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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
WCC FILE NO. 0100434

Emitt Gunnells, Employee,Appellant,

vs.

Galey & Lord, Employer, and Arrowpoint Capital
Corporation, Carrier, Respondents.

**APPELLANT'S OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS APPEAL**

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This appeal arises from an Order of the Workers' Compensation Commission Appellant Panel dated May 9, 2022; suspending the Appellant's weekly lifetime benefits in a brain damage award from 2003.

Over three (3) years ago, on May 11, 2022, two (2) days after the Commission's Order, the Appellant filed a Notice of Appeal to this Court.

The Respondents did not raise any objection to the jurisdiction of this Court to review the decision of the Commission. Rather, both parties submitted to the jurisdiction of this Court.

The Appellant filed his Initial Brief on August 22, 2022, and Respondents filed their Initial Brief on October 12, 2022. The Respondents did not raise, in their Initial Brief, any objection with regard to the jurisdiction of this Court to review the decision of the Commission.

The Appellant filed his Final Brief on October 12, 2022. Respondents filed their Final Brief on November 17, 2022. The Respondents did not raise, in their Final Brief, any objection as to the jurisdiction of this Court to review the decision of the Commission.

On May 6, 2025, this Court notified the parties that the Court would hear oral arguments on June 3, 2025. The Respondents did not, at that point, raise any

objection to the jurisdiction of this Court to review the decision of the Commission.

Yesterday, May 22, 2025, twelve (12) days before oral arguments are set to be heard on the briefs filed by the parties two and one-half (2½) years ago, the Respondents, for the first time, moved to dismiss the appeal on the grounds that this Court lacks jurisdiction to hear the matter.

The Respondents admit that the issue of jurisdiction was not raised in the Respondents' brief, or otherwise, before yesterday.

The law is well-established that a party's failure to argue an issue in their brief is deemed an abandonment of the issue. See Rule 208(b)(2), SCACR. (“[i]f a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case.”); see also, Cason v. Gibson, 217 S.C. 500 (1950)(failure of a respondent to argue additional sustaining grounds is deemed an abandonment of those grounds); I'On LLC v. Town of Mt. Pleasant, 338 S.C. 406 (2000)(“[o]f course, a respondent may abandon an additional sustaining ground under the present rules - just as a respondent could under the former rules - by failing to raise it in the appellate brief.”); see also, Rule 208(b)(1)(B), SCACR. (“[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); Rule

208(b)(2), SCACR (“[t]he brief of Respondent shall conform to the requirements of Rule 208(b)(1)(A)-(F)...”).

The Respondents argue that jurisdiction can be raised at any time, including sua sponte by the Court.

It is certainly the case that “[the] lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the Court.” State v. Brown, 351 S.C. 522 (Ct. App. 2002).

The Respondents, however, mischaracterize their belated procedural argument that the appeal is pending in the wrong appellate court, as one involving the Court’s subject matter jurisdiction.

Our Supreme Court in Skinner v. Westinghouse explained:

Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’ Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442, (quoting Bank of Babylon v. Quirk, 192 Conn. 447, 472 A.2d 21, 22 (Conn. 1984)). In Great Games, Inc. v. South Carolina Department of Revenue, 339 S.C. 79, 83 n.5, 529 S.E.2d 6, 8 n.5 (2000), this Court observed that “[t]he failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’

jurisdiction¹ over the case, but it does not affect the court's subject matter jurisdiction.
Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93-94 (2008).

The Respondents do not challenge the Court's subject matter jurisdiction to "determine cases of the general class to which the proceedings in question belong"; that is, the Court's power to review decisions of the Workers' Compensation Commission.

That jurisdiction is well-established, and has existed before and after the 2007 amendments to the Workers' Compensation Act. See S.C. Code §1-23-380, (Supp. 2006, Supp. 2008).

Rather, the Respondents make a **procedural** objection that the appeal was filed in the wrong appellate court and should have, first, been heard in the circuit court.²

However, the failure of a party to comply with a procedural requirement does not affect this Court's subject matter jurisdiction; to which the Respondents have submitted for years in this matter.

¹ Citing Levi v. N. Anderson County EMS, 409 S.C. 374 (Ct. App. 2014), the Respondents, likewise, argue that appellate jurisdiction may be raised at any time. However, Levi, and the cases it cites, all deal with a case's appealability. See, Levi, at 379 (citing St. Francis Xavier Hosp. v. Ruscon/Abco, 285 S.C. 584, 586 (Ct. App. 1985)(providing this court can raise the issue of appealability ex mero motu even when no party raises any question concerning the appealability of an order)).

There is no dispute, however, as to the appealability of the Commission Order here.

² Of note, even if the Respondents procedural objection has not been abandoned and is properly before this Court, Rule 204 SCACR provides that the appropriate remedy is the transfer of the appeal to the circuit court. See Rule 204 SCACR ("[i]n the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.").

This appeal argues that Respondents have improperly suspended the Appellant's lifetime weekly benefits in this brain damage case.

The Court should not entertain the Respondents' procedural objection; raised for the first time three (3) years after the Notice of Appeal, two and a half (2 ½) years after the Final Briefs, and just twelve (12) days before oral argument.

The Motion to Dismiss should be denied.

Respectfully submitted,

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