

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable Thomas A. Russo

Case No. 2013-002491

Alexander Guice, Appellant,

v.

US Food Service, Inc. and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

RESPONDENTS' RETURN
IN OPPOSITION TO
APPELLANT'S PETITION FOR REINSTATEMENT

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MAY 14 2014

SC Court of Appeals

Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Alexander Guice's Petition for Reinstatement ("Petition"). Appellant presents no valid reason for this Court to reinstate his appeal, and nothing in his Petition alters the basis of this Court's dismissal, i.e., that this appeal does not involve a final order of the Circuit Court. Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012); Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dept. of Health & Env't'l Control, 387 S.C. 265, 692 S.E.2d 894 (2010). As this Court noted, the Circuit Court's June 14, 2013 dismissal specifically recognized that,

“[u]pon exhaustion of all administrative remedies, [Appellant] may have an appeal to the Circuit Court once [the Commission] has reached a final decision.” In addition, as this Court explained, the South Carolina Workers’ Compensation Commission issued a final order on July 17, 2013, which Appellant has appealed to the Circuit Court under the same workers’ compensation file number that is the subject of this appeal, W.C.C. No. 0506205.

Appellant’s various arguments are without merit. In Sections No. 1 and 3, he asserts that this Court failed to “properly state or adjudicate” the various grounds stated by Appellant in his Return. However, the first two grounds listed by Appellant in Section No. 1 involve this Court’s procedural rules, with which Respondents’ Motion to Dismiss adequately complied. The final two grounds asserted in Section No. 1 and in Section No. 3 involve the substance of Appellant’s claim and do not serve as a basis to reinstate his appeal of a non-final order. This Court’s Order disposed of all the arguments raised by both sides and, thus, is in full compliance with Canon 3(b)(1), CJC, Rule 501, SCACR.¹

In Section No. 2, Appellant erroneously argues that remand is improper because the Circuit Court has already rendered a decision. The Circuit Court has not rendered a decision on the merits of this claim but, instead, dismissed Appellant’s previous appeal on the ground that Appellant failed to exhaust his administrative remedies. Thus, it is entirely proper for this Court to remand to the Circuit Court for consideration of his entire appeal in one forum. Bone, 399 S.C. at 575-76, 733 S.E.2d at 205 (discouraging piecemeal litigation of appeals).

¹ Although Appellant’s citation is somewhat unclear, Respondents assume this is the provision he intends to reference, which provides that “[a] judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

In Section No. 4, Appellant attempts to challenge the substance of this Court's Order, i.e., that this appeal does not involve a final order. Although Appellant focuses on the letter written to him by Mr. Cannon, this Court's appellate jurisdiction is based on whether the Circuit Court's June 14, 2013 Order is final – as that is the forum from which this appeal arises. As this Court and the Supreme Court have explained, a final judgment is one that “dispose[s] of the whole subject matter of the action or terminate[s] the action, leaving nothing to be done but to enforce what has already been determined.” Bone, 399 S.C. at 575, 733 S.E.2d at 204-05, *citing* Charlotte-Mecklenburg, 387 S.C. at 267, 692 S.E.2d at 895.² As the Circuit Court's June 14, 2013 Order dismissed his appeal on the basis that Appellant had not exhausted his administrative remedies and noted that Appellant “may have an appeal to the Circuit Court once that agency has reached a final decision,” it clearly was not a final order disposing of the whole subject matter of Appellant's claim.

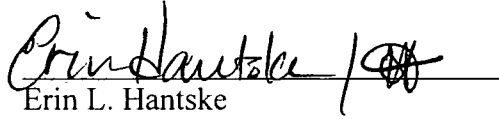
Finally, the allegations in Section No. 5 of Appellant's Petition are completely meritless and unsupported. Although Canon 3(B)(5), CJC, Rule 501, SCACR, addresses prejudice or bias in the courtroom, that Canon makes it clear that it is directed at and intended to prevent bias or prejudice based on such characteristics as “race, sex, religion, national origin, disability or age ...” There is no evidence whatsoever that Appellant has been subjected to any such bias or prejudice by this Court. Furthermore, as the Preamble to the Code of Judicial Conduct states, the “Code is designed to provide guidance to judges,” and was not intended to be “invoked by lawyers for mere tactical advantage in a proceeding.” Preamble, CJC, Rule 501, SCACR.

² Appellant clearly misunderstands the purpose and application of Rule 268, SCACR, which does not set up the priority or order of precedence for the authorities listed therein, but simply provides

CONCLUSION

For all the reasons stated herein, this Court should deny Appellant's Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erin L. Hantske", is written over a horizontal line. To the right of the signature, there are some scribbles and a small mark that looks like a circled "A".

Erin L. Hantske

S.C. Bar No.: 76313

McANGUS GOUDELOCK & COURIE, LLC

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Attorney for Respondents

May 8, 2014

THE STATE OF SOUTH CAROLINA
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APPEAL FROM LEXINGTON COUNTY
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Honorable Thomas A. Russo

Case No. 2013-002491

Alexander Guice, Appellant,

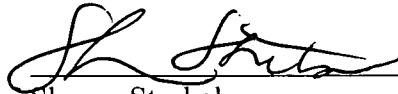
v.

US Food Service, Inc. and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Petition for Reinstatement** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on May 8, 2014, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681.



Sharon Strubel
Legal Assistant to Erin L. Hantske
McANGUS GOUDELICK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200
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Mount Pleasant, South Carolina 29465
(843) 576-2900

Attorneys for Respondents

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SC Court of Appeals



Reply To

ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

May 8, 2014

Via U.S. Mail

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

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appellate Tracking No.: 2013-002491

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Petition for Reinstatement, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies in the self-addressed, stamped envelope

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Erin L. Hantske

Enclosures

cc: Alexander Guice, pro se

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SC Court of Appeals

mgc

INSURANCE
DEFENSE

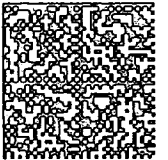
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