

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 18 2014

SC Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated December 19, 2013 Affirming Commissioner Melody L. James
orders dated January 04, 2013 And September 30, 2013

Case No.: 2014-000186

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance
Company c/o United HeartlandRespondents.

**APPELLANT’S RESPONSE TO RESPONDENTS’
MOTION TO STRIKE AND/OR
AMEND APPELLANT’S 2ND INITIAL BRIEF
AND 2ND DESIGNATION OF MATTER**

PLEASE TAKE NOTICE that the Appellant hereby replies to Respondents’ Motion
to Strike and/or Amend Portions of Appellant’s Initial Brief and Designation of Matter as
follows:

Appellant will respond to this motion generally and then as specifically as possible.
This motion must be heard in the light most favorable to the non-movant.

To state it plainly, the Respondents initial motion to strike asked for clarification of
the Appellant’s citations and his designation of matter and the Court granted it in part.

The appellant has made a good-faith attempt to comply with rules 208, 209 and 210
SCACR, and has clarified and amended both his initial brief and designation of matter to
the best of his ability.

Although a small number of typographical errors exist, which will be addressed in turn, the 2nd brief and designation raise the same issues in relation to the instant appeal. The actual changes between the 1st and 2nd brief are for clarification only.

Generally, the Appellant believes the Respondents have filed this motion in an attempt to delay in order to gain an advantage by having additional time to respond to the Appellant's arguments.

Further Respondent's motion to strike contains misrepresentations of the Court's order dated July 3, 2014. Respondent's motion to strike also contains misrepresentations made by the Respondents in reference to Appellant's response to Respondents 1st motion to strike and/or amend.

The Court of Appeals ordered on July 3, 2014 as follows – *“Respondents have filed a motion to strike and/or require appellant to amend his initial brief and designation of matter after careful consideration respondents motion is granted in part and appellant's brief and designation of matter are stricken. Within 15 days of this order, appellant shall file an amended designation of matter, which does not include any personal recordings. Furthermore within 15 days of this order, appellant shall file an amended initial brief, which contains intelligible references to the material cited in the designation of matter pursuant to rule 208 (B)(4) SCACR.”*

Respondent's motion then summarized as follows– *“This court's order filed July 3, 2014 ordered appellant to “file an amended initial brief which contains intelligible references to the material cited in the designation of matter pursuant to rule 208 SCACR,” and to strike the personal recordings from his designation of matter.”*

With the exception of some dates they were affected by clerical error, the entirety of the Respondent's motion is based on the misconceived notion that the Appellant's amended

brief and designation were ordered to be drafted only inclusive of materials properly cited on the initial designation of matter, less any personal recordings.

This portion of the Respondents 2nd motion to strike is a blatant misrepresentation of the Court's order. The court's order struck both the initial brief and the designation of matter, giving 15 days for the appellant to file an amended designation of matter and an amended initial brief.

Within 15 days the appellant served the amended brief and designation of matter. The court's order did not restrict the appellant's designation of matter to materials cited previous, it simply instructed the appellant to exclude any personal recordings.

Additionally it is the Appellant's position that the amended initial brief contains intelligible references pursuant to rule 208 (B)(4) SCACR, and is in conformance with this Court's Order dated July 3, 2014, that this motion should be dismissed, and the respondents requests for a stay of the briefing schedule should be denied.

The following are Appellant's responses to each paragraph or point in the Respondent's motion.

As to Paragraph 2 of Respondent's motion, Appellant has not substantively changed his arguments or issues on appeal. The Appellant has restated and clarified his appeal. Appellant has substantially made the same arguments since the 1st Commissioner's order.

As to paragraph 3: Appellant's 2nd initial brief contains 16 separate issues on appeal and 39 separate numbered arguments where his 1st initial brief with this court contained 12 issues with 36 separate numbered arguments.

This increase in issues on appeal is merely to clarify any ambiguities that may have been present in the Appellant's 1st initial brief.

"Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue. See State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001)

(finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict). Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733"

The appellant believes that he has made a good-faith attempt to clarify his initial brief, given that he is not a law professional and only had a short time to clarify a pleading before the Court of Appeals.

The appellant's arguments have remained largely unchanged since the single Commissioner's order.

