

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

**MOTION TO DISMISS RESPONDENT SC WORKERS' COMPENSATION
COMMISSION AND MOTION FOR RELIEF OF COUNSEL**

Pursuant to Rules 202, 240, 264 and 265, SCACR, The South Carolina Workers' Compensation Commission ("the Commission") moves this Court to Dismiss the Commission as a party to this appeal and relieve J. Keith Roberts, Esquire, and Kristen S. McRee, Esquire, from being listed as counsel of record, based on the following grounds:

1. The Workers' Compensation Act gives the Commission the authority to determine all questions arising under the Act. S.C. Code Ann. § 42-3-180 (1976). The purpose of the Commission is to hear parties' disputes and decide them in a summary manner. S.C. Code Ann. § 42-17-40 (1976). The Commission is an "agency" authorized by law to determine

contested cases in accordance with the Administrative Procedures Act. S.C. Code Ann. § 1-23-310 (1976, as amended).

2. On March 6, 2018, the Single Commissioner issued an Order granting in part and denying in part Appellant's request for Attorney fees. On June 6, 2022, the Workers' Compensation Commission Appellate Panel majority affirmed the Single Commissioner's decision. On January 4th, 2023, the Commission issued an Order denying Appellants' Motion for Rehearing.
3. The Notice of Appeal Initial Letter dated February 9th, 2023, indicates that the Court of Appeals considers the S.C. Workers' Compensation Commission the Respondent and party to this appeal and lists the undersigned as counsel of record.
4. The Workers' Compensation Commission is not a party to this appeal. The Commission served in a judicial capacity as the Administrative Tribunal before whom a dispute was decided. The Commission issued its final order in accordance with § 1-23-380 and § 42-17-60. By law, the Commission's involvement in this matter has ended. It is judicially immune from suit. *See Plyler v. Burns*, 373 S.C. 637, 645 (2007) (Judges are immune from litigation unless: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only."); *McEachern v. Black*, 329 S.C. 642, 661 (citing *Bradley v. Fisher*, 80 U.S. 335, 348 (1871)) ("Without judicial immunity, losing parties would vent their ire on the presiding judge" and "the protection essential to judicial independence would be entirely swept away.").
5. Not only is the Commission, as the adjudicative body, not a party to this appeal, but Appellant's Notice of Appeal, filed February 3, 2023, improperly and unilaterally attempts to join the South Carolina Workers' Compensation Commission as a party Defendant. The

Commission is not the Respondent or otherwise involved in the above-referenced appeal.

This is not an appropriate designation of parties in accordance with Rule 202, SCACR.

The Commission was added by the Clerk of Court due to Appellants' Notice of Appeal.

This had the practical effect of joining the Commission as a party.

6. There has been no court order adding the Commission to this claim. Therefore, the Commission seeks an order dismissing it and relieving its counsel from participation in this appeal for being improperly joined. *See* Rule 19(a), SCRCF (joinder is not mandatory as complete relief can be accorded among those already parties and the Commission claims no interest relating to the subject of the action); Rule 20, SCRCF (joinder of Defendant Commission is not permissive as no right to relief has been asserted against it).
7. Furthermore, joinder of the Commission as a party was not argued before the Appellate Panel and thus is not preserved on appeal. *See Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324 (2011) (“A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below.”).
8. The law does not call upon the Commission to defend its final judicial decision on appeal to the courts. The Commission is the “Administrative Tribunal” as defined in Rule 202(b)(2), SCACR. Appeal from a final decision of the Commission should be taken to the Court of Appeals in the same manner as an appeal from a final decision from a lower court or any other administrative tribunal. The following authorities support this position:

It is plain from this section [Code 1962 § 72-356]¹ that it was the intention of the legislature to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single Commissioner; a review, by the full Commission, of the single

¹ S.C. Code Ann. § 42-17-60 was amended in 2007 to allow appeals from final decisions of the Commission to be taken directly to the Court of Appeals, rather than the Court of Common Pleas. 2007 S.C. Act No. 111, Pt I, § 30, eff July 1, 2007, applicable to injuries that occur on or after that date.

Commissioner's award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from that court to the Supreme Court.

Greer v. Greenville County, 245 S.C. 442, 141 S.E.2d 91 (1965). *See also* Riddle v. Fairforest Finishing Co., 198 SC 419, 18 SE2d 341 (1942); Walsh v. U. S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961).

Where it was contended that an appeal from the Commission should be treated the same as if it had come from a lower court it was held that upon consideration of the whole Act and its drastic departures from the common law which it displaced, the answer is patent that the procedure upon appeal must not be permitted to conflict with the novel substantive law which the Act contains.

Schwartz v. Mount Vernon-Woodberry Mills, 206 S.C. 227, 33 S.E.2d 517(1945).

