

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 19 2015

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS
Court of Common Pleas

S.C. Supreme Court

John C. Few, Chief Justice; James Lockemy, Justice; Jasper M. Cureton, Associate
Justice

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

Russell Goodwin,.....Petitioner,

v.

Employbridge dba Prologistix, Employer, and
American Casualty Company of Reading PA,Respondents.

**REPLY ~~FILED~~ TO RESPONDENT'S RETURN TO THE PETITION FOR WRIT
OF CERTIORARI**

As explained in Petitioner's Writ of Certiorari, the issue presented is whether upon a finding that Petitioner is *non compos mentis*, the deadline to file a notice of appeal may be tolled pursuant to the Americans with Disabilities Act (ADA). Respondents, while acknowledging that Rule 242 SCACR is not controlling and in no way limits this Court's power to grant review, argues that Petitioner's Writ should be denied for failure to meet numbers 2-5 of the character of reasons set forth in Rule 242, SCACR. The applicability of the ADA to a tolling of the deadline to file a notice of appeal is a novel question of law in South Carolina and within the general character of reasons this Court will grant a review. Respondents acknowledge that such questions are within the

consider review and offer no authority for their suggested requirement that Petitioner meet more than one of the reasons outlined in Rule 242, SCACR.

Further, Respondents argue that Rule 263, SCACR, precludes this court from extending the time for serving a notice of intent to appeal. While Petitioner acknowledges the language of this rule, he specifically request a ruling on the applicability of the ADA. If this Court finds the ADA applicable, federal law would preempt Rule 263, SCACR with respect to individuals with disabilities. Petitioner again argues that the Court of Appeals erred in failing to address the applicability of the ADA.

Next, Respondents argue that Petitioner's medical records are not properly before this Court. While Respondents have accurately stated Rule 210(c), SCRAC, they have misapplied it to the circumstances of this Case. Respondents correctly note that Petitioner's medical records relating to his mental health were not a part of the record before the Workers' Compensation Commission. Petitioner did not and is not seeking compensability of those illnesses. Rather, those records were introduced to the Court of Appeals in order to demonstrate Petitioner's history of mental illness as part of his request for a tolling of the deadline to file a notice of appeal. These records were before the Court of Appeals, the lower court or tribunal, and Respondents made no objection to them at that time. Therefore, those medical records are properly before this Court in accordance with Rule 210(c), SCRAC, and Respondents waived any objection they may have had to their inclusion in the record.

Finally, Respondent argues that Petitioner is not *non compos mentis*. In this case, although the notice of appeal was filed more than 30 days after the receipt of the underlying order, Appellant requests a tolling of the deadline under the Americans with Disabilities

Act to allow for an extended filing period given the *pro se* Appellant's long running mental illness. It is undisputed by Respondent that the deadline should be tolled if it is established that the plaintiff is *non compos mentis*.

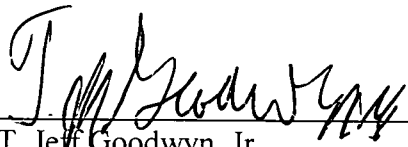
Respondent offers two arguments against a finding that Appellant was *non compos mentis* during the time which the notice of appeal could have been timely filed. First, Respondent argues that such a finding is not warranted because the Appellant appeared *pro se* at the prior hearings. It is not alleged that Appellant is physically disabled. Rather, Appellant has been diagnosed with multiple severe mental illnesses. Merely appearing for an action is not sufficient to establish that an individual has the requisite cognitive ability to handle his own affairs and function in society. Appellant, while appearing *pro se* was unsuccessful in his prior attempts to obtain relief in this action. An unsuccessful attempt to represent oneself does not evidence one's ability to engage in rational thought and deliberate decision making sufficient to pursue their claim. Rather, it evidences the opposite. Appellant's prior unsuccessful attempts to litigate this claim and his refusal to seek counsel establish his inability to engage in the rational thought necessary for this court to find that he was not *non compos mentis*.

Second, Respondent argues that no records exist to show Appellant was incapable of handling his own affairs or function in society. Respondent correctly indicates that Appellant suffers from (1) Major Depressive Disorder with psychotic features, (2) cannabis abuse, (3) caffeine induced sleep disorder, and (4) caffeine induced Anxiety Disorder. However, Respondent fails to note that along with and in addition to the above described disorders, Appellant also suffers from severe memory lapses for which he has been prescribed Alzheimer's medications. Additionally, though not noted in Respondent's

brief, Appellant suffers from anhedonia, social withdrawal, panic attacks, and both visual and audio hallucinations. The fact that Appellant uses cannabis and caffeine does not negate the fact that he suffers from a variety of severe mental illnesses.

