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Dec 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC No. 1923480

Appellate Case No.: 2023-001264

Takara L. Stewart, Claimant.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and
XL Insurance America, Inc., Carrier.....Respondents.

**RESPONDENTS' RETURN TO APPELLANT'S "MOTION
DESIGNATION OF MATTER SPECIFIED"**

Michelle DeLuca Yarbrough
(S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, South Carolina 29603
Telephone: (864) 271-5349
Facsimile: (864) 271-7502

Attorneys for Respondents

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules (“SCACR”), Respondents, South Carolina CVS Pharmacy, LLC, and XL Insurance America Inc., by and through their counsel of record, respectfully submit this Return to Appellant’s “Motion Designation of Matter Specified.” In support of which, Respondents present the following:

I. FACTUAL AND PROCEDURAL HISTORY

This Court should deny Appellant’s motion to amend her Designation of Matter (“DOM”) because this court has already ruled on this same request, denying same, by Order of July 12, 2024. Specifically, this Court stated “**We construe Appellant’s motion as requesting . . . to amend the designation of matter** or to remand to the South Carolina Workers’ Compensation Commission. After careful consideration, **we deny the motion.**” (emphasis added) (Ct. App. Order, July 12, 2024).

To understand how we arrived at this point, this Court needs to know the protracted appellate briefing history. Appellant filed her **FIRST** Initial Brief and DOM on December 8, 2023, over one year ago. On December 18, 2023, Respondents filed a Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On March 28, 2024, this Court issued an Order denying Respondents’ Motion to Dismiss but granting Respondents’ Motion to Strike Appellant’s Initial Brief and DOM. This Court required Appellant to file a **new** Initial Brief and DOM that complied with Rules 208 and 209 of the SCACR within 20 days. Failure to comply with the Order, according to this Court’s Order, “**will result in dismissal** of the appeal.” (emphasis added). (Ct. App. Order, March 28, 2024).

On April 17, 2024, Appellant filed a **SECOND** Initial Brief and DOM and, on April 24, 2024, Appellant filed a “Motion New Evidence” which this Court construed as a Motion to Amend the DOM or a Motion to Remand the case to the South Carolina Workers’ Compensation

Commission. On May 3, 2024, Respondents filed an Opposition to Plaintiff's Motion [for] New Evidence and on May 10, 2024, Respondents filed a **SECOND** Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On July 12, 2024, this Court issued an Order *denying Appellant's request to amend the DOM* or to remand to the South Carolina Workers' Compensation Commission. This Court denied Respondents' motion to dismiss the appeal, granted Respondents' motion to strike Appellant's **SECOND** initial brief, and opted to give Appellant a third opportunity to correct her initial brief by filing a **THIRD** initial brief in compliance with the South Carolina Appellate Court Rules within twenty (20) days. This Court also granted Respondents' motion to strike items 2, 3, and 4 from Appellant's DOM.

On August 1, 2024, Appellant filed a **THIRD** Initial Brief and DOM. On August 7, 2024, this Court noted deficiencies in Appellant's filing in that she did not include a cover page as required by Rules 208 and 267, SCACR and she did not include a table of contents and cases and statement of the issues on appeal as required by Rule 208(b), SCACR. On August 11, 2024, Appellant filed a document entitled "Table of Contents;" however, the content of the document was consistent with a DOM and appeared to be an attempt by Appellant to circumvent this Court's prior ruling denying her request to amend her DOM. The Clerk of Court clocked in the document entitled "Table of Contents" as "Stewart v. SC CVS – DOM" although Appellant's DOM had previously been filed with the **THIRD** Initial Brief on August 1, 2024 without further leave to amend.

On August 29, 2024, Respondents filed a **THIRD** Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On September 9, 2024, Appellant filed a return in opposition to the motion. On October 1, 2024, this Court issued an Order denying Respondents' Motion to Dismiss and Motion to Strike Appellant's **THIRD** Initial Brief (which was almost

exactly the same as the **SECOND** Initial Brief which this Court had stricken) and DOM. Thereafter, relying on the properly filed Appellant's DOM dated August 1, 2024, Respondents filed their Initial Brief on October 30, 2024. Along with their brief, Respondents filed their own DOM to include documents relevant to the appeal which had not already been included in Appellant's August 1, 2024 DOM.