In the Appellant's initial brief issue XII contained recordings between the commission and the Appellant that by order of the Court of Appeals were stricken. The appellant believes these recordings would have spoken for themselves.

In order to clarify the issues on appeal the appellant made a good-faith attempt to concisely state four alleged due process violations. These issues were then renumbered issues on appeal one (1) through four (4) on the appellant's 2nd initial brief.

In the appellant's initial brief (1st) the 2nd argument of issue XI is verbatim the 16th issue on appeal in the appellants 2nd initial brief (2nd)

. For the Respondents to state the issues were "not contained in the 1st initial brief" is a gross misrepresentation.

As to paragraph 4; the respondents move for certain cited law to be stricken from the appellant's table of authorities due to the fact that the cited statutes allegedly failed to appear in the appellant's initial brief.

In response to this the appellant pleads with this court to use any applicable law whether omitted or properly stated in the table of authorities or otherwise known to them to effect a just outcome in the present case.

As to paragraph 6: Respondents – “In addition appellant has designated material for inclusion in the record on appeal in his 2nd designation, (Att. O) that were not listed in his initial designation of matter. (ATT. M). The following items appear and appellant’s 2nd designation they were not previously designated:

13. Form 13 with attached form 15 – S dated September 6, 2012;

15. 21 dated September 17, 2012;

18. Dan Cobb deposition August 20, 2012;

29. Email chain about “proposed finding of fact re-SCWCC file # 1116275 dated August 30, 2013 and dated December 2, 2013.

34. Email chain about “re-proposed order language dated September 13, 2013; and

36. Rehabilitation centers of Charleston report dated June 26, 2012.

These items should be stricken from appellant’s 2nd designation.”

As to point 13-the form 15 S is a statement of periodic payments produced by the respondents and clearly shows one week where no payment was made to the appellant.

As to point 18-Dan Cobb’s deposition was cited 13 times in the initial brief and its exclusion from the initial designation of matter was a clerical oversight.

As to points 29, 34 and 36 these items appeared in appellant’s initial designation of matter as items titled “emails regarding objection to request for full commission order & proposed finding of fact w/ attachment” and “motion for additional evidence and deposition testimony and exhibits (deposition testimony of John C McDaniel).”

The appellant’s initial brief had errors that were fixed in the amended initial brief. The appellant’s initial designation of matter had errors that were fixed in the amended designation of matter.

As to Paragraph 7: Respondent’s motion state as follows *“in addition, there are a number of items listed in appellant’s 2nd designation that are unclear. For example, No. 9*

lists, "Claimant's motion for additional evidence to complete the record and notice of, and No. 10 lists, "additional APA submissions with attachments dated March 6, 2013 filed May 9, 2013." It appears the Nos. 9 and 10 may have been intended to be one designation but it is not entirely clear appellant should be ordered to clarify what he intends to designate here.

Appellant admits that this is true numbers 9 and 10 were meant to be a single designation numbered "9."

Respondent's motion states as follows *"respondents point out that, in appellant's response to respondent's motion to strike and or amend the claimant's initial brief and designation of matter dated May 31, 2014 the clarified he was designating only APA page 127 and 166 through 195 to the extent appellant intends to designate more than the materials he identified in his initial designation as clarified in his appellant's response to motion to strike this court should order him to conform his 2nd designation materials previously designated."*

This once again is an absolute misrepresentation of the appellant's response to respondent's 1st motion to strike and should be viewed by the court as abusive.

Appellant's response to respondent's 1st motion to strike references paragraphs 19, 20 and 21 of respondents 1st motion which requests clarification on certain items listed in appellants brief, not items designated in Appellant's designation of matter. .

Respondent's motion states *"again, appellant should not be allowed two bites at the Apple based on his own failure to follow this court's appellant briefing rules."*

When the court struck the initial brief of the appellant's then that pleading cannot be considered "a bite at the apple," as no defenses were mounted and no pleadings were ruled upon. The effect of striking the initial brief and designation of matter was not equal to

limiting the appellant's ability to enter sufficient evidence into the record on appeal for judicial review.

