

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5948 (S.C. Ct. App. Filed October 26, 2022)

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SC Court of Appeals

Frankie Padgett, Claimant Respondent,

v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, CarrierPetitioners.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL:

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 22, 2023.

QUESTIONS PRESENTED:

This Petition for Writ of Certiorari raises an unresolved issue in the Workers' Compensation arena as to whether an employer and carrier is entitled to credit for permanent partial disability compensation benefits paid the same employee of the injured worker by virtue of a settlement agreement and release pursuant to *S.C. Code Ann. §42-9-170 (2022)*.

This case also seeks a resolution of whether the South Carolina Workers' Compensation Commission can properly exercise subject matter jurisdiction and order payment of indemnity benefits in excess of 500 weeks as is reflected in *S.C. Code Ann. §42-9-10 (2022)*.

The Petition also raises the question of whether a settlement agreement (clincher) approved as an order of the Commission can be reformed by the Full Commission's Appellate Panel or Court of Appeals when there is unrefuted evidence that Frankie Padgett, Claimant/Employee, breached the contractual agreement-which is also designated as an official act, judgment and decree- not to re-apply for re-employment. In this particular incidence, this case raises a novel issue which has not been addressed by this Court.

The case also raises a novel issue as to whether an injured employee has the ability and authority to pro-rate compensation paid by virtue of a clincher over the employee's lifetime if the impairment rating was not referenced in the settlement agreement and contract. This issue was indirectly addressed in the case of *James V. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010). The Court determined settlement allocation or pro ration language can be unilaterally placed into

settlement agreements by the injured worker absent the employer and carrier's consent. *Id.* The Court of Appeals has ignored this holding and found as a fact and concluded as a matter of law that a settlement or an award of benefits cannot be allocated as disability payments by the parties absent a finding of a permanent injury by the Commission, despite a contractual agreement of the parties.

The specific questions presented by Cast and Crew Entertainment Services, Inc., and American Zurich Insurance Company for a Writ of Certiorari are as follows:

1. Did the Court of Appeals commit legal error in affirming the South Carolina Workers' Compensation Commission's award of additional indemnity benefits when Padgett breached terms of the contract and has been paid in excess of 500 weeks of indemnity benefits?
2. Did the Court of Appeals legally err in deciding that the South Carolina Workers' Compensation Commission had subject matter jurisdiction to order additional indemnity benefits in view of the 500-week monetary cap as is set forth in section 42-9-10?
3. Did the Court of Appeals err in failing to address whether the South Carolina Workers' Compensation Commission erred in determining Padgett is entitled to a prospective award of permanent disability benefits?
4. Did the Court of Appeals err in affirming the South Carolina Workers' Compensation Commission's decision that Padgett did not breach terms of the settlement agreement or violate a judicial decree, act, order and judgment of the Commission or Court?
5. Did the Court of Appeals err in concluding that §42-9-170 was inapplicable because permanent medical impairment to the left leg that was not referenced in the settlement agreement, despite the fact the Record on Appeal reflects a medical impairment had been assigned to the left leg?

CONSIDERATIONS GOVERNING REVIEW

A Writ of Certiorari is not a matter of right, but a sound judicial discretion, and will be granted only where there are special important reasons.

Petitioners believe that the reasons set forth below constitute a sound basis for review by this Court.

1. There are novel issues of law.
2. The decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court. In particular, the Supreme Court's holding in the case of James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 730 (2010).

STATEMENT OF THE CASE

Cast and Crew Entertainment Services, Inc., the Employer, and American Zurich Insurance Company, the Workers' Compensation Carrier, (hereinafter "Petitioner" or "Petitioners") appealed a decision of the South Carolina Workers' Compensation Commission finding and concluding that Frankie Padgett, Employee/Claimant, was entitled to indemnity or temporary total disability and permanent disability compensation benefits work-related accident on May 6, 2015.

Frank Perry Padgett, Jr. a/k/a Frankie Padgett, Perry F. Padgett, Jr., and Perry Padgett [hereinafter "Padgett" or "Respondent"] is a 54-year old male, who stands 6'3" tall and weighed 352 pounds around the time of the accident. Padgett was hired to work as a driver for Cast & Crew Entertainment Services, Inc., the employer, on March 30, 2015, by virtue of his membership in the Teamsters Union. [R.p. 59]. Specifically, Cast & Crew Entertainment Services, Appellant, is assigned drivers through the Teamsters Union. The assigned drivers provide transportation services for film production in South Carolina. [R.pp. 94-96].

Cast & Crew is a provider of payroll services to the entertainment industry and do not directly employ or control the day-to-day responsibilities of payroll clients and their production employees. (Record p. 248). Cast & Crew basically operates as a Professional Employer Organization as set forth in sections 40-68-10 to 180 and is designated as the employer. Cast & Crew's legal designation as the employer is undisputed.

