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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

174919

W.C.C. File No.: 1122484
Appellate Case No.: 2014-002070

William W. Huggins, Jr. Claimant, Respondent,

v.

City of Mullins and South Carolina Municipal Trust Defendants, Respondents.

and

Dr. Rakesh Chokshi Non-Party Appellant.

MOTION TO DISMISS

Respondents, City of Mullins and the South Carolina Municipal Trust, move to dismiss Dr. Rakesh Chokshi's appeal of the underlying Order compelling him to give his deposition in accordance with the workers' compensation fee schedule because Dr. Chokshi lacks standing to challenge it under Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881(1986).

STATEMENT OF THE CASE

Dr. Rakesh Chokshi is a non-party appellant. He has appealed the Decision and Order of the Full Commission Appellate Panel dated September 3, 2014, wherein it upheld the Decision and Order of Commissioner Roche granting the defendants' Motion to Compel Dr. Chokshi to provide his deposition pursuant to the South Carolina Workers' Compensation Fee Schedule.

By way of background, this matter involves an admitted work-related accident on September 19, 2011, resulting in an admitted injury to the claimant's low back. The defendants authorized medical care for the claimant's low back injury with Dr. Odom. Dr. Odom diagnosed the claimant with a low back sprain and eventually released the claimant to return to work full-duty on September 28, 2011.

The defendants authorized a follow-up visit with Dr. Odom due to the claimant's complaints of continued low back pain. The claimant at this time alleged a new complaint of right-sided neck pain. Dr. Odom opined that the claimant's neck spasm was not directly-related to the admitted accident. As such, the defendants denied the neck was related to the admitted accident and declined to provide additional medical care.

In the meantime, the claimant also sought unauthorized medical care with his family care provider, Dr. Carroll, for neck and low back problems allegedly related to the admitted workers' compensation accident. Dr. Carroll eventually referred the claimant for an unauthorized evaluation with Dr. Chokshi for the alleged cervical problems. All of the unauthorized treatment was without notice to or knowledge by the Defendants. Dr. Chokshi treated the claimant on October 28, 2011, and November 20, 2011. Dr. Chokshi billed the claimant's health insurance for these visits.

On or about January 18, 2013, the claimant issued a questionnaire to Dr. Chokshi, asking that he complete it with regards to the claimant's back and neck problems. Dr. Chokshi completed the questionnaire regarding the back and neck problems. A second questionnaire was completed by Dr. Chokshi on May 16, 2013. In this questionnaire, Dr. Chokshi opined that the claimant's neck injury was caused by the September 19, 2011, incident. This questionnaire was submitted by

the claimant to support his workers' compensation claim. In fact, Hearing Commissioner Barden has found the claim compensable, though it is currently on appeal to the Full Commission.

In further defense of the claim, defendants scheduled Dr. Chokshi's deposition. On July 26, 2013, defendants contacted Dr. Chokshi's office to confirm the deposition date and time. In addition, counsel for defendants sought to confirm that payment for same would be in the amount of \$400.00 for the first hour, and \$100 for each additional fifteen minutes thereafter as required by the SCWCC fee schedule.

Dr. Chokshi's office manager issued a letter to counsel for the defendants on July 26, 2013, requesting \$1,000.00 per hour and each additional hour for \$500 as Dr. Chokshi did not treat the claimant under workers' compensation. According to a follow-up email, the difference would be refunded if the case settled as a workers compensation claim.

Defendants subsequently filed a Motion to Compel Dr. Chokshi's deposition with the Commission. On January 27, 2014, after a hearing on the matter, Commissioner Roche issued an order dated January 27, 2014, granting the Motion to Compel. Dr. Chokshi appealed the Order to the Full Commission. On March 10, 2014, Dr. Chokshi gave his deposition in this matter. On September 3, 2014, the Full Commission affirmed the decision of Commissioner Roche. This appeal followed.

AGRUMENT

The Court of Appeals should dismiss the appeal of Dr. Chokshi because the Order he is appealing became moot once Dr. Chokshi complied with the Order and gave his deposition in the underlying action pursuant to the fee schedule.

Under South Carolina law, it is well established that a non-party suffers no legal injury when ordered to participate in discovery and that the necessary legal injury does not arise until the

party is held in contempt for failing to comply with the discovery order. Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881(1986)). In this case, because Dr. Chokshi was not held in contempt of the court, he has no legal injury and no basis to appeal.