As to paragraph 8: Respondent's motion states as follows *"number 11 on claimants 2nd designation which lists," claimant's motion for additional evidence and deposition testimony dated March 10, 2013 and exhibit including deposition testimony of John C McDaniel," (att. O p.2), it is also unclear. In his 1st designation appellant listed "motion for additional evidence and deposition testimony and exhibits (deposition testimony of John C McDaniel)." (ATT. M p. 2) "In his appellant's response to motion to strike he clarified that the motion for additional evidence he intended to designate was dated May 14, 2013."*

These two are one and the same, and the date of March 10, 2013 is a clerical error as the document is dated May 10, 2013 and date filed May 14, 2013.

As to paragraph 9: number 23 on the appellant's amended designation of matter the date should have been March 26, 2013.

As to paragraph 10: appellant confirms the dates of October 31, 2012 November 15, 2012 and November 17, 2012 respectively.

As to paragraph 11: The three affidavits are attached to the Form 30 as attached exhibits I, J and K.


The Medical report respondents seek to have the Court order Appellant to produce must be in their possession, as it was submitted by their counsel Ms. Allison Nussbaum to the South Carolina Workers Compensation Commission, certified mail – return receipt requested, on March 18, 2014.

It is unduly burdensome for the Respondents to waste the courts time with motions that could have been solved through a cursory investigation, in office. Failing in due diligence, the Respondents must not be allowed to abuse the system and place additional administrative costs (copies) on the Appellant.

On an additional note, although not required, the respondents have never contacted the Appellant in response to any of the issues raised in this motion or the one previous.

Finally appellant requests that the briefing schedule in this appeal not be suspended as the respondents initial response is currently due August 18, 2014, or in the discretion of the court order the respondents initial response brief due 15 days after adjudication of this motion.

WHEREFORE, based on all of the above, the Appellant respectfully requests that the Respondents' Motion be denied or that the Appellant be given the opportunity to Amend both his initial brief and designation of matter or that the clarifications herein be incorporated into appellant's amended initial brief and designation of matter. Also, that the respondents be ordered to supply their response brief as soon as possible in the interest of fairness, and/or any other action the court may deem fair and just.



John C. McDaniel, Pro Se Appellant
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Charleston, SC 29412
843-425-3000
Jmcdaniel1982@gmail.com

August 14, 2014

The South Carolina Court of Appeals

John McDaniel, Employee, Appellant,

v.

Career Employment Professional D/B/A Snelling
Staffing, Employer, and United Wisconsin Insurance Co.,
Carrier, Respondents.

Appellate Case No. 2014-000186

ORDER

Respondents have filed a motion to strike and/or require Appellant to amend his initial brief and designation of matter. After careful consideration, Respondents' motion is granted in part and Appellant's brief and designation of matter are stricken. Within fifteen days of this order, Appellant shall file an amended designation of matter, which does not include any personal recordings. Furthermore, within fifteen days of this order, Appellant shall file an amended initial brief, which contains intelligible references to the materials cited in the designation of matter pursuant to Rule 208(b)(4), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
John McDaniel
R. Mark Davis, Esquire

FILED

July 3, 2014

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PROOF OF SERVICE

I certify that I have served Appellant's Response to Respondents' Motion by depositing a
copy in the U.S. Mail, postage paid on August ¹⁵/~~14~~, 2014 addressed to the below:

R. Mark Davis
Helen F. Hiser
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29465

Weston Adams, III
PO Box 12519
Columbia, SC 29211-2519


Elizabeth A. Dale

¹⁵
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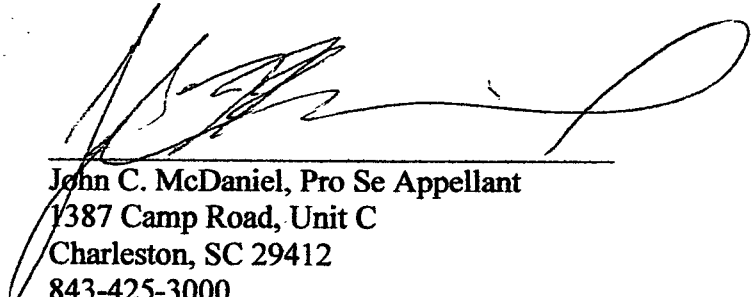
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R. Mark Davis
Helen F. Hiser
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
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Weston Adams, III
PO Box 12519
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Elizabeth A. Dale

¹⁵
August 14, 2014