On or about May 6, 2015, Padgett was entering a trailer in order to make a copy when he felt right ankle pain. Padgett suffered a tear of his right Achilles tendon and ankle fracture. [R.p.163]. Padgett reported the right ankle injury on the same date to Brian Turner, a supervisor and medic.[R.pp. 232-234].

Padgett was initially treated at Nason Medical Urgent Care Center. [R.p.232 complained of pain radiating from the right ankle into the right calf. Padgett also complained of numbness and tingling of the right ankle. Padgett underwent a physical examination and x-rays of the right ankle.

The medical providers at Nason Medical Center Urgent Care diagnosed Padgett with a right foot and ankle fracture and a rupture of the Achilles tendon.

Subsequently, Padgett treated with Dr. John Prather because of continued right foot and ankle pain. Dr. Prather ordered a MRI. [R.pp. 163 p. 162- 190]. The MRI revealed an Achilles tendon rupture, plantar fasciitis and plantar calcaneal spur. Dr. Prather initially prescribed a CAM boot and the medications Percocet and Flexeril for pain and spasms. Because conservative medical modalities did not improve Padgett's symptoms of pain, Dr. Prather performed right Achilles reconstruction surgery on May 19, 2015. [R.pp. 162-166; 179-181; 236-238].

Several weeks after undergoing right Achilles reconstruction surgery, Padgett suffered a second Achilles rupture when he felt a pop in his right heel while lifting himself from the toilet. [R.pp. 170].

Padgett underwent a second MRI, which revealed a re-rupture of the right Achilles tendon. Dr. Prather performed a debridement of the Achilles and a second reconstruction surgery. [R.p. 175]. Padgett was placed in a short leg splint after surgery. Dr. Prather later

prescribed a short leg cast with plantar flexion. Dr. Prather also ordered Padgett to undergo physical therapy. [R.p. 174].

During the course of Padgett's physical therapy, he continued to complain of right ankle and foot pain. Dr. Prather administered injections to address Padgett's post-surgery complaints of pain. Dr. Prather also prescribed a number of pain and anti-inflammatory medications, i.e., Percocet, Lyrica, Mobic, Flexeril, Elavil, Soma, and Amitriptyline.

On January 19, 2016, Padgett underwent an IME with Dr. Richard Gross, an orthopaedic surgeon. Dr. Gross recommended Padgett undergo an EMG in order to evaluate the cause of the neuropathy affecting the right foot. Dr. Gross also recommended the possible transfer of FHL tendon from the big toe to the calcaneus bone in order to improve the flexion of the right foot.

Padgett attended physical therapy sessions at Low Country Rehabilitation from September 1, 2015 to September 28, 2016. Because physical therapy did little to alleviate Padgett's complaints of pain, he was referred to Dr. Gerald Chai for another medical opinion. Dr. Chai first evaluated Padgett on March 30, 2016, for complaints of chronic pain. Dr. Chai recommended Padgett continue with long-term narcotic medication in order to treat complaints of chronic pain. [R.p. 212 & 221].

While Padgett was receiving medical treatment resulting from the May 6, 2015 accident, the insurance claims adjuster for American Zurich Insurance Company, Petitioner, discovered Padgett had been involved in a prior work-related accident as an employee of Cast & Crew on August 27, 2009. [R.pp. 37-39; 230 & 242]. Padgett had initially worked for Cast & Crew as a truck driver beginning on January 26, 2009,. [R.p. 38

Previously, on August 27, 2009, Padgett fell while walking up the steps to a warehouse. [R.p. 39]. He injured his left ankle and right knee. [R.p. 43]. Padgett underwent multiple

surgeries to the left ankle. Padgett subsequently began complaining of increased right knee pain and low back pain. Because Padgett suffered with diabetes, hypertension and obesity, he contended he was permanently and totally disabled because of the 2009 accident. Padgett later filed a Form 50 seeking a permanent and total disability award. [R.p. 39].

Padgett was paid \$106,000.00 or 154.8571 weeks of temporary total disability compensation benefits from 2009 to 2012. [R.p. 37 lines 1-2 of Form 19]. Padgett's 2009 claim was ultimately settled for a lump sum payment of \$150,000.00, by virtue of a settlement agreement and release (clincher). [R.pp. 31-36]. The amount of money paid to resolve Padgett's 2009 permanent disability claim and the subsequent continuous payments of temporary total disability benefits stemming for the 2015 accident have resulted in payment of excess of 500 weeks of benefits to Padgett.[R.pp. 37 & 244].

