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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2014-001720

Michael D. Ficklin Appellant,

vs.

Security Forces, Inc., Employer and
Sentry Insurance Co., Carrier Respondents.

RETURN TO MOTION TO DISMISS

Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Appellant

Respondents Security Forces, Incorporated and Sentry Insurance Company move pursuant to Rule 240, SCACR, to dismiss Michael Ficklin's appeal to this Court on the ground that the underlying circuit court order is interlocutory and not directly appealable given the remand to the Workers' Compensation Commission. Both parties appealed the Workers' Compensation Commission's Appellate Panel order to the circuit court for Laurens County alleging multiple errors. The circuit court stated:

The claimant's position can be summarized as follows: the Full Commission erred in allowing video surveillance into the record over claimant's objection; in denying the compensability of claimant's alleged psychological injury; in awarding less than permanent and total disability; in failing to make sufficient findings of fact concerning the date of MMI, the extent of claimant's loss of earning capacity, and extent of loss of use of body parts affected other than the claimant's back. The claimant asserted he should be entitled to lump-sum payment of benefits or lifetime allocation of his award, and that the Full Commission awarded too much credit to the defendants for overpayment of TTD. The defendants, on the other hand, maintained the Commission's determination as to credit for overpaid TTD should be affirmed with the exception that MMI should have been found as of March 16, 2007, as determined by Dr. Kanos, the authorized treating neurosurgeon; and therefore, that they were not awarded enough credit for over paid TTD.

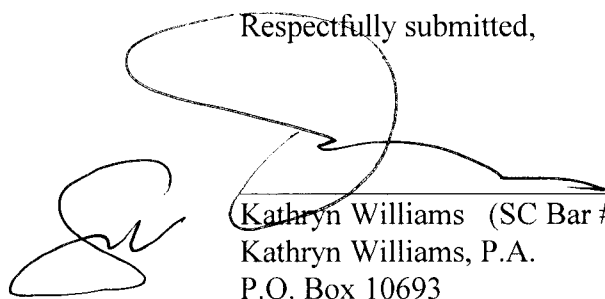
The circuit court ultimately remanded the issues of the date of maximum medical improvement and credit for overpayment of temporary total disability compensation benefits. However, the circuit court chose not to wait on the result of the remand and reached all other issues before it. The circuit court stated: "As to all other issues, this Court finds the record contains sufficient or substantial evidence to support the Commission's ruling." Accordingly, the merits of a large number of the

issues raised by the parties have been finally ruled on by the Commission and the circuit court, though two issues remain to be finally decided following the remand. Because of the many finally determined issues, and in an abundance of caution, Ficklin filed the instant appeal to this Court.

Security Forces and Sentry Insurance now move this Court to dismiss the instant appeal contending that the entirety of the circuit court's order is interlocutory and not directly appealable based on Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012). However, it is unclear that this situation fits neatly into the scenario contemplated by the Bone court. For instance, Ficklin argues that the Commission erred in failing to find that he entitled to permanent total disability, and such a determination on appeal would render moot the date of maximum medical improvement and credit issues argued by respondents, making remand unnecessary. As such, the timing of the current appeal may be appropriate.

Accordingly, Ficklin argues that the current motion should be denied.

Respectfully submitted,



Kathryn Williams (SC Bar #6140)
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent/Appellant

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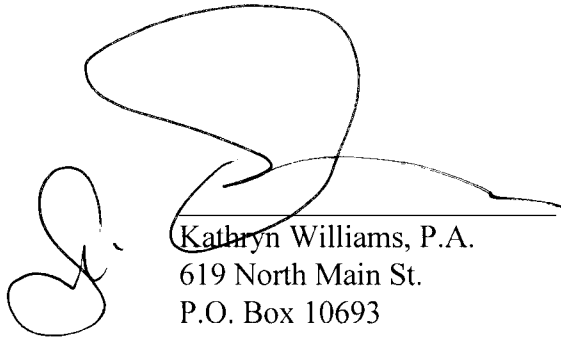
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CERTIFICATE OF SERVICE

I certify that I have served the RETURN TO MOTION TO DISMISS on Respondents by depositing a copy in the United States Mail, postage prepaid on 12/22/14, addressed to their attorney of record, Grady L. Beard, Esq. of Sowell Gray Stepp & Lafitte, LLC at P.O. Box 11449, Columbia, SC 29211.


Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
ANDREW N. PRICE
TOM J. ERVIN
OF COUNSEL

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

December 22, 2014

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

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Re: **Michael D. Ficklin v. Security Forces, Inc., et al.**
Court of Appeals Case Tracking No.: **2014-001720**

Dear Ms. Kitchings:

Enclosed herein please find the following items for filing in the above matter:

1. Return to Motion to Dismiss (original and six copies);
2. Certificate of Service by Mail.

By copy of this letter, I am also serving defendants' attorney with copies of the same.

Kindest regards,

Yours truly,


Kathryn Williams

KW:d
Enclosures

cc: Grady L. Beard, Esq.
B. Gibbs Leaphart, Jr., Esq.
Sowell Gray Stepp & Lafitte, LLC
P.O. Box 11449
Columbia, SC 29211

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KATHRYN WILLIAMS, P.A.
ATTORNEYS AT LAW

P.O. BOX 10693
619 N. MAIN STREET
GREENVILLE, SC 29603

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