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Dec 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1824344

Appellate Case No. 2022-001153

Zachary Brown, Claimant, Respondent,

v.

Southeastern Services, H.H.I., LLC, Employer and Uninsured Employers' Fund, Carrier,
Defendants, of which Uninsured Employers' Fund is the Appellant.

APPELLANT'S MEMORANDUM OF LAW

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December 3, 2024

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Introduction

By letter dated October 24, 2024, the South Carolina Court of Appeals requested memoranda from all parties addressing whether the decision of the South Carolina Workers' Compensation Commission in this case is immediately appealable.

The South Carolina Workers' Compensation Workers' Compensation Uninsured Employers' Fund hereby files this memorandum to respectfully submit to the Court why failure to hear the present appeal would deprive Appellants of an adequate remedy. This memorandum will demonstrate that the Commission's order meets the necessary exception under South Carolina law allowing for immediate appellate review.

I. South Carolina Law on Interlocutory Appeals

Under South Carolina law, an appeal from an administrative proceeding is typically limited to final judgments or orders. S.C. Code Ann. § 1-23-380. Final judgments are those that “dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what has already been determined.” *Bone v. United States Food Serv.*, 399 S.C. 566, 575, 733 S.E.2d 200, 204-05 (2012). However, interlocutory orders – those made during the pendency of a case and not disposing of all issues – are “immediately appealable if review of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. § 1-23-380(A).

II. The Failure to Hear the Case Would Not Provide an Adequate Remedy

While it is true that interlocutory orders generally cannot be appealed immediately, this rule is not absolute. An appeal must go forward if denying it would cause irreparable harm and prevent an adequate remedy. This principle is recognized in *Russell v. Wal-Mart Stores*, 426 S.C. 281, 826 S.E.2d 863 (2019), in which the South Carolina Supreme Court noted that a court may exercise jurisdiction over an interlocutory appeal if the party seeking appeal demonstrates that without it, the appellant would be denied an adequate remedy at law. Thus, each case must be

determined on its own merits, and there is no *absolute* rule prohibiting review of interlocutory appeals.

In this case, the Commission's order significantly impacts the rights of the Appellants in such ways that failure to review the case would prevent the Appellants from obtaining a full and fair resolution. The order causes Appellants ongoing harm which could not be rectified on appeal after a final judgment.

Irreparable Harm and the Inadequacy of Post-Judgment Review

The Order of the Commission deemed the case compensable and directed that benefits be paid to and on behalf of the Respondent. Legally, this decision – reached by a split vote below – established that a sole member of an uninsured LLC taxed like a sole proprietor can be classified as an employee of the LLC. As a result of this finding, the LLC became subject to the terms and conditions of the South Carolina Workers' Compensation Act (the Act).

Since the LLC lacked workers' compensation insurance, the South Carolina Workers' Compensation Uninsured Employers' Fund (Fund) was determined to be secondarily liable for the payment of benefits under S.C. Code Ann. § 42-7-200. However, the statute specifies that the LLC retains primary liability for covering these benefits.

Under S.C. Code Ann. § 42-7-200, the Fund is required to pay benefits on compensable claims when the employer fails to do so. When the Fund pays benefits or incurs related costs, it establishes a statutory lien on the employer's assets for the full amount paid, as outlined in § 42-7-200(C). Additionally, the Fund is granted the same rights of attachment detailed in § 15-19-10 and may enforce the collection of its lien in the same manner as the Department of Revenue collects taxes under Section 12-49-10, *et seq.*, as stated in § 42-7-200(D). The Fund also has all

other rights and remedies afforded to the Department of Revenue under Section 12-54-10, *et seq.*, as provided in § 42-7-200(D).

Reaching a final judgment in this case requires the Claimant/Respondent to undergo medical treatment until achieving maximum medical improvement. At that point, an award for either permanent partial or permanent total disability may be issued. That would be the final order. However, before reaching that stage, the Claimant will need ongoing medical care and treatment, along with Temporary Total Disability (TTD) benefits for an undetermined period.

