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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2022-001175

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

v.

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

INITIAL BRIEF OF RESPONDENTS

Thomas B. Pritchard (S.C. Bar No. 65006)
Vernis & Bowling of Columbia, LLC
494-A Savannah Hwy.
Charleston, SC 29407
Telephone: (843) 242-7805
Email: tpritchard@scarolina-law.com

Attorney for Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. **The Circuit Court correctly determined that the dual persona doctrine did not apply to the instant case.**
- II. **The Circuit Court properly reconsidered its prior denial of summary judgment and determined that the matter should be dismissed in accordance with the lack of jurisdiction.**
- III. **The Circuit Court correctly determined that the question was one of jurisdiction as to the exclusivity provision of the South Carolina Workers' Compensation Act and concluded that exclusive jurisdiction lay before the Workers' Compensation Commission.**

STATEMENT OF THE CASE

This Appeal arises from the Sumter County Circuit Court's grant of Respondents' Motion to Reconsider the Court's previous denial of Respondent's Motion for Summary Judgment, the Motion to Reconsider having been granted by the Court by Order dated July 28, 2022 (Reconsideration Order, July 28, 2022).

The underlying case arose out of the unfortunate and untimely death of Decedent, Samel Ragin, who suffered a fatal heart attack while she was at work at her place of employment, a chicken processing facility owned and operated by Respondent Pilgrim's Pride in Sumter County, South Carolina, on November 24, 2017. Appellant Hunsten B. Ragin,¹ as Personal Representative of the Estate of Samel Ragin, brought an action against Pilgrim's and two of its in-house nurse employees, Respondents Mary McBride and Susan Jones, asserting numerous negligent acts and omissions against each. (*See generally* Complaint). Appellant asserted that the specific negligent acts and omissions alleged against Pilgrim's and its employees were violations of the nursing standard of care, which violations caused or directly contributed to Decedent's death by heart attack. Due to the allegations asserted by Appellant, a Notice of Intent was filed on November 6, 2020.

Upon completion of the statutory requirements of the medical malpractice enabling statute, S.C. Code Ann. §15-79-125 (1976, as amended), on February 23, 2021, Appellant filed the Complaint, which alleges that Decedent had complained of

¹ Hunsten B. Ragin is the mother of Decedent. She was appointed Personal Representative of the Estate of Decedent on April 3, 2018. She died on September 27, 2020, approximately two months prior to the filing of the Notice of Intent in this action and approximately five months prior to the filing of this action. The Successor Personal Representative, Syreea Baxter, was appointed on October 19, 2021, but the caption has not been amended at any point in the proceedings to reflect

chest pain and was seen in the Pilgrim's nursing clinic before being instructed to return to work where she subsequently lost consciousness in the restroom and ultimately passed away.² As stated above, the Complaint asserts that the purported care and treatment, or lack thereof, provided to Decedent failed to meet the nursing standard of care. (Complaint ¶¶ 6-10).

Prior to filing the Notice of Intent or the Complaint, Appellant had made a claim with Respondent Pilgrim's worker's compensation carrier. By letter dated January 27, 2020, Sedgwick Claims Management Services, Inc., on behalf of American Zurich Insurance Company (carrier for Pilgrim's), advised Decedent's representative that "[a]fter careful consideration of all available information, it is our opinion that your claim for Workers' Compensation benefits is not compensable." (Jan. 27, 2020, letter). Appellant did not file an action with the South Carolina Workers' Compensation Commission and did not pursue the matter of entitlement to workers' compensation benefits any further after the denial from Sedgwick.

Respondents filed an Answer on April 7, 2021, wherein they specifically denied that Decedent visited the nursing clinic at any point on the date of her death, that she reported to anyone experiencing chest pains, and that she was instructed by anyone to return to the floor and continuing working, despite such a report. (Answer ¶ 4). On September 17, 202, Respondents filed a Motion for Summary Judgment, asserting, among other issues, that the exclusivity provision of the South Carolina

the current Personal Representative.

