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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
South Carolina Workers' Compensation Commission
Appellate Panel

T. Scott Beck, Commissioner for the Appellate Panel;
Andrea C. Roche, Commissioner, and Avery B. Wilkerson, Jr., Commissioner,
concurring

Appellate Case No.: 2014-001676 (S.C. Ct. App. Order Filed January 8, 2015)

Russell Goodwin, (Employee/Claimant), Petitioner,
v.
Employbridge d/b/a Prologistix (Employer) and
American Casualty Company of Reading PA (Carrier), Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly denied Petitioner’s Motion to File Notice of Intent to Appeal on the grounds that it was a jurisdictional question not properly raised to the Court of Appeals for consideration.
2. Despite the Court of Appeals lack of authority to hear the motion on jurisdiction grounds, whether there was sufficient evidence to establish that the Petition was *Non Compos Mentis*, so as to allow for an equitable tolling of his filing deadline.

STATEMENT OF THE CASE

Petitioner was involved in an admitted accident arising out of and in the course of his employment on July 5, 2011. As a result of the accident, Respondents provided Petitioner with authorized causally related treatment pursuant to S.C. Code Ann. § 42-15-60. On September 27, 2012, Petitioner was found to be at maximum medical improvement (“MMI”) by his authorized treating physician. As a result, on April 22, 2013, Respondents filed a Form 21 Request for Hearing, seeking stop payment of temporary compensation, an award for permanency if appropriate, and credit for overpayment of temporary compensation paid after MMI. Petitioner, proceeding Pro Se, filed a Form 50 Request for Hearing on April 24, 2013, alleging injuries to his arms, legs, neck, nerves, and throat. In response, Respondents timely filed a Form 51, admitting Petitioner’s injury to the cervical spine, but denying the extent of injuries as alleged by Petitioner. It was the Petitioner’s position that he was not at MMI, and he requested additional medical care for the alleged injuries listed on his Form 50.

A hearing was held before the Single Commissioner on July 12, 2013. On July 15, 2013, the Single Commissioner issued a Decision and Order wherein she found that Petitioner reached MMI on September 27, 2012 and sustained 38% permanent partial disability to his back (neck). Further, the Single Commissioner found that Respondents were entitled to credit for all temporary total disability benefits paid after February 22, 2013, and Petitioner was not entitled to any additional future medical treatment as none was recommended by an authorized treating physician.

On October 3, 2013, Petitioner filed a Form 30 Request for Commission Review. Oral arguments were held before the Workers’ Compensation Full Commission Appellate

Panel on February 18, 2014. On May 20, 2014, the Full Commission issued an Appellate Panel Decision and Order affirming the Single Commissioner's Jul 13, 2013 Order in full.

Petitioner contends he received written notice of Order on May 25, 2014, but he did not file a Notice of Intent to Appeal until July 29, 2014, over one month past the 30 day deadline set forth in Rule 203(b)(6). On September 2, 2014. Petitioner filed a Motion to File [his notice of intent to appeal] Out of Time. The Court of Appeals denied Petitioner's Motion on November 5, 2014, and subsequently denied Petitioner's Motion for Reconsideration [Petition to Rehear] on January 8, 2015. Petitioner filed the current Petition for Writ of Certiorari on February, 5, 2015.

ARGUMENTS

I. The South Carolina Court Of Appeals Properly Denied Petitioner's Motion To File [Notice Of Intent To Appeal] Out Of Time Based On Jurisdictional Grounds And In Accordance With Rule 263(B)(3).

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, "a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242, SCACR provides a list of the character of reasons that will normally be considered, although the list is neither controlling nor fully measuring the Supreme Court's discretion or power to grant review. The list of the general character of reasons the Court will consider in Rule 242 SCACR includes the following:

1. Where there are novel questions of law;
2. Where there is a dissent in the decision of the Court of Appeals;
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;

4. Where substantial constitutional issues are directly involved; and
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Petitioner's Writ of Certiorari clearly fails to meet numbers 2-5 of the character of reasons set forth in Rule 242, SCACR. There was no dissent in the opinion, the decision of the Court of Appeals does not conflict with any prior Supreme Court decision, there are no constitutional issues involved, and there are no federal questions included.

In this case, Petitioner's counsel suggests that since counsel has been unable to find South Carolina case law dealing with the applicability of the American Disability Act ("ADA"), then the issue appears to be a novel question of law that the Supreme Court should address. Respondents respectfully argue that this line of thinking is illogical and holds absolutely no merit.

Respondents acknowledge that the list in Rule 242 SCACR is not controlling and in no way limits the Court's power to grant review, but Respondents argue the immediate case is one in which Petitioner's argument fails outright on jurisdiction grounds, and therefore the Courts have no grounds to review the merits of his argument.

The South Carolina rules of Appellate Procedure are very clear on the remedy Petitioner seeks in this matter, an extension of time to file their Notice of Intent to Appeal. "The time prescribed by these rules [Rule 263] for performing or any act *except the time for serving notice of intent to appeal under Rules 203 or 243* may be extended or shortened by the appellate court, or by any judge or justice thereof." (Rule 263(b)(emphasis added)); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2nd 206 (1985)(explaining the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which notice of intent to appeal must be

served).

The Court of Appeals did not err in failing to address the applicability of the American Disabilities Act as suggested by Petitioner. Instead, the Court of Appeals properly dismissed the Petitioner's request on jurisdictional grounds, and therefore had no need to go into the merits of Petitioner's request for an equitable tolling of the deadline to file the Notice of Intent to the Appeal.