Appellant's mental illnesses are numerous, relentless, and oppressive, and Respondent has made no argument sufficient to establish that this Court should not find he was and is *non compos mentis*. Thus, this Court should equitably toll the filing deadline and allow Appellant's notice of appeal to be filed out of time.

March 17, 2015



T. Jeff Goodwyn, Jr.
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Attorney for Respondents

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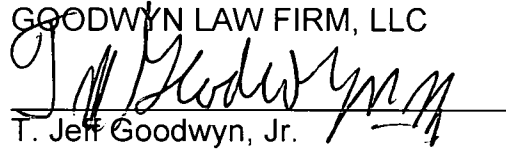
v.

Employbridge dba Prologistix, Employer, and
American Casualty Company of Reading PA, Respondents.

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant Russell Goodwin on Justin T. Williams, Esquire and John G. Coggiola, Esquire, Attorneys for the Respondents at Willson, Jones, Carter & Baxley, P.A., 4500 Fort Jackson Blvd., Columbia, SC 29209 by depositing a copy of same in the United States Mail, postage prepaid, on March 17, 2015.

GOODWYN LAW FIRM, LLC


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Attorney for Petitioner

March 17, 2015

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*Also Licensed in Georgia

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S.C. Supreme Court

Daniel E. Sharehouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: ***Russell Goodwin v. Employbridge dba Prologistix and American Casualty
Company of Reading PA***
Appellate Case No.: 2014-001676
WCC File No.: 1108188
Our File No.: 7000-0097

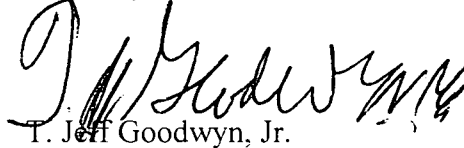
Dear Mr. Sharehouse:

Enclosed for filing please find an original and seven (7) copies of the Reply Brief of Petitioner Russell Goodwin in regard to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy to me in the self-addressed stamped envelope provided.

By copy of this letter, I am serving a copy of the Reply Brief of Petitioner Russell Goodwin upon J. Gabriel Coggiola, Esquire and Justin T. Williams, Esquire, Attorneys for the Respondents.

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

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb

Enclosures

cc: J. Gabriel Coggiola, Esquire
Justin T. Williams, Esquire
Russell Goodwin

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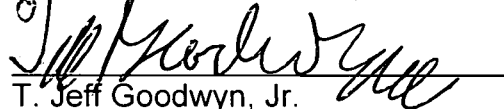
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I certify that I have served the Reply to Respondent's Return to the
Petition for Writ of Certiorari on Justin T. Williams, Esquire and John G. Coggiola,
Esquire, Attorneys for the Respondents at Willson, Jones, Carter & Baxley, P.A.,
4500 Fort Jackson Blvd., Columbia, SC 29209 by depositing a copy of same in
the United States Mail, postage prepaid, on March 17, 2015.

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March 17, 2015

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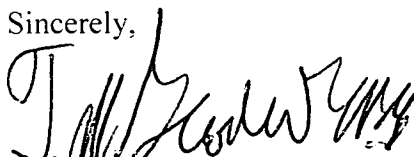
Dear Mr. Sharehouse:

Pursuant to a conversation with Linda, enclosed for filing, please find an original and one (1) copy of the Proof of Delivery evidencing service on the parties' listed below and indicating that the caption was corrected on the cover page to accurately reflect "Reply to Respondent's Return to the Petition for Writ of Certiorari" and that a copy of the same was served in regard to the above referenced matter.

By copy of this letter and as evidenced in the Proof of Service, I am serving a copy of this letter and Reply to Respondent's Return to the Petition for Writ of Certiorari, indicating that only the cover page caption corrected upon J. Gabriel Coggiola, Esquire and Justin T. Williams, Esquire, Attorneys for the Respondents as well as Russell Goodwin, Petitioner.

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

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb

Enclosures

cc: J. Gabriel Coggiola, Esquire
Justin T. Williams, Esquire
Russell Goodwin