² It is expressly denied that Decedent was ever seen in the nursing clinic on the date in question as there is no record in the required log of her visiting the clinic that day and Respondent Susan Jones, who was the only nurse in the clinic on that date and at or near the alleged time of the visit, has testified that Decedent was not seen on that day. Respondent Mary McBride was not working

Workers' Compensation Act, S.C. Code Ann. § 42-1-540 (1976, as amended), barred Appellant from suing Respondents because Appellant had not produced any evidence that the death of Decedent by way of heart attack had involved intentional acts on the part of all or any of the Respondents. (Respondents' Motion for Summary Judgment at 4-5; Respondents' Memorandum in Support of Motion for Summary Judgment at 7-9). Appellant submitted a Memorandum in Opposition to Motion for Summary Judgment asserting that Decedent's heart attack was not a compensable injury as defined by the Act, and, therefore, would not bar this action by way of the Act's exclusivity provision (Appellant's Memorandum in Opposition to Motion for Summary Judgment at 7-8), and arguing that Decedent's heart attack was idiopathic in nature and unrelated to her employment (*Id.* At 8-9).

The Circuit Court heard the Motion for Summary Judgment on January 31, 2022. (*See generally* Hearing Transcript, January 31, 2022). Counsel for Respondents argued that it was not necessary to go beyond the allegations of the Complaint as the exclusivity provision would bar Appellant's action because Decedent was an employee at the time of the incident, her injury occurred while she was working, and Appellant had not alleged any sort of intentional conduct on the part of Respondents. (Hearing Transcript, 11:23-12:20, Jan. 31, 2022). Counsel further asserted that whatever may have occurred at the nursing clinic was irrelevant to the analysis of whether the exclusivity provision applied to Appellant's lawsuit as it was not clear whether or not Decedent's heart attack was a compensable injury. (Hearing Transcript, Jan. 31, 2022). Additionally, Respondents argued that McBride

on that day and had no involvement, whether Decedent visited the clinic or not.

and Jones as co-employees were immune to suit under the Act, and that Appellant's tort action should be barred even if Decedent's injury was not compensable. (*Id.*).

Counsel for Appellant argued that Decedent's heart attack did not arise from her employment, and that it was not accidental but an idiopathic injury and was, therefore, not compensable or barred by the exclusivity provision.³ (*Id.* At 27:12-20, 29:25-31:9). Counsel also asserted that any alleged acts or omissions on the part of the nursing clinic or its staff would be more properly addressed in a civil action, rather than under the Act, because the nursing clinic had its own obligations and identity distinct from the scope of the relationship between Decedent and Pilgrim's as her employer. (*Id.* At 28:2-29:6, 31:9-17). In response, Respondents argued that despite the idiopathic nature of Decedent's heart attack, it could still be a compensable claim if Decedent had overexerted herself in performing her work duties. (*Id.* at 33:2-13). Unfortunately, the record was not further developed on this issue as the proper forum in which to have conducted such an analysis and receive such determination would have been before the Workers' Compensation Commission.

In its Order of April 7, 2022, the Circuit Court denied Respondents' Motion for Summary Judgment on all grounds and stated that Decedent's injury did not arise from her employment. (Summary Judgment Order, April 7, 2022). Respondents timely filed a Motion and Memorandum in Support of Defendants' Motion to Reconsider Denial of Summary Judgment on April 15, 2022. (Motion to Reconsider,

³ While neither party introduced evidence of the findings of the forensic pathologist who conducted the autopsy or the Sumter County Coroner, the records available reflect that Decedent's

April 15, 2022). Appellant filed a Memorandum in Opposition to the Motion to Reconsider on April 26, 2022. (Memorandum in Opposition to Motion to Reconsider, April 16, 2022).

On May 17, 2022, The Circuit Court heard Respondents' Motion to reconsider. (*See generally* Hearing Transcript, May 17, 2022). Respondents argued because Respondents were Decedent's employer and co-employees, and she was working at the time of her heart attack, that it is possible that her injury arose from her employment. (*Id.* at 6:11-19). Respondents also argued that the Workers' Compensation had jurisdiction to determine the question of whether the injury arose in the course and scope of Decedent's employment and such determination had not been made. (*Id.* at 7:9-12).

The Circuit Court entered an Order on July 28, 2022, reversing its prior decision and granting Respondents' summary judgment. (Order Granting Defendants' Motion to Reconsider, July 28, 2022). The Order cited the following grounds for granting summary judgment: The dual capacity doctrine does not provide an exception to the exclusivity provision for injuries allegedly caused by company-employed health care providers; Decedent was at work at the time she suffered her heart attack; Respondents were employer and co-employees of Decedent; and, the question of whether or not Decedent's heart attack was an employment injury was a question for the Workers' Compensation Commission. (*Id.* at 2-4). The Appellant filed her Notice of Appeal on August 19, 2022. (Notice of

death was due to cardiac arrhythmia (onset to death minutes) and cardiomyopathy (onset to death years).

