

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

FEB 17 2015

SC Court of Appeals

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

William W. Huggins, Jr. Claimant, Respondent,

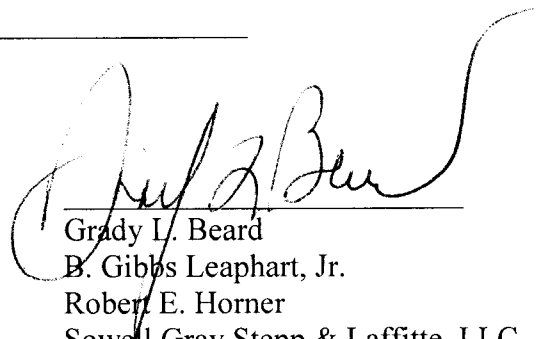
v.

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

and

Dr. Rakesh Chokshi Non-Party Appellant.

**RESPONDENTS' REPLY TO RETURN TO
MOTION TO DISMISS**



Grady L. Beard
B. Gibbs Leaphart, Jr.
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondents

Respondents City of Mullins and South Carolina Municipal Trust hereby submit this Reply to Appellant Dr. Chokshi's Return to the Motion to Dismiss. For the reasons set forth herein, the Respondents respectfully submit that dismissal of the appeal is still required under South Carolina law.

Argument

Dr. Chokshi argues he is entitled to continue his appeal under the Administrative Procedures Act pursuant to South Carolina Code section 1-23-280 because appeals under the APA are handled different than under the general appealability statute found at South Carolina Code section 14-3-330. However, this is a distinction without a difference and does not save his appeal from dismissal.

Though a workers' compensation case is one that is appealed pursuant to the APA, the result of dismissal is the same under the general appealability statutes or the APA because of the type of Order being appealed and because Dr. Chokshi is a non-party appellant. South Carolina Code section 1-23-380 states in relevant part:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law.

S.C. Code § 1-23-380 (1976). South Carolina Code section 1-23-505 defines who is a party for purposes of the APA. This section states that a "party" means "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party[.]" S.C. Code § 1-23-505(5) (1976).

Though Appellant may have been "involved" in the proceedings with respect to the Motion to Compel his deposition due to his failure to give his testimony under the fee schedule, Appellant

was by no means a party to the action. The action below was a workers' compensation case between the claimant and his employer. Dr. Chokshi became involved in the matter when he demanded \$1000.00 per hour for a deposition, despite the fact that the Respondents believed the matter was controlled by the SCWCC fee schedule. Appellant chose to contest a lawfully issued subpoena, forcing the Respondents to move to compel his testimony under the fee schedule. Appellant lost that issue, appealed to the Full Commission, and lost that issue again. However, at no time did he become a party to the underlying workers' compensation matter, and it would have been absurd had he attempted to do so.

Appellant is a non-party who was brought into this matter for his refusal to abide by the subpoena, a mechanism of discovery directed (typically) to non-parties. He remained a non-party throughout. Though Appellant had standing, due to his refusal to honor the subpoena issued to him, to appear before the Hearing Commissioner, and again before the Full Commission, to argue why he should not be compelled to comply in accordance with the fee schedule, his standing to contest the subpoena ended when he complied with the subpoena. *See Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) (noting that to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding). Had the Appellant desired to appeal the Order of the SCWCC further, his remedy was to refuse to comply with the Order, be held in contempt, and immediately appeal the contempt order. *Id.* citing (*Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881–82 (1986) (“An order directing a party to participate in discovery is interlocutory and not directly appealable.... Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.”))

While Dr. Chokshi argues there is a strong presumption in favor of judicial review of administrative actions, he fails to ignore the fact that the law has already provided him, and anyone like him who has been compelled to provide discovery, a means to obtain judicial review of such an Order. *See Ex parte Whetstone, supra.* Appellant's arguments that he is a party because he had standing to contest a discovery order that was decided against him and which he rendered the appeal of as being moot upon his compliance is merely an effort to get around the fact that his appeal should be dismissed under South Carolina law.