9. Furthermore, there is no relief which can be awarded to Appellants from the Commission.

Should Appellants prevail on having the judicial decision of the Commission overturned, they would be awarded \$13,461.76. This amount would be distributed to them from Appellants' trust account. Should the Court of Appeals uphold the decision of the Commission, that amount will be distributed from the Appellants' trust account to the injured worker, Pamela Cartee. There is no statutory authority entitling the Commission to the fees in question or requiring that the Commission itself hold and disburse the fees in question.² *See* S.C. Code Ann. § 42-15-90 (2012, as amended) ("Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the Commission."); S.C. Code Regs. 67-1204A (2010, as amended) ("An attorney shall report and obtain approval of any fee for services rendered in a workers' compensation claim . . ."); Rule 1.5(a), RPC ("A lawyer shall hold property of clients . . . that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.").

Therefore, there is no relief that the Commission itself may provide to the Appellants.

² Where a deceased employee leaves no dependents or partial dependents, S.C. Code Ann. § 42-9-140(D) permits the Commission to receive the commuted value of remaining benefits and expend them pursuant to § 42-9-400. However, this provision is inapplicable to these facts.


10. Additionally, the Court of Appeals lacks jurisdiction to adjudicate this appeal if the Commission is added as a party defendant. The Court of Appeals has such jurisdiction as the General Assembly prescribes by law. S.C. CONST. ART. V, § 9. The General Assembly vested the Court of Appeals with only appellate jurisdiction in appeals from a final decision of the Workers' Compensation Commission. S.C. Code Ann. § 14-8-200 (2007, as amended). The Commission takes no position on the Court's ability to hear the merits of this appeal. However, a ruling that binds the Commission as a party defendant under the facts of this case is an unconstitutional exercise of its authority as against the Commission.
11. Because there is no legal authority permitting a portion of a Claimant's recovery to be remitted to the Commission there is no life, liberty, or property interest of the Commission being considered by the Court of Appeals. The only legally cognizable interest being adjudicated by the Court of Appeals is the property interest in \$13,461.76 between Ms. Cartee and Appellants.
12. Given that there is an inherent conflict of interest between Ms. Cartee and her attorney, a Guardian ad Litem or independent attorney may be in the best position to represent the interests of this injured worker.
13. Further, Mr. Roberts and Mrs. McRee move that the South Carolina Workers' Compensation Commission be dismissed as a party to this action and that they be relieved as counsel of record in this matter. Mr. Roberts and Mrs. McRee did not notice the court of their appearance but were unilaterally named as counsel of record by Appellants. There is no legal authority that allows an Appellant to choose which attorneys must represent a named Respondent.

CONCLUSION

The Commission is not a proper Respondent to an appeal of its final judicial decision. The Commission moves to be removed as Respondent and the undersigned move to be relieved as counsel of record.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



J. Keith Roberts
SC Bar No. 100735
Kristen S. McRee
SC Bar No. 74690
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

March 21, 2023

DATE

RECEIVED

Mar 21 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

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SC Judicial Department, Employer, and State Accident Fund, Carrier,
Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

PROOF OF SERVICE

I, the undersigned counsel for the Workers' Compensation Commission, hereby certify that I have served a copy of the Motion to Dismiss Respondent SC Workers' Compensation Commission and Motion for Relief of Counsel by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, and via email, addressed to the Appellant and Court as listed below.

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
ctappfilings@sccourts.org

Preston F. McDaniel, Esquire
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Columbia SC 29201
preston@pfmcdlaw.com

John M. Milling, Esquire
PO Drawer 519
Darlington SC 29540
johnmilling@bellsouth.net

March 21st, 2023



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RECEIVED

Mar 21 2023

SC Court of Appeals

State of South Carolina

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Workers' Compensation Commission

March 21st, 2023

Jenny Abbott Kitchings, Clerk of Court
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Re: Pamela Cartee v. SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants, IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants, v. SC Workers' Compensation Commission, Respondent.
Appellate Case No. 2023-000187
WCC File No. 1307922

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the South Carolina Workers' Compensation Commission's Motion to Dismiss Respondent SC Workers' Compensation Commission and Motion for Relief of Counsel, which I would appreciate your filing with the court. It is my understanding that, as the Commission is an agency of the State of South Carolina, we are exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted.

By copy of this letter to Preston F. McDaniel and John M. Milling, Appellants pro se, I am hereby serving them with copies of our Motion. Please see the attached Certificate of Service. Pursuant to Rule 11, SCRCR, I certify that consultation with the opposing pro se parties would serve no useful purpose.

If there is anything further the Court requires from the Commission at this time, do not hesitate to ask.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Keith Roberts".

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure

Cc: Preston F. McDaniel (Via US Mail and email)
John M. Milling (Via US Mail and email)