Appeal).

STANDARD OF REVIEW

The question of whether or not the South Carolina Workers' Compensation Act provides an exclusive remedy is a jurisdictional question. *See e.g., Nelson v. Yellow Cab Co.*, 349 S.C. 589, 594, 564 S.E.2d 110, 112 (2002). "When the issue on appeal involves jurisdiction, [the Court] can take [its] own view of the preponderance of the evidence." *Fuller v. Blanchard*, 358 S.C. 536, 542, 595 S.E.2d 831 (Ct. App. 2008).

Though raised by Respondents at the Circuit Court level as a Motion for Summary Judgment, the question presented here is one of jurisdiction, which may be more properly raised and addressed by way of a Motion to Dismiss. "The proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, rather than a motion for summary judgment pursuant to Rule 56, SCRCP. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), *overruled on other grounds, Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). If a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss. *Edens v. Bellini*, 359 S.C. 433, 439, 597 S.E.2d 863, 866 (Ct. App. 2004)." *Posey v. Proper Mold & Engineering, Inc.*, 661 S.E.2d 395, 399 (Ct. App. 2008)

ARGUMENT

I. The Circuit Court correctly determined that the dual persona doctrine did not apply to the instant case.

South Carolina has adopted the so-called “dual capacity” or “dual persona doctrine.” As Appellant correctly stated, the Supreme Court announced the dual persona doctrine in *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251 (2013). In so adopting this doctrine, the Court determined that it 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 person doctrine is to apply, it must be possible to say that the duty arose *solely* from the *nonemployer* persona For only in such 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.

However, the facts of *Mendenall* are wholly distinguishable from the instant case. In that case, the Plaintiff was seeking to sue a predecessor in interest for faulty design and construction, failure to warn of a dangerous condition and negligent maintenance. There the Court held that the recognized exceptions to the exclusive remedy “are premised on the notion that the employee is not suing his employer, but rather a separate legal entity that allegedly caused his injury.” *Id.* at 563, 738 S.E.2d 253. Here, the Appellant seeks to sue the employer and two of Decedent’s co-employees who worked in a nursing office provided by the employer because of the inherently dangerous nature of the facility, a chicken processing facility, and the

frequent job-related injuries that occurred therein. There was no separation or legally distinguishable line of demarcation between the employer and the nursing office maintained therein.

If, as alleged, the Decedent sought treatment from the nursing office as an employee of Pilgrim's Pride, by nurses employed by Pilgrim's Pride for the sole purpose of providing medical treatment to Pilgrim's Pride employees, the nurse co-employees cannot be held personally liable in tort for alleged negligence. The Circuit Court correctly relied on *Fuller v. Blanchard*, 358 S.C.536, 595 S.E.2d 831 (Ct. App. 2004) in so finding, determining that Decedent was allegedly negligently injured by co-employees conducting the employer's business. Appellant would have this Court embrace the finding in *Fuller* that an independent contractor doctor retained by the employer is not subject to tort immunity. The facts of *Fuller* are clearly distinguishable in that regard, and the Circuit Court fully appreciated and articulated the distinction.

II. The Circuit Court properly reconsidered its prior denial of summary judgment and determined that the matter should be dismissed in accordance with the lack of jurisdiction.

Respondents timely filed their Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e) allows a court to alter or amend a judgment upon a party's timely motion. Contrary to the implications in Appellant's Initial Brief, a motion to reconsider does not require a party to raise or argue new issues. "A party may wish to file such a motion when she believes the court has misunderstood, failed to full consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it."

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

III. The Circuit Court correctly determined that the question was one of jurisdiction as to the exclusivity provision of the South Carolina Workers' Compensation Act and concluded that exclusive jurisdiction lay before the Workers' Compensation Commission.

“A claimant may recover workers' compensation benefits if he sustains an ‘injury by accident arising out of and in the course of the employment.’ S.C. Code Ann. § 42-1-160 (2006). The general rule is that a heart attack is compensable as a worker's compensation accident if it is induced by unexpected strain or overexertion in the performance of the duties of a claimant's employment or by unusual and extraordinary conditions of employment.” *Jordan v. Kelly Co., Inc.*, 674 S.E.2d 166, 381 S.C. 483 (2009), *citing Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 464, 405 S.E.2d 407, 409 (1991). In the instant case, the Appellant never sought a determination as to whether or not the Decedent’s heart attack was” induced by unexpected strain or overexertion in the performance” of her duties of employment or by “unusual and extraordinary conditions of employment.” Appellant relies, instead, on the assertion that Decedent was suffering from an idiopathic injury that was unrelated to the workplace at the time of her death. While Respondents don’t disagree that Decedent had underlying health issues that led to her heart attack, the record was not clearly developed by Appellant by exhaustive pursuit of a workers’ compensation claim.