In Whetstone, a non-party witness appealed an order directing him to attend a deposition and provide certain documents. The Court held that “an order directing a non-party to submit to discovery is not immediately appealable.” Id. at 580, 347 S.E.2d at 881. In so holding, the Court outlined the appropriate procedure available to a non-party who wishes to appeal a discovery order. A non-party may either: (1) comply with the discovery order and waive any right to challenge it on appeal; or (2) refuse to comply with the order and appeal after being held in contempt for the failure to comply. Id.

In the present case, Dr. Chokshi chose to comply with the Commission’s Order and give a deposition and accept the fee schedule rate rather than be held in contempt. While he “reserved the right” to contest the fee paid to him for his deposition, this is of no legal consequence because our Supreme Court has established the manner in which one can appeal a discovery order. Because Dr. Chokshi was not held in contempt of court with respect to the Order compelling his deposition in accordance with the fee schedule, he has no right to appeal said Order. Therefore, the appeal should be dismissed.

Lastly, and as noted above, the underlying claim was found compensable by Commissioner Barden. That ruling is on appeal to the Full Commission. Therefore under Dr. Chokshi’s own theory of the case, he has been paid the appropriate fee as the case now stands.

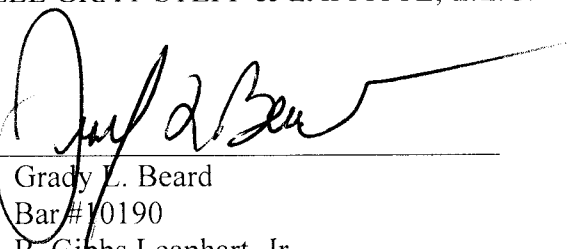
CONCLUSION

Due to Dr. Chokshi’s failure to follow the appropriate procedure for being held in contempt and appealing the contempt order, there is no case or controversy remaining for Dr. Chokshi to

appeal, as the appellate courts will not rule on moot and academic questions or make an adjudication where there remains no actual controversy. Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997). By failing to perfect his own appeal via a contempt sanction, any possible claim Dr. Chokshi may have had has now been extinguished. Moreover, as the underlying claim now stands, Dr. Chokshi has been paid the appropriate fee under his own legal theory.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:



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February 2, 2015

CERTIFICATE OF SERVICE

I, the undersigned, Legal Assistant of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendant/Respondent, do hereby certify that I have served the following parties with the foregoing document(s) by mailing a copy of the same via United States Mail, postage prepaid, and/or hand delivering, or otherwise indicated, to the following address(es):

Pleading(s): **MOTION TO DISMISS**

Parties served:

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
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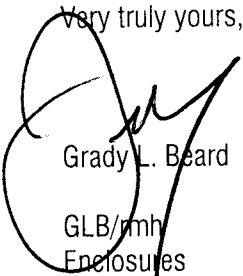
RE: William W. Huggins, Jr., Claimant, Respondent, v. City of Mullins and South Carolina Municipal Trust, Defendants, Respondents and Dr. Rakesh Chokshi, Non-Party Appellant
Appellate Case No.: 2014-002070
WCC File No.: 1122484
Date of Accident: 09/19/11
Claim No.: 63-79462
Our File No.: 5682/8175

Dear Ms. Kitchings:

Please find enclosed herewith the original and one (1) copy of a Motion to Dismiss in the above-referenced matter. We would appreciate your filing the original and returning a clocked-in copy of same to us via our courier. We are enclosing our Firm's check for the \$25.00 filing fee.

By copy of this correspondence to Natalie S. Stevens-Graziani, Esquire, Carl E. Pierce, II, Esquire, Benjamin C. Smoot, II, Esquire, the Office of Court Administration and Ms. Amy Bracy, SCWCC Judicial Director, we are advising them of same. Should you have any questions, please feel free to contact me.

Very truly yours,


Grady L. Beard

GLB/mh
Enclosures

cc: Natalie S. Stevens-Graziani, Esquire (w/enclosures)
Carl E. Pierce, II, Esquire (w/enclosures)
Benjamin C. Smoot, II, Esquire (w/enclosures)
Office of Court Administration (w/enclosures)
Ms. Amy Bracy, SCWCC Judicial Director (w/enclosures)
Mr. Tony Deschamps (w/enclosures)
Ms. Felicia Turner (w/enclosures)

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