

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

W.C.C. File Nos 1104303 & 1104304

RECEIVED

JUL 18 2014

SC Court of Appeals

Kerry Levi Appellant,

v

Northern Anderson County EMS
and Berkshire Hathaway
Homestate Insurance Company Respondents.

RETURN

This return is filed pursuant to Rule 221 and Rule 240(e) of the South Carolina Appellate Court Rules. Rule 221 governs petitions for rehearing Rule 240(e) governs returns to motions and petitions generally.

Rehearing is not needed. This Court's decision is correct. The following are brief responses to the arguments raised in the respondents' petition.

Respondents' Issue 1

The hearing commissioner's order states that it was based on the respondents' motion to dismiss (R p 3). The order was *not* based on the respondents' Form 21; instead the order directed that this form would be the subject of a future hearing (R p.5).

The appellate panel's order acknowledges this point. The order provides "[t]he Order of Commissioner Wilkerson," which is the order on appeal, "was directed to the motion [to dismiss] only." (R.p 7).

Respondents' Issues II to IV

The process of "appealing" a decision to the commission's appellate panel is similar to the process of appealing a circuit court's decision to this Court. This was part of the holding in *Riddle v Fairforest Finishing Company*. See 198 S.C. 419, 18 S.E 2d 341 (1942). Just as appealability in civil cases is governed by statute (via section 14-3-330 of the South Carolina Code), so too does a statute govern appealability inside the commission.

The relevant statute requires that there be an "award." See S.C. Code Ann. § 42-17-50 (Supp 2013). At no point does the respondents' petition explain how an order denying a motion to dismiss constitutes an "award."

Respondents' Issue V

Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong *Dove v Gold Kist*, 314 S.C. 235, 237-38, 442 S.E 2d 598, 600 (1994). Ms. Levi does not have the ability to impact the commission's power to hear workers' compensation cases.

Respondents' Issue VI

The hearing commissioner's decision is not the law of the case. The law of the case doctrine is a procedural tool used by appellate courts and does not describe how trial court orders relate to one another. See *State v Hewins*, Op. No. 27415 (S.C. Sup. Ct. filed July 16, 2014) (Shearouse Adv. Sh No. 28 at 48, 61 n 5).

Respondents' Issue VII

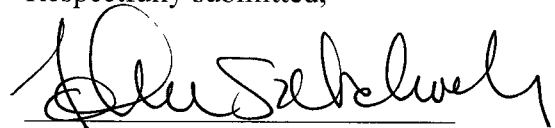
Rule 268 governs citation of South Carolina authority. It provides that unpublished decisions from South Carolina's appellate courts have no precedential value and should not be cited except in proceedings in which they are directly involved Rule 268(d)(2), SCACR. The rule does not apply to North Carolina cases.

CONCLUSION

The appellant requests that this Court deny the petition for rehearing. All that the Court has done is correctly hold that an order denying a motion to dismiss is not immediately appealable.

July 18, 2014

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Return to Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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July 18, 2014
Columbia, South Carolina


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OF COUNSEL
O Eugene Powell, Jr

July 18, 2014

VIA HAND DELIVERY

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

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JUL 18 2014
SC Court of Appeals

RE: Kerry Levi v. Northern Anderson County EMS, Employer, and
Berkshire Hathaway Homestate Insurance Company, Carrier
Case Tracking No.: 2012-212631

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Return* in regards to the above referenced matter. I have also enclosed a proof of service of this document on counsel for the respondents. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges

Paralegal to Blake Hewitt

BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

/emb

Enclosures

cc: Chadwick D. Pye, Esquire
David H. Keller, Esquire