Upon review of the two claims, the adjuster discovered Padgett had utilized his legal name of Perry F. Padgett, Jr., with regard to the 2009 claim and a drastic variation of his name for the 2015 claim. [R.pp. 31; 36-41; 43; 85 ll. 5-7; 87-88 ll. 16-20; & 242-243]. In particular, at the time of Padgett's re-hire with Cast & Crew Entertainment Services on March 30, 2015, he utilized the name of Frankie Padgett. [R.pp. 56-59]. Without dispute, Padgett has utilized two different names in obtaining indemnity benefits.

Upon this discovery around May 17, 2017, it was concluded Padgett would soon be paid in excess of 500 weeks of benefits, and that no additional indemnity benefits should be paid pursuant to sections 42-9-10 and 42-1-160 and 170 of the South Carolina Code of Laws.

Accordingly, a hearing to address the issues raised in the Petition of the employer and carrier, Appellants, was scheduled on October 30, 2017, in Moncks Corner, South Carolina, by the Honorable Aisha Taylor, Commissioner [R.pp. 25-28]. On May 31, 2018, Commissioner

Taylor promulgated an Order permitting Appellants to terminate payment of temporary total disability compensation benefits to Padgett because of receipt of payments in excess of 500 weeks of compensation benefits. [R.pp. 11-24].

Padgett appealed Commissioner Taylor's Decision and Order to the Full Commission. The Full Commission affirmed in part and vacated in part the Hearing Commissioner's Decision and Order. [R.pp. 1-10].

Petitioners timely appealed to the Court of Appeals by letter dated July 25, 2019. On June 7, 2022, oral arguments were held. The Court of Appeals promulgated its decision affirming the South Carolina Workers' Compensation Commission on October 26, 2022.

Thereafter, a Petition for Rehearing was timely filed on November 9, 2022. The Court of Appeals denied the Petition for Rehearing on March 22, 2023. From the denial, Petitioners file this Petition for Writ of Certiorari with this Honorable Court.

STATEMENT OF THE FACTS

Frankie Padgett a/k/a Perry F. Padgett, Jr. and Perry Padgett worked for Cast & Crew. During Padgett's first period of employment with Cast & Crew in 2009, he sustained injuries to his left foot, left leg, back, hips and right leg on August 27, 2009. [R. p. 31].

Petitioners paid Padgett temporary total disability compensation benefits from August 28, 2009 to September 26, 2012. As a result, Padgett was paid a total of 154.8571 weeks of temporary compensation benefits. [R. p. 37, lines 1-2]. Cast & Crew also paid \$91,851.55 in medical benefits. [R. p. 37, line 6].

Padgett resolved the 2009 claim for the lump sum and non-commuted payment of \$150,000.00, by virtue of a settlement agreement and release (clincher). According to the terms of the clincher, the \$150,000.00 payment, less attorneys' fees and costs, were to be paid over a

period of 1,704.56 weeks for “*disputed permanent disability*” exclusively at Padgett’s request. [R.p. 32, item number 3]

The clincher provided that although the settlement agreement and release is an agreement approved by the South Carolina Workers’ Compensation Commission, the settlement agreement also would be construed as a contract, judgment and decree with the provisions of the same enforceable in a court of competent jurisdiction. [R.p. 34, provision (H)].

Padgett and Cast & Crew also agreed effective October 22, 2012, Padgett was no longer an employee of Cast & Crew and he would not seek future employment with Cast & Crew. [R.p. 34, provision (I)].

Subsequently, in 2015, Padgett sought employment as a driver for a production company referred to as “*Danger Boy Production*”. [R.p. 56]. Padgett completed various employment documents at the time of his hire, which reflected the employer was Cast & Crew. [R.p.56]. Padgett submitted his employment hire forms to Cast & Crew, but he did not use his legal name “Perry F. Padgett, Jr.” as he had utilized in 2009 when he was first hired by Cast & Crew. [R.pp. 31, 37-40, 230-231]. Rather, Respondent used the name “Frankie Padgett” when completing the employment documents. [R.pp. 56-59; 109; & 110, ll. 1-9].

Padgett testified that he has always referred to himself as **Frankie Padgett**. [R.pp. 89, ll. 20 – 25; & 90-91]. However, a review of the clincher, which was signed by Padgett on October 12, 2012, reflects that the formal name of **Perry F. Padgett, Jr.**, was utilized. [R.pp. 36-37, 109 & 110, ll. 1-9].

Last, Padgett admitted that prior to his 2015 ankle injury and upon receipt of his first paycheck, Cast & Crew was designated as the employer. [R.p.113, ll. 1 – 4]. As such, Padgett willfully, deliberately, purposefully and knowingly continued his employment with Cast &

Crew, while cognizant of his promise and acceptance of the terms of the clincher prohibiting future employment with Cast & Crew. [R.pp.102, ll.1-5; 103, ll. 21-25 & 104, ll. 1-6].