Appellant's August 1, 2024 "Designation of Matter to be Included in the Record on Appeal" filed with her **THIRD** Initial Brief identified three matters for this Court to consider:

- 1.) Single Commissioner Decision and Order of January 19, 2023;
- 2.) Statements of the Case / Arguments (I-VI); and
- 3.) Issues on Appeal

(Exhibit A).

Appellant now seeks to amend her DOM to add numerous additional documents for this Court to consider:

- 1.) Single Commissioned [sic] Order/Rulings of Law of January 19, 2023;
- 2.) Appellant [sic] Panel Order of July 10, 2023;
- 3.) Appellants Initial/Reply Brief;
- 4.) APA #11 Depo P. 17; APA #1, #2, #3 #9, #6, #7 #11; APA #5 Pgs. 19-24,
APA #12 Pgs. 37-44
- 5.) Transcript of Proceedings: S. C. Tr. P. 17-31; F.C Hearing Tr. Pg. 3:1-25,
Pg.4:1-25; F.C. Hearing Pg. 4:17-25; F.C. Tr. Pg. 4:11-12; F. C. Hearing
Tr. Pg. 11:10-25; F. C. Hearing Tr. Pg. 10:1-25; F.C Tr. Pg. 8:3-25; F.C.
Tr. Pg. 12:12-18; F. C. Hearing Tr. Pg. 17:5; F. C. Hearing Tr. Pg. 6:1-25
- 6.) CVS Employee Handbook, Sexual harassment/assault policy; and

7.) Defendants' APA #13 Pg. 45-55

(Exhibit B, DOM, November 20, 2024).

Further, although not specifically mentioned in her formal DOM dated November 20, 2024, Appellant effectively seeks to include additional documents in her DOM by including such documents in her previously filed Record on Appeal. By way of example but presumably not required to be addressed because not officially part of her DOM, these include, but are not limited to, the following:

1.) Other Ad Rem Documents

2.) Appellant, Respondents Correspondence

(Exhibit C, Record on Appeal, December 11, 2024). These documents include letters to physicians, receipts, settlement offers, photographs, and medical records, **none** of which were included in the record before the Commission.

II. ARGUMENT

To support her motion, Appellant cites only Rule 209, SCACR. Unfortunately, she fails to cite the pertinent portions of the rule. Under Rule 209(a), the DOM "shall" be served at "the same time" the party serves his initial brief. Accordingly, under the rules, the November 20, 2024 DOM, filed over 2 ½ months after Appellant's Third initial brief does not comply. For this reason alone, Appellant's motion should be denied.

Appellant also does not comply with Rule 209(b). Under this rule, the DOM must clearly identify what the party desires to have included in the Record on Appeal, and the designation may only propose to include materials which may be properly included in the Record on Appeal as detailed in Rule 210(c). Additionally, items not relevant to the appeal shall not be included. Rule 209(b), SCACR.

As argued successfully in the past, Respondents once again point out that the Appellate Court's review must be confined to the record and shall not include matters not previously presented to the South Carolina Workers' Compensation Commission. Specifically, under Rule 210(c), SCACR, the record on appeal (and, therefore, the designation of matter) "**shall not**, however, **include** matter which was not presented to the lower court or tribunal." Additionally, under South Carolina Code § 1-23-380(4), "[t]he review must be conducted by the [appellate] court and **must be confined to the record.**" (Emphasis added).

