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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Appellate Case Number 2021-000633

Rachel J. Turner, Employee, Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Conustrial, Inc.; Guarantee Insurance Company;
Countrywide Staffing Solutions Group, Inc.; South Carolina Department of Corrections; State
Accident Fund; and South Carolina Uninsured Employer's Fund, Respondents

of which Conustrial, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the
Respondent-Appellant.

RESPONDENT-APPELLANT'S PETITION FOR REHEARING

George D. Gallagher, Esquire
S.C. Bar # 12149
Speed, Seta, Martin, Trivett, Stublely &
Fickling, LLC
P.O. Box 11669
Columbia, SC 29211
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Attorney for Respondent/Appellant

Petition for Rehearing

Pursuant to South Carolina Appellate Court Rules 221 and 240, Respondent/Appellant (“Condustrial”) hereby petitions the Court for a rehearing of its Order dated January 28, 2025 awarding Appellant-Respondent (“Turner”) attorney fees and costs under SCACR 222. The purpose of a Petition for Rehearing under SCAR 221 is not to reargue the case in the appellate court a second time or regurgitate issues already argued/briefed. *See Kennedy v. S.C. Retirement Systems*, 349 S.C. 531, 564 S.E.2d 322 (2011). Rather, to prevail in its Petition for Rehearing a party must show that the Court overlooked or misapprehended a specific argument or issue. *Id.* Condustrial respectfully submits the Court misapprehended the effect of its decision on the merits and the procedural posture of this claim when it awarded Turner attorney fees and costs solely taxable against Condustrial.

Arguments

Condustrial first reminds the Court that this case involves cross-appeals on the merits separate and distinct from the liable party issues. Specifically, Turner appealed the Commission’s findings on her average weekly wage (“AWW”) determination, denial of her prayer for running temporary total disability benefits from the date of accident to the present and continuing, and the denial of her Motion to Admit Newly Discovered Evidence. Condustrial, the S.C. Department of Corrections (“SCDC”) and the South Carolina Property and Casualty Guaranty Association (“Guaranty Association”) were all Respondents to Turner’s appeal on those issues and briefed them accordingly. Turner ultimately prevailed on the AWW issue but the Court affirmed the Commission’s decision on her remaining merits issues. Condustrial appealed the Commission’s decision on the independent contractor vs. employee issue. The Court affirmed the Commission’s finding that Turner was an employee. Therefore, Turner prevailed on two merits issues while Condustrial and the other respondent parties also prevailed on two issues. SCACR 222 on its face provides for the award of fees and costs to the “prevailing party” on appeal (i.e. respondent when the issue is affirmed and the appellant when the issues is

reversed). See Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (SC 1993).

Here, the Court's award of costs to Turner where the ultimate outcome on the merits is, for lack of a better description, a "split decision," seems incongruent with that purpose.

Moreover, SCACR provides that when an appeal is "affirmed in part and reversed in part, which is the exact outcome presented here, "costs *"shall only be allowed as ordered by the appellate court."* (emphasis added). This appears to be a discretionary standard, but the Court's January 28, 2025 Order does not specify the basis for awarding fees and costs to Turner under the circumstances presented. After merely reciting the procedural history of the respective parties' filings on the fees and costs issues, the Court's Order summarily declares that Turner's Motion for fees and costs is "granted against Condustrial." Without further explanation or reasoning the Court's award is arbitrary and capricious.

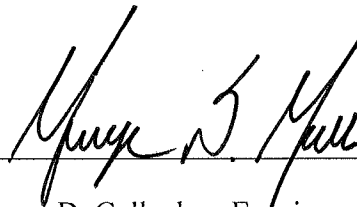
In Morris v. BB&T Corporation, 438 S.C. 582, 885 S.E.2d 394 (2023), our Supreme Court held "no court is entitled to the deference associated with the discretion standard of review until that court has earned such deference by fulfilling the responsibility of exercising its discretion according to law." In that case the Court reversed a Court of Appeals decision affirming the Commission's denial of a party's motion to reinstate its appeal "because the commission offered no explanation for its decision" and thus did not "act within its discretion." Morris, 438 S.C. at 588. "The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances." Jordan v. Hartford Financial Group, Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021). Condustrial respectfully submits that the Court's January 28, 2025 Order falls short of meeting this standard. At the very least, the Court should revisit the issue and explain the basis for

awarding Turner fees and costs in the first instances, as well taxing such costs solely against Condustrial as opposed to all party respondents.

On a final note, Condustrial respectfully reminds the Court of the procedural posture of this case. Specifically, Condustrial is not even the party currently liable for benefits to Turner under the Act. The Commission's Order affirmed on appeal currently imposes that liability on SCDC and its carrier, the State Accident Fund. *See Record on Appeal p. 122.* The State Accident Fund may ultimately have an indemnity cause of action in the courts against Condustrial under S.C. Code §42-1-440 but Condustrial's liability for this claim, IF ANY, has yet to be determined. Because Condustrial may not ever be liable for benefits in this claim, it is inappropriate to award Turner costs on appeal solely against it.

Conclusion

For all the aforementioned reasons, Condustrial respectfully submits that the Court has misapprehended numerous issues/arguments in its Order awarding costs dated January 28, 2025 and should grant this Petition for Rehearing to amend its rulings accordingly.



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of which Condustrual, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent-Appellant Condustrual, Inc.'s Petition for Rehearing by electronic mail on February 11, 2025, addressed to all attorneys of record at the addresses below:

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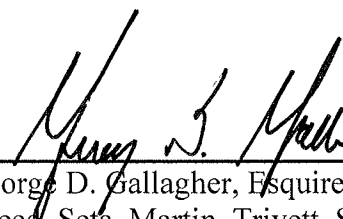
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February 11, 2025


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February 11, 2025

VIA EMAIL: CTAPPFILINGS@SCCOURTS.ORG

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
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RE: *Rachel Turner v. SC Department of Corrections – Kirkland, et al*
Appellate Case No.: 2021-000633
WCC No.: 1514359
DOA: 9/5/2015
Our File No.: 8400-0101

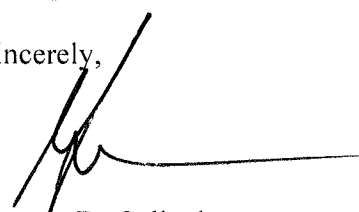
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Dear Ms. Kitchings:

Please find enclosed the Respondent-Appellant Condustrial's Petition for Rehearing in the above-referenced matter. The original and six copies along with our firm's check in the amount of \$50.00 for the filing fee have been placed in the mail to your office.

By copy of this letter to all counsel of the involved parties, I am serving them with this Petition.

Sincerely,


George D. Gallagher
GDG/rco
Enclosures

cc: The Hon. Amy Bracy
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