The Circuit Court specifically addressed Appellant’s failure to fully pursue a workers’ compensation claim, finding unpersuasive Appellant’s argument that the Workers’ Compensation Insurer’s denial of the claim by letter was proof that the

claim was not covered under the Act. (Order Granting Motion to Reconsider at 4). The Court, instead, determined that the question of Decedent's heart attack and whether or not it was related to her employment was one first for determination by the Commission. *Boulware v. Mills*, 294 S.C. 24, 362 S.E.2d 184 (Ct. App. 1987); *Fuller v. Blanchard*.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Circuit Court's July 28, 2022, Order Granting Respondents' Motion to Reconsider be affirmed.

VERNIS & BOWLING OF SOUTH CAROLINA, LLC



Thomas B. Pritchard (S.C. Bar No.: 65006)
494-A Savannah Hwy.
Charleston, South Carolina 29407
(843) 242-7805
tpritchard@scarolina-law.com

Attorneys for Respondents

January 3, 2023
Charleston, South Carolina

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Hunsten B. Ragin as Personal Representative of the Estate of Samel
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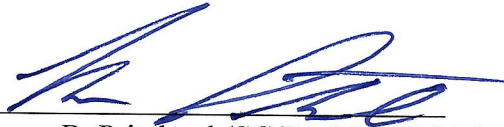
CERTIFICATE OF SERVICE

This is to certify that the **Initial Brief of Respondents**, to which this certificate is affixed, was served upon all parties to this action by hand delivery, by depositing a copy of same, enclosed in a first-class, post-paid envelope, addressed to the attorneys of record, or by other means as permitted by Appellate Court Rules as follows:

Neil E. Alger
John E. Parker, Jr.
PARKER LAW GROUP, LLC
690 N. Green Street
Ridgeland, SC 29936
Tel.: (843) 547-8025
nalger@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

-AND-

Dwight C. Moore
MOORE LAW FIRM, LLC
P.O. Box 1229
Sumter, SC 29151-1229



Thomas B. Pritchard (SC Bar No.: 65006)
VERNIS & BOWLING OF SOUTH CAROLINA, LLC
494-A Savannah Highway
Charleston, SC 29407
(843) 242-7805
tpritchard@scarolina-law.com

January 3, 2023
Charleston, South Carolina

VERNIS & BOWLING

ATTORNEYS AT LAW • EST. 1970

2711 Middleburg Drive, Suite 216, Columbia, South Carolina 29204 • Telephone: 803-234-5416 • Facsimile: 803-978-6246

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Jan 03 2023

SC Court of Appeals

Thomas B. Pritchard
tpritchard@scarolina-law.com
Randi M. Berlin
rberlin@scarolina-law.com

January 3, 2023

Via Electronic Mail Only

Jenny Abbott Kitchings, Clerk of Court
Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Hunsten B. Ragin as Personal Representative of the Estate of Sameel Ragin vs. Pilgrim's Pride Corporation, Mary McBride, and Susan Jones
Court of Appeals Case No.: 2022-001175
Civil Case No.: 2021-CP-43-00307
V&B File Number: 1485-21035

Dear Ms. Kitchings:

As you are aware, we represent Respondents Pilgrim's Pride Corporation, Mary McBride, and Susan Jones in regard to the above-referenced matter. Enclosed for filing with the Court, please find Respondents' Initial Brief and Respondents' Designation of Matter to Be Included in the record on Appeal, each with the appropriate Certificate of Service. By copy of same to all counsel, they are also being served with a copy of same.

Please let us know if you have any questions or need any additional information.

With highest regards,

/s/ Thomas Pritchard

Thomas B. Pritchard

TBP/rmb
Enclosures

cc: Neil E. Alger, Esquire
John E. "Jay" Parker, Jr., Esquire
Dwight C. Moore, Esquire

DELAND, FL
FORT MYERS, FL
HOLLYWOOD, FL
ISLAMORADA, FL

JACKSONVILLE, FL
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NORTH PALM BEACH, FL

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