Appellant further argues that the Respondents "invoked the jurisdiction of the Act and opened the door to allow Appellant to have standing" The Act was invoked when the claimant in the underlying workers' compensation claim filed his claim seeking benefits from the Respondents. Respondents did not invoke the Act but did take advantage of the rights and privileges afforded under the Act by issuing a subpoena requesting a deposition from Dr. Chokshi who refused to give it unless he was paid substantially in excess of the fee schedule. Respondents did not object to Dr. Chokshi's appearance at the hearing on the Motion to Compel because Dr. Chokshi was the subject of the Motion to Compel and, ultimately, the Order compelling his deposition. His deposition was necessary in the defense of the underlying workers' compensation claim. It defies reasoning to say that he could not appear at a hearing on a motion that could have resulted in his being compelled to provide testimony; however, it also defies reason to say that merely because he appeared at the hearing, he has standing under the APA to continue to appeal the Order after his compliance with the Order, particularly in light of Supreme Court precedent instructing how such orders should be appealed.

Appellant further misunderstands the procedural history of this case when he asserts this is a contested case involving ratemaking. This was a contested case involving a workers'

compensation claim, to which he is not a party. If Appellant wants to file a ratemaking claim with an administrative law judge, he is free to do so, but his attempts to convert an order compelling his deposition into a ratemaking case because he is dissatisfied with his deposition fee are disingenuous.

Appellant's attempts to get around *Ex parte Whetstone* are based upon a narrow reading of the holding in that case. The APA requires that an appeal can only be had by a "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case." S.C. Code § 1-23-380 (1976). Again, Appellant is not a party to the action and is not entitled to appeal the discovery order at all if he complies with it. Rather, he must be held in contempt. The Appellant has already given his deposition as commanded and given it in accordance with the fee schedule. There is nothing left for Appellant to contest.¹

Appellant further argues that his appeal does not involve an order directing a non-party to submit to discovery, an argument that flies in the face of the facts of this case. While his refusal to comply with a lawfully issued subpoena may have arisen out of his refusal to comply with the fee schedule, this was raised and decided solely in the context of Respondents' Motion to Compel. Respondents do not disagree with the assertion that the SCWCC retained exclusive jurisdiction over the enforcement of the subpoena that was issued and not complied with. However, the law is clear that once a discovery order is complied with, there is nothing left for a tribunal to decide, as the appellant no longer suffers a legal injury that is capable of being addressed on appeal.

Appellant's argument that it is capable of repetition yet evading review is without merit, as the Supreme Court has identified how the Appellant can challenge a subpoena commanding his appearance at a deposition under the SCWCC fee schedule: (1) he can refuse to comply with the

¹ Nothing prevents Appellant from filing suit under the Declaratory Judgment Act, South Carolina Code section 15-53-10 et al.

next subpoena issued to him, (2) be compelled to appear, (3) refuse to comply with the order in question, (4) be held in contempt, and (5) immediately appeal the contempt order. This order would not only be immediately appealable, but would not become moot unless or until it was complied with. Without following that procedure, the Appellant has not suffered any legal injury, as the Supreme Court has held that a non-party suffers no legal injury when he is ordered to participate in discovery and any legal injury does not arise until he is held in contempt. *See Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535. If Appellant does not comply with a future discovery order compelling his deposition and instead is held in contempt, he has not only suffered the necessary legal injury to appeal, he alone can guarantee that his case will not evade review. When that happens, the Appellant can have his day in court that he prematurely seeks in this case.

Conclusion

For the reasons set forth herein, Respondents City of Mullins and South Carolina Municipal Trust respectfully requests this appeal be dismissed.

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

By: 

Grady L. Beard

Bar #10190

B. Gibbs Leaphart, Jr.

Bar #72609

Robert E. Horner

Bar #16326

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Respondents City of Mullins and
South Carolina Municipal Trust

February 17, 2015

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VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

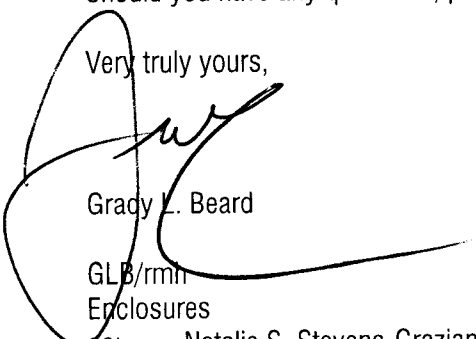
RE: William (Billy) W. Huggins, Jr. v. City of Mullins
Appellate Case No.: 2014-002070
WCC File No.: 1122484
Date of Accident: 09/19/11
Claim No.: 63-79462
Our File No.: 5682/8175

Dear Ms. Kitchings:

Please find enclosed herewith the original and seven (7) copies of Respondent's Reply to Return of Appellant 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.

Should you have any questions, please feel free to contact me.

Very truly yours,


Grady L. Beard

GLB/rmh
Enclosures

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