

RECEIVED

THE STATE OF SOUTH CAROLINA
In the Supreme Court

May 12 2023

S.C. SUPREME COURT

ON PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS

Appellate Case No. 2021-000696

Dana L. Dixon, Claimant.....Petitioner

v.

SC Department of Mental Health, Employer, and State Accident Fund,
Carrier.....Respondents

RESPONDENT'S RETURN TO PETITION FOR WRIT OF *CERTIORARI*

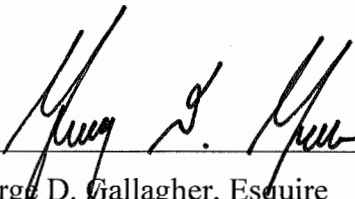
Pursuant to SCACR 242 (f), Respondents hereby file the ensuing Return to Dana Dixon's Petition for Writ of *Certiorari* following the Court of Appeals' unpublished Opinion # 2023-UP-075 filed on March 1, 2023 (Petition for Rehearing DENIED on March 23, 2023). Respondents respectfully submit this Petition should be summarily denied on its face because it fails to meet the general standards for review by the Supreme Court set forth in SCACR 242, including, but not limited to, the following: a) this case does not present a novel question of law as it primarily involves application of the well-established "substantial evidence rule" governing worker's compensation orders; b) there are no discernible constitutional issues or federal questions presented; and c) the Court's decision is not clearly erroneous since "substantial evidence in the Record otherwise supports the Worker's Compensation Commission's Order(s). Nevertheless, for the sake of clarity and without rehashing all arguments previously briefed, Respondents remind the Court of the following undisputed points that are outcome determinative of the issue of Petitioner's claims for entitlement to further medical evaluation/treatment secondary to her 2016 accident.

First, medical treatment under the Act is governed by S.C. Code 42-15-60(A), which states, in pertinent part, the following: "The employer shall provide medical, surgical, hospital and other treatment as reasonably may be required for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgement of the commission will end to lessen the period of disability **as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.**" (emphasis added). The Court confirmed this requirement in Hartzell v. Palmetto Collision, LLC (S.C. App. 2016) 419 S.C. 87, 796 S.E. 2d 145, noting specifically that expert medical evidence is required to support an award of additional medical treatment beyond ten (10) weeks from the accident. See Hartzell, 419 S.C. at 97, 796 S.E.

2d at 150. Simply put, there is no medical evidence stated to a reasonable degree of medical certainty in the Record that the current request for medical treatment is causally related to the December 22, 2016 accident

Moreover, on March 3, 2017 Petitioner was treated for back injuries at Providence Hospital following an intervening motor vehicle accident occurring a couple of days prior. (Appendix p.34, p.53). This intervening accident reinforces the policy of why a medical opinion stated to within a reasonable certainty would be necessary to discern whether any need for further treatment was attributable to the former or latter accident. Petitioner has simply failed to meet her burden of proof on this issue.

For these reasons, the Court of Appeals did not err in affirming the Commission's denial of Claimant's request for additional medical evaluation/treatment and the Petition for Writ of *Certiorari* should be DENIED.



George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett, Stublely, &
Fickling, LLC
P.O. Box 11669
Columbia, SC 29211
(803) 748-2919
SC Bar# 12149
ggallagher@speed-seta.com
Attorney for Respondents

Columbia, SC

May 12, 2023