

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 25 2014

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

W.C.C. File No. 1116275

John McDaniel, Employee,.....Appellant,

v.

Career Employment Professional
d/b/a Snelling Staffing, Employer, and
United Wisconsin Insurance Co., Carrier, Respondents.

**REPLY TO APPELLANT'S RESPONSE IN OPPOSITION TO
MOTION TO STRIKE AND/OR AMEND
APPELLANT'S REVISED INITIAL BRIEF AND
REVISED DESIGNATION OF MATTER**

Respondents Career Employment Professional d/b/a Snelling Staffing and United Wisconsin Insurance Co. hereby reply to Appellant John McDaniel's Response ("Response") in opposition to Respondents' Motion to Strike and/or Amend Appellant's 2nd Initial Brief and 2nd Designation of Matter ("Motion to Strike"). To begin with, Appellant incorrectly suggests that Respondent's Motion to Strike should be "heard in the light most favorable to the non-movant," (Response p. 1), *i.e.*, the standard applied to dispositive motions such as motions for summary judgment, directed verdict and/or for JNOV. Appellant's suggestion is entirely unsupported by case law and should be rejected. A motion to strike non-complying portions of a brief and designation is of an entirely different nature than a dispositive motion and the standard for the

latter does not apply to the former. Accordingly, this Court should decide Respondents' Motion to Strike on its merits.

Furthermore, Respondents categorically reject Appellant's suggestion that the Motion to Strike is an attempt to delay this appeal or gain extra time to respond to Appellant's brief. Respondents cannot adequately reply to a brief that relies on cryptic cites to the underlying record, relies on non-record material and, in the case of Appellant's Revised Initial Brief, is ever-changing. Appellant should not be allowed to change, revise and rearrange his arguments once he has filed his Initial Brief. Although, Appellant has chosen to proceed *pro se*, he still must comply with this Court's rules just as all other parties must.

Appellant's protestations essentially amount to asking this Court to allow him to re-write his Initial Brief and somehow penalize Respondents for asking that he comply with this Court's rules. Appellant's attempt to characterize the substantive re-write of his Initial Brief as a merely "clarification" should be rejected. Contrary to his suggestions otherwise, (Response, pp. 1, 2), neither Respondents' initial Motion to Strike and/or Amend Portions of Appellant's Initial Brief and Designation of Matter ("First Motion to Strike") nor this Court's July 3, 2014 Order requested him to clarify or rearrange the legal arguments in his Initial Brief, but merely to strike cites to non-record materials and, in a couple of instances, clearly identify the specific portions of the record below to which he was citing.

The revisions to Appellant's Initial Brief go beyond mere correction of "a small number of typographical errors." (Response, pp. 2, 3). As noted in the Motion to Strike, Appellant's Revised Initial Brief contains multiple new sections and new substantive arguments that did not appear in his first Initial Brief. Appellant's claim that he did not substantively revise his Initial Brief is belied by his convoluted explanation of where and how his arguments moved around and

why new arguments were added. (Motion pp. 3-4). Ultimately, even Appellant admits that he “has restated and clarified his appeal,” and attempted “to clarify any ambiguities that may have been present in the Appellant’s 1st initial brief.” (Motion pp. 3, 4).¹

This Court’s July 3, 2014 Order simply did not authorize him to take a second swipe at trying to write or expand or better organize his Initial Brief. The reason the time allowed for Appellant to resubmit his Revised Initial Brief was relatively short is because all that was asked of him was to clarify certain citations and remove references to non-record material.

Appellant goes so far as to ask the Court itself to uncover “applicable law whether omitted or properly stated” in his brief, that might support his case. (Motion p. 4). It is not this Court’s role to advocate on the part of either party, regardless of whether a party is represented by counsel or proceeding *pro se*.

As to the specific items addressed in Appellant’s Response, Respondents note as follows:

13.² Form 13 with attached Form 15-S Dated September 6, 2012;

15. Form 21 dated September 17, 2012; and

18. Dan Cobb Deposition Aug. 20, 2012.

Appellant does not dispute that these items were not listed in his initial Designation of Matter. These additional items are part of Appellant’s attempt to re-write and improve his previously filed Initial Brief and, consequently, they should be stricken from his both his Revised Initial Brief and his Revised Designation.

Although Appellant states that the following:

¹ Appellant apparently misconstrues Respondents’ Motion to Strike as raising preservation issues. (Motion pp. 3-4). Respondents have not raised any preservation arguments at this point; instead, they argue that Appellant should be required to comply with this Court’s procedural rules and file an amended Initial Brief that complies with this Court’s July 3, 2014 Order.

² Again, all numbered references herein are to Appellant’s Revised Designation of Matter, filed July 18, 2014 (“Revised Designation”), unless otherwise indicated.

29. Email chain about “Proposed Findings of Fact RE:SCWCC File #1116275” dated Aug. 30 2013 and dated Dec. 2, 2013;

34. Email chain about “re: Proposed order language” dated Sept. 13, 2013; and

36. Rehabilitation Centers of Charleston Report dated June 26, 2012,

“appeared in appellant’s initial designation 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),” (Response p. 5), a review of his Response to Respondents First Motion to Strike reveals otherwise. For example, in the First Motion to Strike, Respondents queried whether No. 6 in that motion referred to:

6. “Emails regarding objection to Request for Full Commission Order & Proposed Finding of Fact w/ Attachment” (*possibly dated December 16, 2013*).