Despite the clause in the 2012 clincher, which precluded Padgett from seeking or obtaining future employment with Cast & Crew, Padgett began working for Cast & Crew on March 30, 2015, by utilizing the name Frankie Padgett. [R.pp. 53-59 & 232-234].

Padgett injured his right leg and foot on May 6, 2015, approximately one month after his hire. Despite receiving correspondence from American Zurich Insurance Company's adjuster and documents filed with the South Carolina Workers' Compensation Commission designating Cast & Crew as Padgett's employer, Padgett initially denied the existence of an employment relationship with Cast & Crew. [R.pp. 29, 44, 46-47, 85, ll. 5-20 & 240-241].

Padgett argued that despite completion of an application in which Cast & Crew is clearly designated as the employer [R.p. 56], he did not violate the terms of the clincher because Cast & Crew is a payroll company, Professional Employer Organization or staffing company, rather than an employer.

Cast & Crew argued Padgett's employment application, check stubs and documents involving his receipt of temporary total disability compensation benefits in 2015, all designate Cast & Crew as the employer. [R. pp. 29, 44-47, 53-54, 56 & 241].

Cast & Crew's legal designation as Padgett's employer was not appealed. Thus, Padgett breached the contract and promise not to seek re-employment in order to work with Cast & Crew. [R.p. 34, provision (I); & 59]. Cast & Crew further asserts that because of Padgett's actions, he should be barred at the very least from receiving indemnity benefits.

In addition, Cast & Crew argues that no additional total disability benefits are available because more than 500 weeks of benefits had been paid at the time of the hearings before the Full Commission and the Court of Appeals.

LEGAL ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION LACKS SUBJECT MATTER JURISDICTION TO AWARD MORE THAN 500 WEEKS OF COMPENSATION.

A. Because there is no employer/employee relationship by which to confer jurisdiction upon the South Carolina Workers' compensation Commission, there is no legal basis to award any benefits under the Workers' Compensation Act.

In order for the for the South Carolina Workers' Compensation Commission to exercise jurisdiction, it must be established that an employee/employer relationship exists. *S.C. Code Ann. §§ 42-1-130 and 140 (2020)*. The existence of an employer/employee relationship is jurisdictional and the reviewing court is not bound by the Commission's findings of fact upon which jurisdiction is dependent. *Harding v. Plumley, 329 S.C. 580, 496 S.E.2d 29 (1998)*.

In particular, the employment contract entered into by Respondent with Cast and Crew in 2015 prevented him from lawfully being employed by Cast & Crew. Thus, absent an employment relationship, the Commission is unable to exercise subject matter jurisdiction and award benefits in the instant case. *S.C. Code Ann. §§ 42-1-10; 42-1-130-150 (2020)*.

Because Respondent knowingly and willfully breached the provision of the judicial decree, order and contract not to seek employment or reemployment with Cast & Crew, the contract of hire or employment is deemed voidable. *Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 3 (1940) (actual fraud renders all contracts voidable); Regions Bank v Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003) and Small v. Oneita*

Indus., 318 S. C. 553, 459 S.E.2d 306 (1995). See also, *Cooper v. McDevitt-Street & Co.*, 260 S.C. 463, 196 S.E.2d 833 (1973)(false representation inducing employment makes the employment contract voidable at the employer's option).

Padgett with the assistance of counsel, signed a Settlement Agreement and Release (clincher) on October 12, 2012.[R.p. 36, provision "VIII"]. In provision III (G) of the clincher, the scope and construction of the Settlement Agreement and Release was agreed by the parties to be construed as an act, judgement and decree of South Carolina. [R.pp. 33-34]. Moreover, the parties agreed that the Settlement Agreement and Release shall be construed as a contract between the parties. Provision III (I), states **the "parties agree that the [Padgett] is no longer an employee of Cast & Crew Entertainment Services, Inc. and further agrees that he will not seek employment with Cast & Crew Entertainment Services, Inc."**. [R.p. 34].

The Settlement Agreement was filed with the Commission and approved as an order of the Commission on October 22, 2012. [R.p. 31]. *S.C. Comm. Reg. 67-803(B)(2)(a-c)(C)*. Thereafter, the payment of \$150,000.00 in settlement proceeds representing payment of permanent disability benefits were dispersed to Respondent.

The decision of the Full Commission to order reinstatement of Respondents' temporary total disability compensation benefits absent subject matter jurisdiction constitutes an error of law. See *Hairston v. Re: Leasing, Inc.*, 286 S.C. 493, 334 S.E.2d 825 (Ct. App. 1985). In short, the Commission lacks subject matter jurisdiction on following three grounds.