Appellant attempts to include matters which were not considered by the Commission (the lower court tribunal) to include but are not limited to (1) CVS Employee Handbook; (2) Sexual harassment / assault policy; (3) Multiple letters from Stephen Wukela to Appellant; (4) Form 32; (5) Letters from Appellant to Creel Reporting; (6) E-mails between Respondents' Counsel and Appellant; (7) E-mails between Stephen Wukela and Respondents' Counsel; (8) Photograph entitled "Perpetrator," (9) "Self-Execution of Proposed Treatment" document, (10) Medical provider rate schedule, (11) Correspondence between Appellant and medical providers, (12) Deposition of Robyn Hanna / APA #12 (excluded by Commissioner at hearing); and (13) Medical receipts.

Additionally, any attempt to include offers of settlement in the record, whether through appeal or otherwise, is improper. The South Carolina Supreme Court held that compromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made. Hunter v. Hyder, 236 S.C. 378, 387, 114 S.E.2d 493, 497-98 (1960). As such, all correspondence between Respondents' counsel and Appellant or Appellant's prior counsel, Stephen Wukela, is not properly before the Court and should not be allowed in the record whether by a DOM or surreptitiously included in the Record on Appeal, although left out of the formal DOM, as was done in this matter.

Finally, Appellant produces documents without consideration as to relevancy.

Specifically, she includes extraneous documents not relevant to the issues being appealed, and documents not mentioned or cited in her Initial Brief. Essentially, Appellant is dumping all documents she has in her possession whether it be letters from the Court of Appeals, her prior attorney, or Respondents' counsel; full hearing transcripts regardless of the testimony included therein and regardless of the lack of any citations to all 111 pages of the transcripts in the Appellant's initial brief; and medical bills regardless of the fact that the amount of medical bills is not an issue on appeal.

It should also be noted that Appellant's DOM and Record on Appeal are inconsistent and the submission of additional records through the Record on Appeal not included on either Appellant's or Respondents' DOM show Appellant's additional attempts to include irrelevant matter into the record in violation of SCACR. For example, Appellant's DOM states she is producing "Transcript of Proceedings: S. C. Tr. P. 17-31" which is the entirety of her direct testimony at the initial hearing without regard to the relevancy to the issues on appeal¹. In contrast, the Record on Appeal, contains the entire 111 page Single Commissioner hearing transcript, again, without limitation or consideration of relevancy to the issues on appeal. The inclusion of only relevant matter is critical to an efficient review by the appellate court of the issues. Rule 209(c), SCACR. This Court should not have to review extraneous information that is not determinative of the issues on appeal. Because Appellant did not make the citations in her Initial Brief to the 111 page transcript, it should not be included. Further, because Appellant's citation to 15 pages

¹ Per her Initial Brief, Appellant claims that this Court should review 15 pages of the hearing transcript, her entire testimony on direct examination, for the proposition that "The statements of the case merely detail, to a minimally necessary degree, per understanding of the record on appeal. (R. June 3, 2021; S. C. Tr. P. 17-31)." It is unclear what argument Appellant is attempting to make with this statement; however, the entirety of her direct examination testimony, without limitation, does not appear to support that argument.

of the transcript do not support the one sentence which it supposedly references, it also should not be included. If this Court gives Appellant a fourth chance at filing a DOM, which Respondents strenuously disagree with, this Court should require specific limitations on the items included to prevent broad transcript citations, to prevent inclusion of documents not considered by the Commission, and to prevent inclusion of any document not directly cited by Appellant in her initial brief.

III. CONCLUSION

Considering the legal authority cited above by Respondents, and further considering the lack of legal authority cited by Appellant to support her motion, Respondents respectfully request the Court deny Appellant's "Motion Designation of Matter Specified," and require her to amend her Record on Appeal accordingly consistent with the DOM previously filed on August 1, 2024.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

By: Michelle D. Yarbrough

Michelle DeLuca Yarbrough
(SC Bar No. 15603)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-5349
Facsimile: (864) 271-7502

Attorneys for Respondents,
South Carolina CVS Pharmacy, LLC
and XL Insurance America Inc.

Greenville, South Carolina
December 20, 2024

EXHIBIT A

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
THE STATE OF SOUTH CAROLINA**

In The Court of Appeals
The Supreme Court

WORKERS COMPENSATION COMMISSION PANEL:

Cynthia C Dooley, Chair

T. Scott Beck

Melody L James

Appellate Case No. 2023-CP-001264

Takara L Stewart

Claimant/Appellant,

v.

