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May 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-000655

Emmitt R. Gunnells,Appellant,

v.

Galey & Lord Industries,Employer,

and

SC Insurance Guaranty Assoc., Respondents.

**RESPONDENTS' REPLY TO APPELLANT'S RETURN IN OPPOSITION TO MOTION TO
DISMISS APPEAL**

Pursuant to Rule 240(f), SCACR, Respondents file this Reply in response to the Return filed by Appellant. In response to Respondent's Motion to Dismiss this appeal for lack of appellate jurisdiction, Appellant firstly contends that any objection to jurisdiction has been waived or abandoned, and secondly contends that appellate jurisdiction differs from subject matter jurisdiction, in that the former may be waived while the latter may not.

To be clear, Respondents do not contend that the Court of Appeals lacks subject matter jurisdiction, only appellate jurisdiction. A review of several appellate cases set forth herein clarifies that appealability is simply a substrand of cases addressing appellate jurisdiction as a whole. As the case law illustrates, this is a distinction without a difference as appellate jurisdiction can also be raised at any time. The Court of Appeals should dismiss the appeal.

In support of his position regarding subject matter jurisdiction, Appellant cites to the case of *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008), and that opinion from Justice

Kittredge opens with “[t]his appeal concerns the appellate jurisdiction of the circuit court in an appeal from the Workers’ Compensation Commission.” *Id.* at 92-93, 668 S.E.2d at 795 (emphasis added). The case also clarifies the difference between subject matter jurisdiction and appellate jurisdiction, but does not provide that appellate jurisdiction can be waived or abandoned by a party. *Id.* at 94, 668 S.E.2d at 795.

The year prior, the Supreme Court addressed the very issue of determining which court held appellate jurisdiction over workers’ compensation appeals regarding injuries occurring prior to July 1, 2007. *See Pee Dee Regional Transportation v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007) (“[T]he amendments set forth in Act 111 do not apply and, applying the former version of section 42-17-60, jurisdiction over this appeal lies in the Court of Common Pleas.” (emphasis added)). Likewise, this Court’s decision in *Levi v. N. Anderson Cty. EMS* addresses appealability through the lens of appellate jurisdiction. 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014). The opinion from Judge Konduros very explicitly states that “South Carolina, as well as other states, has made clear appellate jurisdiction can be raised by appellate courts even if none of the parties have raised it.” *Id.* at 379, 762 S.E.2d at 47 (emphasis added).

The very reason that interlocutory and other non-appealable orders are dismissed by the appellate courts is because the appellate court lacks appellate jurisdiction over non-final orders. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013); S.C. Code Ann. § 1-23-380 (“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review” (emphasis added)). In the case of *Chastain v. Spartan Mills*, the circuit court (then-Judge Bruce Littlejohn) affirmed an order of the Commission remanding the matter to a single commissioner for a *de novo* hearing. 228 S.C. 61, 88 S.E.2d 836 (1955). Upon an appeal from that interlocutory order, the Court noted “[w]e are confronted, *in limine*, with the question whether the Commission’s order . . . was appealable. If it was not, or if the appeal from it was premature, Judge Littlejohn was without jurisdiction, and likewise this court has no jurisdiction except for the purpose of dismissal.” 228 S.C. at 65, 88 S.E.2d at 837 (emphasis added). Further, the Court

addressed the fact that neither party had previously raised the issue as being “of no consequence” because “the order not being a final one . . . , the circuit court was without jurisdiction, in that state of the proceeding, to consider the appeal on its merits.” *Id.* at 67, 88 S.E.2d at 838 (emphasis added). The appeal was dismissed. *Id.*

Comparing *Chastain* to the present case, there is no question that the Supreme Court of South Carolina held subject matter jurisdiction over the appeal from the circuit court, just as the South Carolina Court of Appeals in this case has subject matter jurisdiction over an appeal from the South Carolina Workers’ Compensation Commission. However, in both cases, appellate jurisdiction is lacking and issue preservation principles are inapplicable. The Supreme Court’s guidance in *Chastain* is the appellate court “has no jurisdiction except for the purpose of dismissal” notwithstanding the fact that the issue “has not been questioned or discussed by either party.” *Id.*

Similarly, there have been prior cases in which a party has attempted to “leapfrog” an appellate court. In all such cases, doing so has been deemed improper. In *Riddle v. Fairforest Finishing Co.*, an employee’s claim was heard by a single commissioner before being deemed barred by the statute of limitations. 198 S.C. 419, 421-22, 18 S.E.2d 341, 342 (1942). Rather than appealing to the full Commission, the employee sought direct appeal to the circuit court. *Id.* at 422, 18 S.E.2d at 342. The circuit court determined that it held jurisdiction because the appellant had the right to elect his appellate path; however, the Supreme Court reversed the circuit court’s determination. *Id.* at 430, 18 S.E.2d at 346. The Supreme Court reasoned “that no appeal from a compensation commission may be had unless granted by the express terms of the compensation act, or by necessary implication therefrom” and that “[t]he only appeal available from the judg[.]ment of a Court in a compensation cases is that which is provided by the compensation act.” *Id.* at 426, 18 S.E.2d at 344 (referring to *McDonald v. Palmetto Theatres*, 196 S.C. 38, 11 S.E.2d 444 (1940)). The Act at the applicable time period specifically requires an appeal “from the decision of the commission to the court of common pleas.” S.C. Code Ann. § 42-17-60 (Supp. 2006).

In *Janhrette v. Union Camp Paper Corp.*, an employee again attempted to appeal a single commissioner's decision directly to the circuit court rather than proceeding to the full Workers' Compensation Commission. 293 S.C. 59, 358 S.E.2d 704 (1987). Adhering to the Supreme Court's prior holding in *Riddle, supra*, the circuit court dismissed the appeal and the Supreme Court affirmed the dismissal. *Id.*

Contrary to Appellant's position, the ability of appellate courts to dispose of cases at any time is not limited to appealability issues, but applies to the entirety of cases involving appellate jurisdiction. The above cases display that appellate jurisdiction cannot be waived or abandoned, and such jurisdiction is absent in the event a party does not proceed in the proper appellate course in accordance with the applicable statutory framework. Respondents again seek dismissal of this appeal.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



May 28, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of May, 2025, caused to be served a copy of Respondents' Reply to Appellant's Return in Opposition to Motion to Dismiss Appeal by electronic transmission a copy of same, as follows:

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SC Court of Appeals

VIA EMAIL

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

RE: Emitt R. Gunnells v. Galey & Lord Industries and SC Insurance Guaranty
Association
Our File No.: 2039.24002
Appeal No.: 2022-000655

Dear Ms. Kitchings:

Enclosed for filing please find the Galey & Lord Industries and the South Carolina Insurance Guaranty Association's Reply to Appellant's Return in Opposition to Motion to Dismiss Appeal and the Proof of Service concerning the same.

If you have any questions, please contact me.

Very truly yours,

D. Tyler Hembree

DTH/ma
Enclosures
cc: Stephen J. Wukela, Esquire (via email only)