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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

J. Derham Cole, Circuit Court Judge

AUG 03 2015

SC Court of Appeals

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults,Appellant,

v.

Angela G. Miller,Respondent.

APPELLANT'S MOTION TO SEAL

The Appellant hereby files this motion to seal Exhibits 2 and 3 of Respondent's Reply Brief in Support of Motion to Compel Appellant to Produce Complete Record on Appeal, served July 27, 2015, so that the two exhibits (three documents) are not available to the public in person or online.

BACKGROUND

On July 27, 2015, the Respondent served a Respondent's Reply Brief in Support of Motion to Compel Appellant to Produce Complete Record on Appeal. The Reply Brief contains three exhibits. Exhibit 1 is the Appellant's Designation of Matter and is not an issue in this motion. Exhibit 2 consists of two settlement agreements from the case of Dickie Shults vs. the Estate of Philip M. Seay (Estate) for the injuries sustained by Mr. Shults in the automobile collision that is the subject of this appeal. (R. p. 287). Exhibit 3

consists of a settlement document required to be filed with the South Carolina Workers' Compensation Commission by Mr. Shults and the Estate of Seay.

ARGUMENT

I. The Exhibits are Not Relevant to Any Issue Raised on Appeal and they Contain Private Financial Information.

Before the Appellant gets to the confidentiality arguments in this Motion to Seal, the Appellant wants to emphasize the context of the three documents contained in Exhibits 2 and 3. First, the documents are not relevant to any issue raised on appeal, but they contain financial information concerning the Appellant. The public has no need to know the information in the Exhibits, but the filing of the documents releases financial information that the Appellant would like to remain private. Second, the documents were not submitted to the trial court. The documents are not in the Record on Appeal. S.C. Code Section § 42-19-40 specifically states that Exhibit 3 is "not open to the public." The documents have no relevance to the appeal in this case and the balance of public and private interests favors sealing the documents.

II. The Respondent Has Possession of the Documents only because of a Confidentiality Agreement.

The primary issue in this motion is the significance of Mr. Rob Davis signing a confidentiality agreement and whether it prevents him from publishing Exhibits 2 and 3 to the public. This motion is related to the motion filed by the Respondent – Respondent's Motion to Compel Appellant to Produce Complete Record on Appeal. The Appellant refers the Court to the Appellant's Return to the Motion to Compel for a discussion of the issues and hereby incorporates the arguments in the Return into this motion.

On June 25, 2012, Mr. Shults and the Estate of Seay mediated the case between them. Mr. Robert Davis, attorney for Respondent Angela Miller, wanted to attend the mediation between Mr. Shults and the Estate of Seay. Pursuant to Rule 8(a), Mr. Robert Davis had to sign a confidentiality agreement as a condition to his presence at the mediation between Mr. Shults and the Estate of Seay. Rule 8(a), South Carolina Alternative Dispute Resolution Rules (“Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process.”). Mr. Davis was provided Exhibits 2 and 3 after the mediation because he signed the confidentiality agreement required by Rule 8(a).

The Appellant’s position is that the confidentiality agreement signed by Mr. Davis prevents him from publicizing the settlement information. Exhibits 2 and 3 were not produced through discovery during the case of Seay vs. Miller and the documents are not attached to any depositions taken in the case of Seay vs. Miller. Because of the Rule 8(a) confidentiality agreement, the Respondent should not be able to publish Exhibits 2 and 3 and they should be sealed by the Court.

III. South Carolina Code § 42-19-40 Provides that Exhibit 3 Should be Sealed by the Court.

Exhibit 3 is a document that is required to be filed with the South Carolina Workers’ Compensation Commission. Regulation 67-805 (Third Party Settlements), Regulations of the S.C. Workers’ Compensation Commission. South Carolina Code § 42-19-40 (Records shall not be public) states:

The records of the Commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to the parties satisfying the Commission of their interest in such records and of the right to inspect them.

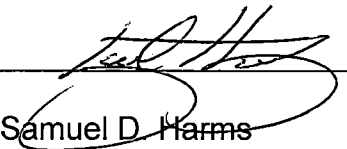
In *Blue Cross and Blue Shield v. South Carolina Indus. Commission*, 274 S.C. 204, 262 S.E.2d 35 (1980), the Supreme Court held that only the Claimant and the Employer may have access to the settlement documents filed with the Commission. The Supreme Court reaffirmed that settlement documents are not open to the public. For these reasons, Exhibit 3 should be sealed by the Court.

CONCLUSION

The Appellant respectfully requests that Exhibits 2 and 3 be sealed and not available to the public.

Counsel affirms that he has consulted with opposing counsel prior to the filing of this motion and has attempted in good faith to resolve the matter contained in the motion.

July 31, 2015



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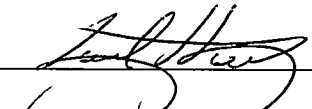
Angela G. Miller,Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Seal on Angela G. Miller by depositing a copy of it in the United States Mail, postage prepaid, on August 1, 2015, addressed to her attorney of record:

Robert E. Davis, Esq.
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304

August 1, 2015



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