In his Response to the first Motion to Strike, Appellant stated, “**As to Paragraph 6: Appellant agrees.**” (Att. N, p. 4). Similarly, in their first Motion to Strike, Respondents asked Appellant to verify No. 13:

13. Motion for Additional Evidence and Deposition Testimony and Exhibits (Deposition Testimony of John C. McDaniel)” (*possibly dated May 10, 2013*);

In his Response to the first Motion to Strike Appellant stated, “**As to Paragraph 13: Appellant clarifies date filed of May 14, 2013.**” (Att. N. p. 4). None of the items listed in No. 29, 34 or 36 is dated either December 16, 2013 or May 14, 2013. Thus, it is apparent that designation Nos. 29, 34, and 36 were not listed in Appellant’s initial Designation and, as a result, should be stricken from his Revised Designation.

The undersigned has located a copy of a July 22, 2013 medical report from Pain Specialists of Charleston, Brittany D. Whiteside, PA. Assuming this is the record to which Appellant is referring in No. 31 of his Revised Designation, Appellant’s own records, (Att N, p.

9 (letter from John C. McDaniel to Virginia Crocker, S.C. Workers Compensation Commission)), indicate that this was not provided to the Commission until October, 4, 2013, ten days before the Commission's Appellate Panel hearing. Appellant did not file a motion to enter this medical report into the Commission record. As such, it was not part of the record reviewed and relied on by the Commission and should be stricken from his Revised Initial Brief and his Revised Designation.

Although Appellant clarified that Nos. 9 and 10 in his Revised Designation are intended to be a single designation, his response to the first Motion to Strike clearly indicated that the only portions of the APA that were indicated by "Claimant's Motion for Additional Evidence to Complete the Record and Notice of Additional APA Submissions with attachments dated March 6, 2013 filed May 09, 2013" included pages 127, and 166-195 of the APAs. To the extent Appellant is revising and adding to his Initial Brief and/or Designation, he should be instructed to comply with this Court's July 3, 2014 Order.

Clearly, Appellant will have a chance to designate additional materials in his Reply Brief, should he choose to file one. Respondents are not attempting to restrict which portions of the record Appellant designates for this Court's review. Instead, Respondents are trying to obtain sufficient clarification as to what portions of the record Appellant is relying on in his Initial Brief so that they can properly respond, and asking that Appellant comply with the same procedural rules that apply to all other parties appearing before this Court.

Appellant appeals to this Court's leniency because he is "not a law professional." However, he had competent counsel before the South Carolina Workers' Compensation Commission who he voluntarily dismissed. Failure to comply with Court rules and proper

appellate procedure is a risk *pro se* appellants,³ particularly those who have chosen to proceed without formal legal representation for reasons of their own, must face.

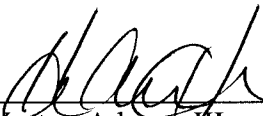
At the end of the day, this Court's July 3, 2014 Order only authorized Appellant to file: 1) "an amended designation of matter, which does not include any personal recordings," and 2) "an amended initial brief, which contains intelligible references to the materials cited in the designation of matter pursuant to Rule 208(b)(4), SCACR." Appellant's Revised Initial Brief and Revised Designation of Matter go far beyond this limited instruction and, therefore, must be stricken.

CONCLUSION

For the reasons stated herein and in Respondents' Motion to Strike, Respondents move this Court to strike Appellant's Revised Initial Brief and Revised Designation, both dated July 18, 2014, and to order Appellant to conform both filings with his Court's July 3, 2014 Order. Finally, Respondents again request that the briefing schedule be stayed while the Court considers this Motion.

McANGUS GOUDELOCK & COURIE, L.L.C.

August 22, 2014



Weston Adams, III
S.C. Bar No.: 64291
Meridian 10th Floor
1320 Main Street
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

³ It is unclear whether Appellant continues to be unrepresented by legal counsel, as all of his Proofs of Service thus far to this Court have been signed by Appellant himself; however, the Proof of Service attached to his Response is signed by an "Elizabeth A. Dale." What her role and authority is in assisting Appellant prepare and file his appellate materials is unknown at present.

Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1116275

John McDaniel, Employee,.....Appellant,

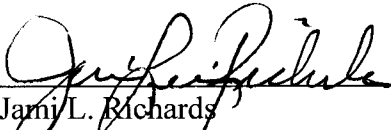
v.

Career Employment Professional
d/b/a Snelling Staffing, Employer, and
United Wisconsin Insurance Co., Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 22nd day of August, 2014, I served the Respondents' **Reply to Appellant's Response in Opposition to Motion to Strike and/or Amend Appellant's Revised Initial Brief and Revised Designation of Matter** on John McDaniel by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

John C. McDaniel, *Pro Se*
1387 Camp Road, Unit C
Charleston, SC 29412



Jami L. Richards
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Career Employment
Professional d/b/a Snelling Staffing and United
Wisconsin Insurance Co.*

RECEIVED

AUG 25 2014

SC Court of Appeals



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

August 22, 2014

Via U.S. Mail

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

RE: John McDaniel v. Career Employment Professionals d/b/a Snelling Staffing
Services and United Wisconsin Insurance Company c/o United Heartland
Date of Accident: November 21, 2011
WCC File No.: 1116275
Our File No.: 20638.12027
Claim No.: 041100021048
Appellate Tracking No.: 2014-000186

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Reply to Appellant's Response in Opposition to Motion to Strike and/or Amend Appellant's Revised Initial Brief and Revised Designation of Matter, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

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

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

RECEIVED

AUG 25 2014

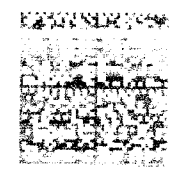
Enclosures

cc: John C. McDaniel, *Pro Se*

SC Court of Appeals

735 JOHNNIE DODDS BLVD, SUITE
200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM



mgc

POST OFFICE BOX 650007
MOUNT PLEASANT, SC 29465

RECEIVED

AUG 25 2014

SC Court of Appeals

20638.12027/HFH/jr

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