First, the clincher/voluntary contractual agreement reached between Petitioners and Respondent with respect to the 2009 case rendered void any future employment relationship. In particular, Respondent's August 27, 2009, work related accident was resolved on October 22,

2012, by virtue of payment of \$150,000.00 of a disability settlement award. The clincher was also designated as an official act, judgment or decree of South Carolina and approved by the Commission. As such, the clincher, which is also designated as a judgment or judicial decree filed with the Commission on October 22, 2012, cannot be altered, amended, modified or interpreted in any other fashion according to *Section VIV* of the agreement. [R.p.36].

Specifically, the 2012 Settlement Agreement and Release entered into by the parties and approved by the Commission provides as follows:

[W]hen approved by a Commission [sic] shall be construed as an Act, Judgment or Decree of South Carolina. This agreement shall be construed as a contract between the parties, and when approved by the South Carolina Workers' Compensation Commission, it shall also be an official act, decree and judgment entitled to full faith and credit in all the states of the United States. The parties agree that this Agreement and Order of the South Carolina Workers' Compensation Commission shall be construed under the laws of South Carolina ...

The Agreement shall have a dual nature and shall also survive as a contract. Even though this agreement, when approved by the South Carolina Workers' compensation Commission shall be treated as an order of the same, it is also to be construed as a contract, with the provisions of the same enforceable in a court of competent jurisdiction.

(Record pp. 33-34; paragraphs G and H).

The use of the terms *Act, Judgment or Decree of South Carolina* in the clincher agreement certainly elevated and enhanced the legal standing and binding impact of the agreement. Moreover, once a clincher is approved, the agreement becomes binding and the employer's representative is legally mandated to pay compensation disability benefits according the terms of the agreement. *S.C. Comm. Reg. 67-803(C)(2022)*.

Both the Commission and the Court of Appeals violated *Section VIV* of the clincher by ignoring the plain and simple terms of the agreement restricting Respondent seeking re-employment. The Court's award benefits by finding an employment relationship, despite

Respondent's subversive actions, is an alteration and modification of the settlement agreement, which is now an order and award of the Commission and a judgment, act and decree of the state of South Carolina.

Second, clincher agreement states that it shall serve a dual purpose. One purpose is to resolve the workers' compensation claim. The second purpose is for the purpose to serve as a binding contract, only enforceable in a court of competent jurisdiction. [R.p. 34, provision (H)].

Implicitly, the Court of Appeals now wishes to challenge the mutually agreed upon prohibition of re-employment of the 2012 agreement, which precluded Respondent from seeking future employment with Cast & Crew.

In order to challenge the validity of the employment clause reflected in the agreement, Respondent is legally and contractually required to contest the provision that "he will not seek future employment" in a court of competent jurisdiction--which is not the South Carolina Workers' Compensation Commission.

Despite un-appealed findings of fact, the Court of Appeals erred and abused its discretion by making its own factual findings that Padgett's use of a variation of his legal name on the wage withholding and employment eligibility forms reflect no deceitful actions regarding Padgett's identity.

On the contrary, the Full Commission found in finding of fact 5 [R.p. 7] that:

[O]nce Claimant reviewed the hiring or initial paperwork and discovered that Cast & Crew was to pay his wages and did in fact pay his salary, he had ample opportunity [to] decline the assignment. However, the facts show Claimant expressly and knowingly accepted the work assignment with Cast & Crew, which violated the terms of the contract and the settlement agreement, and release.

The Order of the Commission's Appellate Panel findings of fact numbers 1-5, clearly and unequivocally reflect evidence of Padgett's fraudulent and conscious intent in obtaining re-employment in direct violation of the 2012 Settlement Agreement and Release. [R.pp. 6-7]. There is no evidence to the contrary which warrant any other finding as asserted by the Court of Appeals.

Although Padgett was prohibited from seeking employment with Cast & Crew according to the Commission's undisturbed findings of fact, the Court of Appeals essentially reformed the clincher to suggest Petitioner was at fault in re-employing Padgett. The Court reasons without explanation that Padgett's completion of a Form I-9 adequately apprised Cast & Crew that Frankie Padgett was the same individual as Perry F. Padgett, Jr.

A review of the Form I-9 completed by Padgett reflects that he stated that his first name or given name is "Frankie" as opposed to "Perry." Padgett did not indicate a middle initial and he did not complete the section of the form which requested Padgett identify "Other Names Used (if any)". (R. p. 57).

In short, the Form I-9, Employment Eligibility Verification, as completed inaccurately by Padgett, did not inform Cast & Crew that Franke Padgett was the same individual as Perry F. Padgett, Jr.

In addition, the Court of Appeals made findings and conclusions that are not supported by the evidence in its effort to reform the agreement and excuse Padgett's conduct. The Court concluded that copies of Respondent's social security card and driver's license were provided to Cast and Crew. The Court erroneously reasons that this assumption was sufficient to put Cast and Crew on notice that Frankie Padgett was, indeed, Perry Frank Padgett, Jr. However, this reasoning assumes facts which are not included in the record.

