

RECEIVED

Sep 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate 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.

SC Workers' Compensation Commission,Respondent.

RETURN TO MOTION TO STAY APPEAL

By way of Return to the Motion to Stay Appeal, the motion should be readily denied specially for the following reasons:

1. First, the Appellants would point out to the Court that the Motion for Certification, upon which this Motion to Stay was based, and the Motion to Stay were both filed electronically on

August 29, 2023 at 9:00 p.m., by new substituted Counsel for the Respondent when the Respondent's Initial Brief was due to be filed with the Court on August 31st.

Next and very importantly, a copy of the Motion for Certification filed in the Supreme Court was attached to the Motion to Stay and the Appellants would respectfully request that the Court review that Motion for Certification and would submit that the Court will find that the bases for the Certification are almost identical to the bases for the Motion filed in this Court and on file with the Court to dismiss the Respondent, SC Workers' Compensation Commission, from this action which was filed by then Counsel, Keith Roberts, General Counsel for the Commission, on March 21, 2023. See specifically paragraphs 4, 8, 9, 10, as well as the Motion as a whole. That Motion was denied, as well as Counsel was not allowed to be relieved as Counsel of Record by Order of this Court dated May 26, 2023.

2. While under Rule 204(B), SCACR, certification by the Supreme Court is a matter of discretion. Certification is normally only appropriate where a case involves an issue of (1) significant public interest, or 2) a legal principle of major importance. The Appellants veribly believe that upon review by this Court and also by the Supreme Court, just as this Court found after reviewing the

Motion to Dismiss the Commission as a party in the Motion to Dismiss filed by then Counsel Keith Roberts, that there is no issue of either significant public interest, or a legal principle of major importance involved.

As this Court by inference found in denying the Motion to Dismiss this is a very simple issue over a disagreement involving the interpretation of the language of a Regulation and the applicable Statutes and case law in reference to the SC Workers' Compensation Commission's administrative responsibility to approve or disapprove physicians and medical providers' fees and attorney's fees pursuant to its Regulations. The Commission in this action is the party with the administrative responsibility to approve or disapprove attorney's fees just as it was concerning physicians fees in the case of SC Ambulatory Surgery Center Assn. v. SC Workers' Compensation Commission, 389 SC 380, 699 S.E.2d, 146 (2010). There is not one scintilla of difference except for the fact that this involves the Commission's administrative responsibilities over approval of attorney's fees pursuant to Regulation versus in that case approval of physicians and medical providers' fees in accordance with Regulation. The Appellants question whether a reasonable attorney under these same circumstances would believe under the facts that this Motion,

which is clearly not warranted under existing law, is allowable on the basis that a good faith or reasonable argument exists for an extension, modification or reversal of that existing law. The Court will note from a review of the Motion for Certification as will be argued in reply to that Motion, that the Motion does not seek a reversal or modification to that decision. Neither does it seek to challenge the Supreme Court's previous decision in Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995). That case involved a dispute between the claimant and her Attorney of Record over the fee to be charged and first Appellants would ask the Court to note the caption of that case in reference to the listing of the other parties in the underlying workers' compensation case below which are not a party to that appeal. Interestingly and directly on point in the Bazzle v. Huff case, the Court stated that the key issue in that case was whether the Workers' Compensation Commission had authority to require approval of attorney's fees prior to the effective date of Regulations authorizing the Commission to do so. The Court in Bazzle held that because the Commission had not adopted Regulations they had absolutely no authority to require the submission or approval of attorney's fees prior to the effective date of the Regulations and that by doing so the Commission exceeded their statutory authority and their

actions in reference to attorney's fees prior to adoption were thus null and void.

Most importantly, the Court noted in Bazzle that the parties had, "contracted for Respondent's legal services" and that:

"Absent statutory or regulatory authority the Commission lacked jurisdiction to effect the private contract rights between attorney and client." (emp. add.)

In objecting to any stay in the proceedings before this Court, the Appellants/Respondents to the Motion would respectfully ask the Court to note the arguments made in reply to the Motion to Dismiss and take those into consideration in reference to the misguided arguments that are now being made in the Motion for Certification, particularly in reference to ethics. Thus, the Supreme Court has specifically stated as a matter of law that the only parties to any fee dispute over the attorney's fees in a workers' compensation action are the claimant and the claimant's attorneys subject to the administrative responsibility and of the Commission authority pursuant to Statute and Regulations which are required by the statute before the Commission can exercise any authority whatsoever in reference to a fee requested under the Workers' Compensation Act.

