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Jan 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

Appellate Case No. 2024-001935

S.C. W.C.C. File No. 2118696

Serge Wandji, Claimant,.....Appellant,

v.

The Regional Medical Center, Employer,
and Antum Risk, Carrier,..... Respondents.

**RESPONDENTS' REPLY TO APPELLANT'S RETURN TO
MOTION TO STRIKE**

On January 16, 2025, the Respondents moved before the Court of Appeals for an Order striking improper, immaterial, and impertinent arguments in the Appellant's Initial Brief referencing testimony and documents that were not submitted into evidence before the Workers' Compensation Commission. On the night of January 16, 2025, the Appellant filed a "Plaintiff's Response in Opposition to Defendant's Motion to Strike," by which he essentially argues the merits of his appeal by again referencing testimony and documents that were not submitted into evidence before the Workers' Compensation Commission and by attaching the deposition of Dr. John H. Samies taken in unrelated civil litigation seven months after the Worker' Compensation Commission issued its final Decision and Order, which was not appealed.

The Respondents respectfully contend that the Appellant’s “Response in Opposition” is frivolous and otherwise not in compliance with the Appellate Court Rules. Specifically, not a single legal citation contained in the Appellant’s “Response in Opposition” stands for the proposition for which it is cited. For example, the Appellant cites Hawkins v. Bruno Yacht Sales, 342 S.C. 356, 536 S.E.2d 698 (Ct. App. 2000) ostensibly in support of his argument about newly discovered evidence and Rule 60, S.C.R.C.P.; however, Hawkins, mentions neither newly discovered evidence, nor Rule 60. The Appellant cites “Ledford v. Dep’t of Pub. Safety, 341 S.C. 89, 533 S.E.2d 314 (2000)” for the same purpose. However, 341 S.C. 89 is actually the citation for the case of Hodges v. Rainey and 533 S.E.2d 314 is the citation for the case of Simmons v. Tuomey Regional Medical Center. Neither Hodges, nor Simmons, nor even Ledford v. Department of Public Safety, 428 S.C. 387, 835 S.E.2d 509 (2019), make any mention of Rule 60 or newly discovered evidence. Likewise, Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981), while seminal for establishing the substantial evidence standard of review, makes no reference whatsoever to “newly discovered evidence” as the Appellant’s Response boldly claims.

Similarly, the Appellant cites Shatto v. McLeod Regional Medical Center, 406 S.C. 470, 753 S.E.2d 416 (2013) for the proposition that “workers’ compensation proceedings are fundamentally equitable in nature” and that “strict adherence to procedural technicalities” do not preclude consideration of evidence to impact “fairness.” However, Shatto, *supra*, doesn’t in any way address issues of equity, evidentiary procedure, or new evidence on appeal. Of course, it is also well-settled that workers’ compensation proceedings are not equitable in nature. Price v. Peachtree Elec. Servs., Inc., 396 S.C. 403, 407, 721 S.E.2d 461, 463 (Ct. App. 2011), *aff’d as modified*, 405 S.C. 455, 748 S.E.2d 229 (2013) (holding that the Workers’ Compensation

Commission does not have subject matter jurisdiction over equitable claims because the “the Commission's authority is derived strictly from statute in derogation of the common law”).

Most egregiously, the “Plaintiff’s Response in Opposition to Defendant’s Motion to Strike” cites “State v. Fletcher, 354 S.C. 555, 581 S.E.2d 127 (2003)” for the proposition that due process is violated if the Appellant is deprived of the opportunity to present all relevant facts.¹ However, 354 S.C. 555 is actually the case of Trancik v. USAA Insurance, Co., and 581 S.E. 2d 127 is Oddo v. Presser, a decision of the North Carolina Court of Appeals and neither of these cases address “due process.” While cases titled State v. Fletcher do exist in South Carolina, the undersigned cannot find a single one -- published or unpublished – that could be cited in support of an evidentiary due process claim.²

These material misrepresentations to the Court not only indicate a lack of candor, but they represent a failure to comply with the Appellate Court Rules themselves, which require citation to actual legal authority. See Rule 208(b)(1)(E) and Rule 268, S.C.A.C.R.. In addition, the Respondents respectfully contend that the Appellants’ multiple misrepresentations³ render the “Plaintiff’s Response in Opposition to Defendant’s Motion to Strike” frivolous under Rule

¹ The Appellant had a full evidentiary hearing before Hearing Commissioner Beck on February 16, 2023, at which time he presented 155 pages of documentary evidence and testified on his own behalf for over two and a half hours, followed by a *de novo* review by the Commission’s Appellate Panel.

² State v. Fletcher, 322 S.C. 256, 471 S.E.2d 702 (Ct. App. 1996), is the only “State v. Fletcher” case to mention “due process,” but it concerns punishment for exercising a protected right, not the right to present new evidence.

³ The Appellant also makes numerous misrepresentations about the substance of the exhibited deposition testimony of Dr. Samies, which was not part of the evidentiary record below and which otherwise does not qualify as “newly discovered evidence,” even to the extent that the concept, or Rule 60, applies in the workers’ compensation context.