Contrary to the Court's reasoning and findings, Landol Dula Fletcher, President of the Teamsters Union for South Carolina, testified on behalf of Respondent and stated the production company would request a list of eligible drivers from the local Teamsters Union. In turn, the production company or Cast & Crew would retain drivers from that list. (R. pp. 115-116, ll. 1-11).

Mr. Fletcher never discussed sending social security cards or a driver's license to Cast & Crew prior to hiring, but only a list of drivers. There is no evidence that the application and notice for membership in the local Teamsters Union, social security card, driver's license and the I-9 were ever provided to Cast & Crew.

Padgett was assigned by the local Teamsters Union to work for Cast & Crew. There is no evidence that Cast & Crew was provided proof of Padgett's identification records when it entered the information into its payroll system. (R. pp. 57-59). In fact, payroll records from Cast & Crew reflect Respondent's name as Frankie Padgett as opposed to Respondent's legal name. (R. p. 54).

On the contrary, if assumptions are to be made, it is more logical to assume that if Padgett had provided Cast and Crew with a copy of his social security card and driver's license, his paycheck would have reflected his formal name of "Perry F. Padgett, Jr." rather than his nickname "Frankie". The payroll records from May 7, 2015 through July 28, 2017, reflect only the name of Frankie Padgett. (Record p.54.)

Next, in a letter dated October 30, 2017, Cast & Crew in response to a subpoena by Padgett's attorney noted that it did not directly employ or control the day-to-day responsibilities of their payroll clients or their production employees. (Record p. 248) Thus, Cast & Crew did not maintain any employment files for any of Danger Boy Production employees.

This is further evidence, Cast and Crew did not receive identification records from Padgett as assumed by the Court of Appeals in its opinion.

The un-appealed Commission's Appellate Panel findings of fact numbers 1-5, reflect evidence of Padgett's fraudulent and conscious intent in obtaining re-employment in direct violation of the 2012 Settlement Agreement and Release. [R.pp. 6-7]. There is no evidence to the contrary which warrant the findings and conclusions of the Court of Appeals.

There is no doubt from the findings of the Full Commission it unequivocally determined Respondent's actions were intended to breach the agreement/clincher and to deceive and confuse Cast & Crew so that he could circumvent the settlement, judgment and judicial decree to obtain employment.

The Commission further found Padgett's actions without a doubt violated the terms of the Settlement Agreement, contract, judgment and judicial decree as is reflected in the Settlement Agreement filed with the Commission on October 22, 2012. [R. p. 7, findings of fact 5 & 6]. Padgett's actions are tantamount to a breach of contract accompanied by fraudulent act because of his obvious intent to deceive Appellants into re-hiring him. *See Kelly v. Nationwide Mut. Ins. Co.*, 278 S.C. 488, 298 S.E.2d 454 (1982).

Hence, the Court's decision that the Settlement Agreement's provision prohibiting future employment does not void the employment relationship for purposes of the Workers' Compensation Act is contrary to the agreement of the parties, which is not subject to review.[R. p. 36, Section VIV]. As such, in permitting Padgett to breach the agreement, the Court opinion modifies and amends the mutual and uncontested agreement of the parties.

The Court is bound by the plain and ordinary terms of the Settlement Agreement and contract, and is prohibited from obviating the terms of the parties' agreement. Although

Padgett's breach may not void the employment relationship for workers' compensation purposes, the employment relationship is certainly voidable under the facts of this case.

Under the attendant circumstances, if it is determined a contract of employment existed in 2015, such is voidable because of Padgett's actions. *Id.*

Finally, our courts do not restrict parties' right to contract. Respondent's failure to properly challenge the validity of the employment provision in a court of competent jurisdiction, the prohibition against Respondent seeking future employment with Cast & Crew remains binding upon Padgett. *S.C. Code Ann. §42-9-390 (2020)*. See also, *Stonhard, Inc., v. Carolina flooring Specialists, Inc.*, 366 S.C. 156, 621 S.E.2d 352 (2005).

The parties mutually agreed that the clincher, decree and judgment is not subject to review, modification or reformation. As a result, there cannot be a finding or legal conclusion that there was a valid employer/employee relationship between the parties as concluded by the Court of Appeals.

B. The South Carolina Workers' Compensation Commission lacks subject matter jurisdiction and the legal authority to order indemnity benefits in excess of 500 weeks pursuant to sections 42-2-10; 42-9-160 and 42-9-170.

In the Form 50 governing the August 27, 2009 accident, Respondent contended he was permanently and totally disabled and entitled to lifetime medical treatment. Respondent's contention that he was permanently and totally disabled is further confirmed in provision II of the Settlement Agreement and Release reflecting an allocation of Respondent's award over the remainder of his life expectancy or 1,704.56 weeks or 32.78 years. It is important to note that the Settlement Agreement and Release reflects Respondent demanded that the \$150,000.00 in settlement proceeds were allocated as "permanent disability" over his life expectancy.