These expenses must be paid by the Employer (the single member LLC taxed like a sole proprietor). While the Fund may make those payments should the LLC fail to do so, the single member LLC will ultimately bear the liability. Because the Fund has all rights of attachment of the DOR, the Fund can seek reimbursement from the individual member of the single member of the LLC. S.C. Code Ann. § 12-2-25(B)(1) (“for South Carolina tax purposes[,] a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner.”). This means that the Respondent’s co-employee, as determined by the Commission, is liable for the payment of workers’ compensation benefits to Respondent.

The Act provides no mechanism for the single member LLC to recover these expenses if, on appeal following the Commission’s final order, it is determined that the LLC was not subject to the Act at any relevant time. In such a scenario, the single member LLC/co-employee will either have paid these funds directly to the Claimant and medical providers or find himself indebted to the State for amounts he should never have been liable.

What happens with the Fund in such a scenario? Does the Fund continue pursuing collections against the single member LLC/co-employee even after the final order is reversed and

it is determined that the Commission wrongly imposed liability? The Act provides no mechanism to prevent the Fund from doing so, nor does it offer any process requiring the Claimant or medical providers to repay the Fund or the single member LLC/co-employee.

The facts of this case are clearly distinguishable from those in *Rose v. JJS Trucking, LLC*, 768 S.E.2d 412, 411 S.C. 366 (Ct. App. 2015), which the Respondent cited in his Memorandum of Law. In *Rose*, the issue on appeal involved the potential transfer of liability from an uninsured statutory employer to the Fund under S.C. Code Ann. § 42-1-415. The court found that the *insured* statutory employer could not demonstrate irreparable harm if the appeal was not heard, as its carrier had the ability to recover all benefits paid to and on behalf of the claimant once a final judgment was entered. There is no such avenue here. Here, in contrast to the insured statutory employer in *Rose*, the employer is *uninsured*, operates as the direct employer, and has no mechanism to recover any amounts paid after a final judgment is issued.

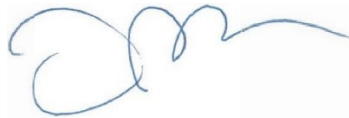
The Appellant has shown that failing to promptly address the Commission's order would result in irreparable harm – harm that cannot be fully remedied through an appeal after final judgment. Without immediate review and correction, the Appellant would be compelled to proceed under a flawed procedural or substantive ruling. This would necessitate continued litigation based on a legal or factual error that cannot be rectified after final judgment. Such potential harm underscores the inadequacy of post-judgment relief in this case.

III. Conclusion

For the foregoing reasons, the Appellant respectfully submits that the case falls within the exceptions to the general rule prohibiting interlocutory appeals, as failure to hear the appeal would deprive the Appellant of an adequate remedy.

The Appellants' interests in obtaining an immediate review of the Commission's order are critical to ensuring the fairness and integrity of the proceedings below. Denial of appellate review at this stage would result in irreparable harm that cannot be adequately remedied after final judgment. Accordingly, Appellant respectfully requests that the Court accept jurisdiction over the appeal and consider the merits of the case.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'TKillen', is written over a light blue rectangular background.

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Appellate Panel

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WCC No: 1824344

Zachary Brown, Claimant, Respondent,

v.

Southeastern Services, H.H.I., LLC, Employer, and Uninsured Employers' Fund, Carrier,
Defendants,

of which Uninsured Employers' Fund is the Appellant.

PROOF OF SERVICE

I hereby certify that I have served the South Carolina Workers' Compensation Uninsured Employers' Fund's Memorandum upon the parties below via electronic service on December 3, 2024, as follows:

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December 3, 2024

VIA EMAIL ONLY – ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Zachary Brown v. Southeastern Services H.H.I., LLC
Appellate Case No: 2022-001153

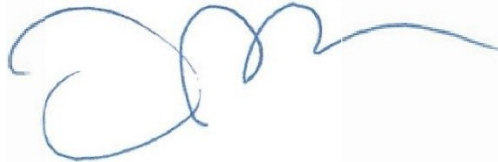
Dear Ms. Kitchings:

Enclosed please find the Appellant's Memorandum for filing regarding the above referenced matter.

Should you have any questions, please feel free to contact me.

Respectfully,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC



Timothy B. Killen

TBK/maa

Enclosure

cc: Joshua Fester, Esquire (*via email*)
Michael P. Bennett, Esquire (*via email*)
Amanda Prentiss (*via email*)