3. Also, the Appellants would ask the Court to note that current Counsel actually admits in the exhibits filed in support

of both the Motion to Stay and Motion for Certification that the SC Workers' Compensation Commission is the party Respondent. The Respondent as Movant notes in filing the Motion that there was both an appeal but then there was a Declaratory Judgment action filed and as referenced in their Exhibit 20, the parties to that Declaratory Judgment action were Preston F. McDaniel and John M. Milling, Plaintiffs, versus the SC Workers' Compensation Commission, Defendant. There was no challenge in either the first appeal that was dismissed or as to the parties in the Declaratory Judgment action, nor did the Commission raise in the final analysis in the Declaratory Judgment action that it was not the appropriate party, and further the Commission did not appeal that joint stipulation of dismissal. Bazzle restates in an attorney fee case and stands for the proposition, which has been reiterated in hundreds of opinions, that an issue that was not raised below will not be considered by the Court of Appeals.

For all the foregoing reasons, this Court should deny the Motion to Stay and order the Respondent to immediately file its Brief pursuant to the thirty (30) day extension granted by the Appellants after a decision on the Stay by this Court and allow this simple issue, to which it was agreed at mediation that the Appellants would limit the appeal to that singular issue of

whether or not the contested portion of the fee as requested for approval by the Commission should have been approved by the Commission as being, in the words of the Regulation, 67-1205(A) that the:

"fee is deemed reasonable when the following requirements are met, and the required fee does not conflict with the SC Supreme Court Disciplinary Rule on determining a reasonable fee."

The only issue, and again the only issue, in this appeal and which has been the basic issue all along is the interpretation of subsection (C) of that Regulation, SCWCC Reg. 67-1205. As will be argued, that issue does not constitute an issue of significant public interest or a legal principle of major importance.

For all the foregoing reasons, the Motion to Stay should be denied and this Court allowed to reach a decision on that simple issue.

Respectfully submitted:



Preston F. McDaniel, Esquire
SC Bar #3770
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Attorneys and Appellants

September 11, 2023

RECEIVED

Sep 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate 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.

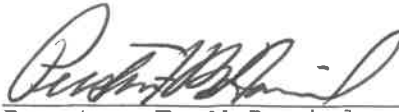
SC Workers' Compensation Commission,Respondent.

PROOF OF SERVICE

I certify that I have served the **RETURN TO MOTION TO STAY APPEAL** addressed as follows:

VIA EMAIL ONLY:
JW@billnettlslaw.com
John L. Warren, III, Esquire
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, SC 29201

VIA EMAIL ONLY:
greg@harrisgasserlaw.com
Greg Harris, Esquire
Harris & Gasser, LLC
1529 Laurel Street
Columbia, SC 29201



Preston F. McDaniel
SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
MILLING LAW FIRM
Post Office Box 519
Darlington, South Carolina 29532
(843) 393-4083

Attorneys and Appellants

September 11, 2023

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 35 years

RECEIVED

Sep 11 2023

SC Court of Appeals

Preston F. McDaniel

Telephone (803) 771-7211

Daniel E. Peagler

Facsimile (803) 252-0709

September 11, 2023

VIA EMAIL ONLY - ctappfilings@sccourts.org

Jenny Kitchings, Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

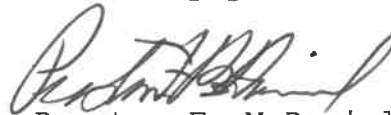
RE: Pamela Cartee v. SCJD (Preston F. McDaniel) (2)
Appellate Case No. 2023-000187

Dear Ms. Kitchings:

Enclosed please find for filing with the Court our **RETURN TO MOTION TO STAY APPEAL** in the above-referenced matter. By copy of this letter, I am serving opposing counsel with a copy of same.

I hope this is sufficient for filing but should you need any additional information, please let us know.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: John M. Milling, Esquire (Via email only)
John L. Warren, III, Esquire (Via email only)
Greg Harris, Esquire (Via email only)