Petitioners argue the Commission lacks jurisdiction to order prospective payment of additional indemnity benefits upon a plain reading of section 42-9-10 (2022). The 500 week limitation on indemnity benefits is also explicitly set forth in section 42-9-10(A), in which the statute provides:

In no case may the period covered by the compensation exceed five hundred weeks.... *S.C. Code Ann. §42-9-10(A) (2022).*

A review of the Settlement Agreement filed on October 22, 2012 with the Commission reflects payment of 1704.56 weeks of compensation benefits for “disputed permanent disability”.

Respondent had pled in a Form 50 dated November 19, 2010, he was disabled by virtue of general disability (section 42-9-10 to wit: left and right leg; and left and right hip); wage loss (42-9-20); and scheduled loss of numerous body parts--left foot, left and right leg, back, left and right hip, and skin--for permanent and total disability (section 42-9-30). *S.C. Code Ann. §§41-9-10 to 42-9-30 (2020)*. Respondent’s unilateral demand for an allocation of a lump sum payment for payment of permanent disability benefits over 1,704.56 weeks is uncontroverted.

The 500 week limitation was most recently addressed in the case of *James v. Anne’s, Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010). Our Supreme Court reaffirmed the 500 week limitation of benefits provided in *S.C. Ann. § 42-9-10(A) (Supp. 2009)* by emphatically concluding the 500 week limitation applies to the maximum or “the limit of the monetary amount of compensation” that one can recover under the South Carolina Workers’ Act. *Id. See also, James v. Anne’s, Inc.*, 390 S.C. 188, 199, 701 S.E.2d 730, 736.

Assuming *arguendo* the prorated amount over Respondent’s life expectancy cannot be utilized to calculate whether 500 weeks of compensation has been paid, without dispute, the \$150,000.00 was paid as permanent disability compensation benefits according to the terms of

the 2012 Settlement Agreement and Release. At the time of the settlement, Padgett's compensation rate was \$681.36. Accordingly, the settlement in 2012 reflected payment of 220.14793 weeks of monetary compensation or permanent disability benefits.

Respondent continues to be paid temporary total disability compensation or monetary benefits because of the 2015 accident. Thus, from May 7, 2015 to April 22, 2023. This equates to a payment of monetary compensation benefits totaling an additional 415.4286 weeks of indemnity benefits.

In sum, between the two injuries occurring in 2009 and 2015, Respondent has been paid a total of 635.57653 weeks of compensation benefits as of April 22, 2023 and counting. [R. p. 9, "AWARD" section].

The monetary weeks of compensation paid to Padgett to the present grossly exceeds the 500 week limitation as set forth in section 42-9-170(A). *Id.* The 500 week maximum limitation clearly precludes the South Carolina Workers' Compensation Commission from ordering prospective payment of additional benefits beyond 500 weeks clearly emanating from the 2015 accident at the very least. *James v. Anne's, Inc., supra., and S.C. Code Ann. §42-9-10(A)(2022)*. As a result, the Commission's order must be reversed as a matter of law; because it lacks the jurisdiction and authority to order additional monetary benefits. *James v. Anne's, 390 S.C. at 198, 701 S.E.2d at 735.*

In short, Padgett was either paid at most 1,705.56 weeks as reflected in the clincher or at least 220.14793 weeks of permanent disability (\$150,000.00 divided by the compensation rate of \$681.36) to which Petitioners are entitled to a credit.

II. THE COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISION RENDERED BY THIS COURT IN THE CASE OF JAMES V. ANNE’S, 390 S.C. 188, 701 S.E.2D 730 (2010).

Section 42-9-170 (A) provides the following:

If an employee receives a permanent injury, as specific in Section 42-9-30 or Section 42-9-10 (B), after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not increasing the amount of weekly compensation, and in no case exceeding 500 weeks.

S.C. Code Ann. § 42-9-170(A) (2020)(Emphasis added)

The Court reasoned that section 42-9-170(A) is inapplicable because it applies only to permanent injuries under section 42-9-30 or section 42-9-10(B) after an employee has sustained another permanent injury in the same employment. The Court concluded because there were no award of permanent benefits by the Commission because of the injury in 2009, Petitioner are not entitled to a credit.

The Court’s novel holding ignores the parties mutual agreement that there was a permanent injury to the left leg, and therefore concludes the settlement was for a “disputed permanent injury” because of the purported absence of an impairment rating or a “disability award by the Commission”.

Based upon the record and undisputed factual evidence, there is no dispute Padgett suffered a permanent injury and disability to his left leg; and this evidence was before the Court of Appeals.

