drawn from them against the Appellant. There are many reasonable inferences and conclusions that could have been drawn from the allegations in this case, including an inference that Ms. Ragin's heart attack was idiopathic, not accidental, and did not arise from employment conditions; these inferences were not considered by the Court and such omission was an error.

Respondents, and the Reconsideration Order, do not point to any segment of the record indisputably demonstrating that the heart attack was the result of unusual or extraordinary conditions such as extreme weather, fear, or overexertion. They do not indicate any segment of the record indisputably demonstrating that any of the events contributing to Ms. Ragin's death were fortuitous or happened by chance. They do not indicate any segment of the record indisputably demonstrating that a physical injury at the workplace caused or contributed to Ms. Ragin's death. Instead, the Respondents and the Order rely solely on the allegations, with all inferences drawn against Appellant, to establish that the facts of this case do not

pass muster under Rule 56, SCRCP. The Reconsideration Order is clearly in error and should be reversed.

The Reconsideration Order relies almost exclusively on one authoritative decision to support its conclusions. Citing *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004), the Circuit Court states that since the nursing clinic was staffed by co-employees of Ms. Ragin, Appellant was barred from holding them liable in tort. However, *Fuller* is inapposite to the facts of this case. In *Fuller*, the estate of a worker who died after not being advised of the results of a cancer screening test by a physician, who was providing his services to the employer, brought a tort action against the physician. *Id.* at 538, 595 S.E.2d at 832. However, the physician in *Fuller* was an independent contractor, not a company physician, so the Court determined that an action against the physician was not barred by the exclusivity provision. *Id.* at 544, 595 S.E.2d at 835. In doing so, the Court noted that the trial court had found that even if the physician was a co-employee, that the employee's death was not work-related so that the exclusivity provision would not apply, but this language was only dicta and did not formulate the basis of any holding of the Court. Outside of the general proposition that a co-employee or employer may not be liable in tort for an accidental injury covered by the workers' compensation scheme, *Fuller* has no specific applicability to the facts that were before the Circuit Court.

To the contrary, numerous authorities have found that a heart attack is not a compensable injury unless it has been induced by unexpected strain or overexertion.

See Lockridge v. Santens of America, Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001); *Fulmer v. S.C. Elec. & Gas Co.*, 306 S.C. 34, 410 S.E.2d 25 (Ct. App. 1991); *Jordan v. Kelly Co., Inc.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *DeBruhl v. Kershaw Cnty. Sheriff's Dept.*, 303 S.C. 20, 397 S.E.2d 782; *Hunter v. Patrick Construction Co.*, 289 S.C. 46, 344 S.E.2d 613 (1986). Respondents have not carried their burden of showing an absence of facts in the record demonstrating that Ms. Ragin's heart attack was not idiopathic and thus, a compensable remedy under Worker's Compensation. Since the issue of whether the exclusivity provision would apply was brought before the Circuit Court on a motion for summary judgment, it was Respondents' initial burden to demonstrate and identify where the record contained undisputed issues of material fact in their favor. They failed to do so, and the Reconsideration Order is in error in that it does not require Respondents to carry this initial burden. The Reconsideration Order should be reversed.

IV. The Circuit Court has jurisdiction to determine whether the exclusivity provision would apply to tort actions.

Lastly, the Circuit Court's Reconsideration Order states that "[t]he purported negligence of Pilgrim's Pride's nursing staff and whether it relates to the Decedent's injury/illness or employment, is a question for the South Carolina Workers' Compensation Commission." (Reconsideration Order at 4). To the extent that the Circuit Court's Order could be construed as holding that it did not have jurisdiction to determine the factual issue of whether the Ms. Ragin's injury was compensable under the Act, and whether the exclusivity provision would apply, Appellant

contends that the Circuit Court absolutely has jurisdiction to determine facts relevant to the Act's exclusivity provision.

The exclusivity provision is procedural in nature and does not involve subject matter jurisdiction. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). Therefore, while the Workers' Compensation Commission may have exclusive original jurisdiction over Appellant's claims depending on the circumstances, the issue of whether the exclusivity provision would apply to grant such exclusive jurisdiction is within the province of the Circuit Court in a tort action. This is supported by numerous decisions within South Carolina jurisprudence in which our trial courts have analyzed the facts in the record to determine whether the exclusivity provision would bar a plaintiff's tort claims. *See, e.g., Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004); *Dickert v. Met. Life Ins. Co.*, 311 S.C. 218, 428 S.E.2d 700 (1993); *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 417 S.E.2d 538 (1992). Therefore, the Circuit Court clearly had jurisdiction to make a determination on the issue of whether the exclusivity provision would apply, and in doing so erroneously decided that the dual persona doctrine was not viable in South Carolina, and that Ms. Ragin's injuries were accidental in nature and arose from a workplace incident.

CONCLUSION

For the foregoing reasons, the Circuit Court's July 28, 2022 Order should be reversed, or in the alternative, vacated.

PARKER LAW GROUP, LLP

By: 

November 1, 2022
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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2022-001175

Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin.....Appellant,

v.

Pilgrim's Pride Corporation, Mary McBride, and Susan Jones.....Respondent.

CERTIFICATE OF SERVICE

This is to certify that I, Claudia Cartier, with the Parker Law Group, LLP., Attorney for the Appellant, have this date emailed a true and correct copy of the within ***Brief of Appellant*** to:

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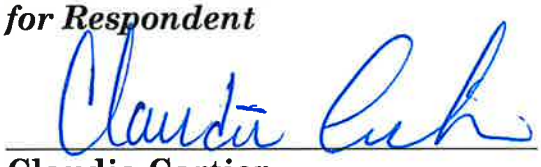

Claudia Cartier

November 1, 2022
Hampton, South Carolina.

November 1, 2022

Via Email Only: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
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Re: Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin v. Pilgrim's Pride Corporation, Mary McBride and Susan Jones
Civil Action No.: 2019-CP-36-00103

Dear Ms. Kitchings:

Please find enclosed for filing, Appellant's Initial Brief and Designation of Matter to be Including in the Record on Appeal in the above-referenced case.

By copy of this letter, Appellant's Initial Brief and Designation of Matter is being served on all counsel of record.

With kind regards, I am

Sincerely,

John E. Parker Jr.

JAY/cc
Enclosures as stated.

cc:Thomas Pritchard, Esquire

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