South Carolina CVS Pharmacy, LLC Employer and

XL Insurance America Inc.,
Carrier

Defendants/Respondents

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Single Commissioner Decision and Order of January 19, 2023;
2. Statements of the Case/Arguments (I-VI)
3. Issues on Appeal

I certify that this designation contains no matter which is irrelevant to this appeal.

August 01, 2024


Takara L Stewart
108 E York Street Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

WORKERS COMPENSATION COMMISSON PANEL:

Cynthia C Dooley, Chair
T Scott Beck
Melody L James

Case No. 2023-001264

Takara Stewart,

Claimant/Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer Defendants/Respondents.
XL Insurance America Inc., Carrier

Designation of Matter

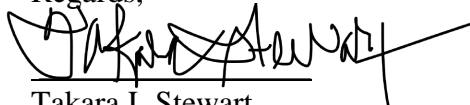
Appellant proposes the following be included in the Record on Appeal:

1. Single Commissioned Order/Rulings of Law of January 19, 2023;
2. Appellant Panel Order of July 10, 2023;
3. Appellants Initial/Reply Brief;
4. APA #11 Depo P. 17; APA #1, #2, #3 #9, #6, #7 #11; APA #5 Pgs. 19-24, APA #12 Pgs. 37-44
5. Transcript of Proceedings: S. C. Tr. P. 17-31; F.C Hearing Tr. Pg. 3:1-25, Pg.4:1-25; F.C. Hearing Pg. 4:17-25; F.C. Tr. Pg. 4:11-12; F. C. Hearing Tr. Pg. 11:10-25; F. C. Hearing Tr. Pg. 10:1-25; F.C Tr. Pg. 8:3-25; F.C. Tr. Pg. 12:12-18; F. C. Hearing Tr. Pg. 17:5; F. C. Hearing Tr. Pg. 6:1-25
6. CVS Employee Handbook, Sexual harassment/assault policy;
7. Defendants' APA #13 Pg. 45-55

I certify that this designation contains no matter which is irrelevant to this appeal.

November 20, 2024

Regards,



Takara L Stewart
108 E York Street
Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

EXHIBIT C

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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals
In The Supreme Court

WORKERS COMPENSATION COMMISSION PANEL:

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC No. 1923480

Appellate Case No. 2023-001264

Takara L Stewart

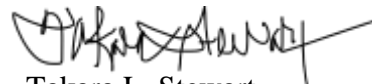
Claimant/Appellant,

South Carolina CVS Pharmacy, LLC,
Employer and
XL Insurance America Inc.,
Carrier

Defendants/Respondents

Record on Appeal

November 20, 2024



Takara L. Stewart
108 E York Street
Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

The State of South Carolina
In The Court of Appeals
In The Supreme Court

Appeal from the South Carolina
Workers' Compensation Commission

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC. No. 1923480

Appellate case No.: 2023-001264

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APPEAL FROM THE SOUTH CAROLINA
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APPELLATE FILE NO.: 2023-001264
SCWCC FILE NO. 1923480

Takara L. Stewart,Appellant,
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South Carolina CVS Pharmacy, LLC, Employer, and
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PROOF OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), I certify that I have served a true copy of the RESPONDENTS' RETURN TO APPELLANT'S "MOTION DESIGNATION OF MATTER SPECIFIED" in the above-referenced case has been served upon Takara L. Stewart, at her primary e-mail address listed as, Takara.L.Stewart@gmail.com, and by depositing a copy of it in the United States Mail, postage prepaid, on December 20, 2024, at, 108 E York Street, Suite 236, Savannah, GA 31401.

December 20, 2024
Greenville, SC



Tawnya Queen, Paralegal
Gallivan, White & Boyd
PO Box 10589
Greenville SC 29603
Telephone: (864) 271-5421
Facsimile: (864) 271-7502
tqueen@gwblawfirm.com