First, the Form 19, which is an accounting of workers’ compensation benefits paid, reflects a date of accident of August 27, 2009 and payment of 155 weeks or approximately three years of temporary total disability or indemnity benefits. (Record p. 37).

Second, the Form 19 reflects \$91,851.55 was paid in medical charges with respect to Padgett's six surgeries to the left leg. (R. p. 37).

Third, Dr. W. Bret Smith, a physician with Moore Orthopedic Clinic, completed a physician's statement (Form 14B) in which he reports treating Padgett from March 10, 2011 to January 5, 2012. (Record p. 43). Dr. Smith assigned Padgett 10% medical impairment to the left ankle and 7% medical impairment to the left leg, or a total of 17% medical impairment to the left lower extremity. Moreover, Dr. Smith relegated Padgett to sedentary duty with no heavy lifting, pushing or pulling. (Record p. 43).

On the contrary, the record is replete with evidence of Padgett sustaining a permanent injury in 2009. Hence, Section 42-9-170 is applicable due to the presence of a permanent injury suffered by virtue of an accident in 2009.

Obviously, the record contains evidence Respondent had suffered significant permanent disability after undergoing six surgeries to the left leg and was relegated to sedentary duty and future medical treatment to lessen disability. Hence, there is no evidence in support of the Court's opinion that Respondent did not suffer a permanent disability to his left leg and ankle.

Additionally, Padgett had contended in the Form 50 he was permanently and totally disabled not only because of an injury to his left leg, but also because of alleged injuries to his back, hips, right leg and skin.

Thus, use of the word "disputed" can only be viewed in context of the parties' dispute about the amount of permanent disability benefits owed to Padgett. There was no factual dispute about Padgett's entitlement to permanent disability benefits, but rather the factual dispute was about the amount of disability benefits.

To this end, Padgett and his attorney sought the allocation of the settlement proceeds with \$98,533.09 being allocated for permanent disability for 1,704.56 weeks. Padgett had total authority and control over the proration and designation of the lump sum settlement award. Cast & Crew had absolutely no say in the allocation. *James v. Anne's, Inc.*, 390 S.C. 188, 201, 701 S.E.2d 730, 736 (2010).

Because the allocation of indemnity benefits specifically states the permanent disability payments are to be allocated over Padgett's lifetime, this is indisputable evidence the monies were paid for permanent injury or permanent disability and not for any other reason.

A. The Law Provides that Padgett Was Paid Permanent Disability Benefits In The Settlement Agreement.

In the case of *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010), this Court unequivocally held that workers' compensation awards for permanent impairment or injuries can be prorated over an injured workers' lifetime, at his/her request, in order to offset reductions in social security disability benefits. The Court found "[a] permanent impairment, by definition, lasts for a lifetime" *James v. Anne's, Inc.*, 390 S.C. 188, 199, 701 S.E.2d 730, 735.

In short, the only dispute at the time of settlement in 2012 was whether Respondent was permanently and totally disabled based upon allegation in the Form 50. Obviously, there was no dispute amongst the parties over Respondent's entitlement to a disability award because of the numerous surgeries and the assigned medical impairment ratings. Padgett had significant loss of use of the left leg. Thus, the amount paid as reflected in the Settlement Agreement and Release was most certainly for permanent disability benefits and was clearly stated in the clincher. To this end the parties' agreed and stipulated that the

...Agreement shall not be subject to review, modification or amendments by the Commission or the courts of this state. Each party prays the approval of this Agreement by the Commission as being to his or their best interests. (R.

p. 36).

Padgett specifically requested the Commission approve the allocation of permanent disability benefits over his lifetime. The allocation and the clincher was approved by the Commission.

Because the Social Security Administration only reduces or offsets the amount of Social Security disability from workers' compensation permanent disability benefits, there is no legal argument to suggest the monies were paid other than for Padgett's permanent injuries and disability. (R. pp. 32-

As a result, the of this impervious straight forward and unambiguous clincher agreement, judgment, order and decree, the Court of Appeals erred and abused its discretion in now requiring that credit from a previous award can only be granted when the Commission adjudicates a claim of disability. The Court of Appeals has modified and amended the agreement and restricted of the parties ability to negotiate and contract, which conflicts with this Court's decision in *James v. Anne's, Inc., supra*. (Record p. 32, ¶3 and p. 36, ¶XIV).

The Court of Appeals decision now calls into question whether parties are free to structure an agreement that is beneficial to the injured worker in the absence of a formal adjudicatory hearing awarding permanent disability benefits.

CONCLUSION

Petitioners request the Court issue the Writ of Certiorari to reverse the holding of the South Carolina Court of Appeals because of the Commission's lack of subject matter jurisdiction; Padgett's breach of promise or contract; and because there is no jurisdiction to award benefits in excess of 500 weeks as established by the South Carolina Workers' Compensation Act.

Respectfully submitted,



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