II. Regardless Of The Court Of Appeal's Lack Of Authority To Hear Petitioner's Argument Based On Jurisdictional Grounds, Petitioner Was Not *Non Compos Mentis*, So As To Allow For An Equitable Tolling Of The Deadlines Prescribed In The Rules.

Regardless of the fact that on jurisdictional grounds the Petitioner's request was not properly before the Court of Appeals, nor is it proper for this Court, in an abundance of caution, Respondents address Petitioner's specific arguments below.

Petitioner seeks an equitable tolling of the deadline for filing his notice of intent to appeal on the grounds that Petitioner was *non compos mentis*, which Petition defines as incapable of handling one's own affairs of function in society. *Smith v. Haynie*, 155 F.3d at 580. Petitioner further states that in order to be *non compos mentis*, an individual must show that he or she "was unable to engage in rational thought and deliberate decision making sufficient to pursue her claim alone or through counsel." *Id.* (quoting *Nunnally v. MacCausland*, 966 F.2d 1, 5 (1st Cir. 1993)).

Petitioner's argument that he should be allowed to file out of time based on his status of *non compos mentis* fails for two primary reasons. First, in support of his claim that Petitioner is *non compos mentis*, Petitioner relies on (2) two pre-work accident psychological records and one 2013 report indicating a diagnosis of psychological conditions. Pursuant to Rule 242(e), SCRAC, the Petitioner's Writ for Ceriorari is to

include an appendix with the Record on Appeal. Rule 210(c), SCRAC, specifically states that the Record shall not include matter which was not presented to the lower court or tribunal. In this case, Petitioner submitted records of the South Carolina Department of Mental Health for the first time in his Motion to File out of Time to the Court of Appeals. As such, the evidence relied on by Petitioner is not properly included as part of the Record on Appeal and therefore should not be available for the Court's review.

Even if the Court did allow the South Carolina Mental Health records in for review, the records themselves note that Petitioner suffered from (1) Major Depressive Disorder, (2) Cannabis abuse, (3) caffeine induced sleep disorder, and (4) caffeine induced Anxiety Disorder. There is nothing in his diagnoses to suggest that Petitioner was unable to handle his own affairs or function in society

Second, Appellant appeared *pro se* at both his June 12, 2013 hearing before the Single Commissioner and his February 18, 2014 hearing before the Workers Compensation Commission Full Appellate Panel. At his first hearing, Commissioner Taylor discussed the Appellant's right to counsel in the pre-hearing conference and at the outset of the hearing on the record:

Q: Oaky, all right. Well, before we get started today, I do have to let you know even though you've already exercised the right, but you do have the right to have an attorney represent you. It sounds like you've at least been able to speak with two or three attorneys.

A: Yes Ma'am.

Q: Okay, is it your desire to proceed today without an attorney?

A: Yes, Ma'am.

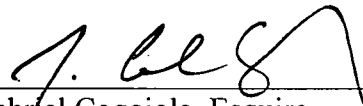
Petitioner was again advised of his right to counsel before his February 18, 2014 Full Commission Appellate Panel Hearing, but Petitioner opted to go forward *pro se*.

Petitioner did not retain his counsel until July 29, 2014, the date his Notice of Appeal was filed. Clearly, Petitioner has been able pursue his claim Workers Compensation Commission from the time of his injury in July of 2011, through a Single Commissioner hearing, and through a Full Commission appeal that he filed for on his own,. These facts clearly demonstrate that Petition is not *Non Compos Mentis*, as demonstrated by his ability to pursue his claim on his own.

Based on the combined facts that no records exist to show Petitioner is incapable of handling his own affairs or functioning in society, and that Petitioner was given the option several times to seek counsel and chose to pursue his workers compensation claim on his own through a hearing and Full Commission appeal, Respondents assert that Petitioner was clearly able to engage in rational thought and deliberate decision making sufficient for him to pursue his claim, and the Court should therefore deny Petitioners Writ for Certiorari.

CONCLUSION

Based upon the arguments set forth above, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari, thereby affirming the November 5, 2014 Order of the South Carolina Court of Appeals.



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March 9, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In Supreme Court

APPEAL FROM SOUTH CAROLINA
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

T. Scott Beck, Commissioner for the Appellate Panel;
Andrea C. Roche, Commissioner, and Avery B. Wilkerson, Jr., Commissioner, concurring

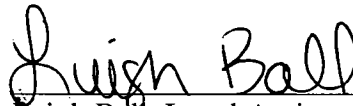
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v.
Employbridge d/b/a Prologistix (Employer) and
American Casualty Company of Reading PA (Carrier),Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served Counsel for Petitioner with a copy of **Respondents' Return to Petition for Writ of Certiorari** by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

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Leigh Ball, Legal Assistant to J. Gabriel Coggiola, Esquire.

March 9, 2015
Columbia, South Carolina

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March 9, 2015

Via Hand Delivery

Supreme Court of South Carolina
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MAR - 9 2015

S.C. Supreme Court

Re: Russell Goodwin v. Employbridge d/b/a Prologistix and American Casualty Company of Reading Pennsylvania
Supreme Court Appellate Case Number: 2015-000221

Dear Mr. Shearouse:

Enclosed for filing please find the original and six (6) copies of our Respondent's Return to the Petition for Writ of Certiorari, and Proof of Service for the same, in the above referenced matter. By copy of this letter, I am serving the same upon T. Jeff Goodwyn, Esquire, attorney for Petitioner.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



John Gabriel Coggiola

JGC/lll

Enclosures

cc: Mr. T. Jeff Goodwyn (via U.S. Mail)
Ms. Adrian Bryant (via email)