269, S.C.A.C.R.. As explained in Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023),

“Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors ... There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.”⁴

All of these harms elucidated by the Mata court are equally implicated in the case *sub judice*.

Other courts that have faced similar issues with erroneous or “fake” citations have indicated that they constitute violations of legal citation requirements,⁵ as well as ethical rules, and may merit “the imposition of sanctions, including but not limited to dismissal.” See Seyedkhashayar Mojtabavi v. Antony Blinken, et al. Additional Party Names: Merrick B. Garland, Nat'l Visa

⁴ *Accord* Park v. Kim, 91 F.4th 610, 615 (2d Cir. 2024) (holding that “[a]n attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system”) (quoting Mata v. Avianca, Inc., *supra*).

⁵ *Pro se* litigants, like the Appellant, “are subject to the same procedural requirements as other litigants.” See Muñoz v. United States, 28 F.4th 973, 978 (9th Cir. 2022); see also Cohen v. Cohen, 438 S.C. 9, 19, 881 S.E.2d 650, 655 (Ct. App. 2022) (holding that “the court will not hold a layman to any lesser standard than is applied to an attorney”) (internal citations omitted); McCall v. A-T-O, Inc., 276 S.C. 143, 146, 276 S.E.2d 529, 530 (1981) (stating that the S.C. Supreme Court “has never held a layman to a lesser standard than attorneys”).

Ctr., United States Dep't of State, No. SA CV 24-1359 PA (ASX), 2024 WL 5316832, at *5 (C.D. Cal. Oct. 22, 2024); ⁶ Mescall v. Renaissance at Antiquity, No. 3:23-CV-00332-RJC-SCR, 2023 WL 7490841, at *1 n.1 (W.D.N.C. Nov. 13, 2023) (stating that “the use of artificial intelligence ... may result in sanctions or penalties when used inappropriately”); Moshrif v. King Cnty. Prosecution Off., No. 2:24-CV-01306-LK, 2024 WL 4494879, at *4 (W.D. Wash. Oct. 15, 2024) (holding that “[v]iolations of applicable law or rules may result in sanctions, even when such violations result from use of artificial intelligence”).

For these reasons, the Respondents respectfully request that the Court of Appeals strike all references, quotations, and representations made by the Appellant in his Initial Brief regarding deposition testimony of Dr. Samies that was not properly presented to, or considered by, the Workers’ Compensation Commission and otherwise order that the Appellant’s future briefing conform to Rule 208(b)(4), S.C.A.C.R.. The Respondents further respectfully request such other and further relief as the Court deems just and proper, including but not limited to sanctions under Rule 269 and/or dismissal under Rule 260(a), S.C.A.C.R.

⁶ Seyedkhashayar Mojtabavi explains that “Local Rule 11-3.9.3 sets forth the requirements for citations to cases. Plaintiff’s Opposition fails to comply with these requirements and ... to the extent that Plaintiff has used a text-generative artificial intelligence tool (*e.g.*, ChatGPT) that has generated fake case citations, this is unacceptable. Plaintiff is warned that any violation of Local Rule 11-3.9 in the future may result in the imposition of sanctions, including but not limited to dismissal of this action.”

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Howell", written over a horizontal line.

Roy A. Howell, III, *S.C. Bar #11888*

Kirsten Leslie Barr, *SC Bar #15525*

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Attorneys for Respondents

January 21, 2025
Mount Pleasant, SC

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Serge Wandji, Claimant,.....Appellant,

v.


The Regional Medical Center, Employer,
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PROOF OF SERVICE

The undersigned hereby certifies that the Respondents served the above-named Appellant, Serge Wandji, with a copy of the attached RESPONDENTS' RETURN TO APPELLANT'S REPLY TO MOTION TO STRIKE this 21st day of January 2025, by emailing and depositing a copy of the same in the United States Mail, first class postage prepaid, addressed as follows:

Serge Wandji
579 Folly Road P.O. Box 12112
Charleston, SC 29422
sergewandji@gmail.com

January 21, 2025


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Reply to SC Court of Appeals
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January 21, 2025

Via Regular Mail and Email-ctappfilings@sccourts.org

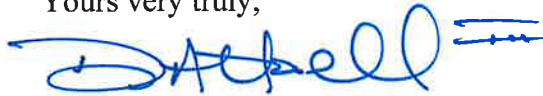
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Serge Wandji v. The Regional Medical Center
W.C.C. File No.: 2118696
Appellate Case No. 2024-001935
Carrier File No.: WC2021098080
Date of Accident: August 27, 2021

Dear Ms. Kitchings:

Enclosed for filing, please find the Respondents' Return to Appellant's Reply to Motion to Strike, along with our Proof of Service serving the Appellant with the same. As always, thank you for your time and consideration of this matter.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/les

Enc.

cc: Sandra Axson, Antum Risk (w/enc.) (email/upload)
Tiffany Kirby, MUSC Health-Orangeburg (w/enc.) (email only)
Mr. Serge Wandji (w/enc.) (email and regular mail)

