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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.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. The Circuit Court had jurisdiction to determine threshold questions as to the applicability of the exclusivity provision.

"It has been consistently held that whether the claim of an injured workman is within the jurisdiction of the [Worker's Compensation Commission] is a matter of law for decision by the court, which includes the finding of the facts which relate to jurisdiction." *Adams v. Davison-Paxon Co.*, 230 S.C. 532, 542, 96 S.E.2d 566, 571 (1957). Trial courts may make determinations of fact concerning whether an injury is accidental and arose out of employment such that it would be subject to the Act's exclusivity provision. *See Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 138, 417 S.E.2d 538, 540 (1992).[1] The Circuit Court's Order essentially does not make any findings of fact as to whether Ragin's heart condition arose out of her employment, or whether it was an idiopathic injury. Instead, the Order merely states that the Circuit Court did not have jurisdiction and that the question had to be determined first by the Commission. (July 28, 2022 Order at 4). In the alternative, the Order secondarily concludes that because Ragin's death occurred at the workplace and involved two Pilgrim employees that her claim was barred by the exclusivity provision. This conclusion omits the necessary inquiry of whether the injury **arose** out of Ragin's employment.

[1] Similarly, trial courts may make factual determinations as to whether the dual persona doctrine is applicable to a case. *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 560, 738 S.E.2d 251, 252 (2013).

"The phrase 'arising out of' refers to the origin of the cause of the accident." *Loges*, 308 S.C. at 138, 417 S.E.2d at 540. "An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, **a causal relationship** between the conditions under which the work is to be performed and the resulting injury." *Id.* (emphasis added). Here, the Order's analysis is flawed in that it fails to focus on facts relevant to the "arising out of" inquiry. In doing so, it solely focuses on whether the incident occurred in the course of employment, while totally ignoring whether it **arose** from the employment. *Id.* ("'In the course of employment' refers to the time, place and circumstances under which the accident occurs."). An injury must (1) arise out of employment **and** (2) occur in the course of employment, and shall not include a disease in any form, to be subject to the provisions of the Act. S.C. Code Ann. § 42-1-160.

The parties agree that Ragin died from two underlying natural causes: cardiac arrythmia and cardiomyopathy. Respondent has not pointed to any evidence in the record demonstrating that Ragin's heart condition was caused by or a result of work conditions. Thus, it was error for the Order to conclude that Ragin's condition arose out of her employment, regardless of the fact that it occurred within the course of her employment, as it entirely fails to determine whether there was a causal relationship between the employment and the heart condition. As such, the Circuit Court did not properly determine whether the Commission had exclusive jurisdiction over the matter, and the Circuit Court's Order should be reversed.

II. Respondents' arguments fail to recognize that a single employer may have two separate and distinct personas.

The July 28, 2022 Reconsideration Order is in error because it fails to recognize that South Carolina has already adopted the dual persona doctrine. Further, the Order is in error because it does not perform an analysis of whether the dual persona doctrine would apply under the facts of this case; instead, the Order incorrectly states that while other jurisdictions have adopted the doctrine, it is the function of the legislature to create a dual persona exception, and if the General Assembly had intended there to be such an exception it would have done so. The Order should be reversed for this reason alone.

Respondent ignores this fundamental flaw in the Order and instead argues that the dual persona doctrine would not apply to the facts of this case. In doing so, Respondent attempts to distinguish the present facts from those of *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251 (2013). Respondent argues that *Mendenall* stands for the proposition that there must be a "separation or legally distinguishable line of demarcation" between the employer entity and the tortfeasor, and that Respondent and its in-house clinic were part of the same facility and were indistinguishable from one another, as far as the employer-employee relationship was concerned, at the time of Ragin's death.

This brief analysis is not in line with the test described in *Mendenall*. *Mendenall* describes the doctrine as being applicable where the set of obligations between the employer and employee that forms the basis of the tort suit is entirely

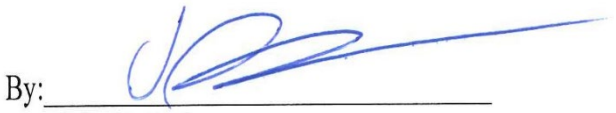
independent of the defendant's obligations as an employer. *Id.* at 563-64, 738 S.E.2d at 254. This is exactly the scenario encompassed by the current facts, as Respondent had an entirely different standard of care and duty to Ragin as a patient than it did to Ragin as an employee. In fact, this same factual scenario was recognized by the South Carolina Supreme Court in *Mendenall* as falling under the dual persona doctrine. *Id.* at 563 n.4, 738 S.E.2d at 254 n.4 (discussing the erroneous application of the doctrine in *Tatum v. Med. Univ. of S.C.*, 346 S.C. 194, 552 S.E.2d 18 (2001)). Thus, not only was the Circuit Court in error in failing to recognize that the dual persona doctrine was South Carolina law, if the Circuit Court had applied the doctrine, it would have been compelled by *Tatum* and *Mendenall* to find that Respondent assumed a completely new identity separate and distinct from its role as employer in providing medical services, making the exclusivity provision inapplicable to Plaintiff's medical malpractice action. The Circuit Court's Order should be reversed.

CONCLUSION

For the foregoing reasons and those set forth in Appellant's Initial Brief, the Circuit Court's July 28, 2022 Order should be reversed, or in the alternative, vacated.

[SIGNATURE PAGE TO FOLLOW]

PARKER LAW GROUP, LLP

By: 

February 15, 2023
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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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February 15, 2022
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February 15, 2023

Via Email Only: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Hunsten B. Ragin v. Pilgrim's Pride Corporation
Appellate Case No.: 2022-001175

Dear Ms. Kitchings:

Please find enclosed for filing, Appellant's Reply Brief, and Proof of Service.in regard to the above-referenced matter.

By copy of this letter, the Appellant's Reply Brief 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, Esq. (Via Email Only)

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