

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

Appellate Case No. 2014-001788

SEP 15 2015

SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

RESPONDENT'S REPLY TO APPELLANTS'
RETURN IN OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS APPEAL

By way of Reply to the Appellants' Return to the Respondent's Motion to Dismiss Appeal, the Respondent would respectfully show unto the Court as follows:

1. That Appellants suggest that the appropriate remedy is to allow the Appellants to file an amended Statement of the Case and states that the Statement of the Case is not evidence but merely a recitation of procedural background. This statement is contrary to the Court's

Rules which hold that the Statement of the Case is binding on the parties as referenced in the Respondent's Motion. The Appellants also refer to mere discontent with the factual background to be no grounds for dismissal but the Statement of the Case is not supposed to contain contested facts pursuant to the Rules.

2. That under allegation #1 in the Appellants' Return, Appellants state that cites all of the documents contested by the Respondent are part of the Commission File but again does not represent those are being made a part of the Record. For example, the first of those documents is the Full Commission Order but the Full Commission Order is not even made a part of their Designation of Matter. Just because the Decision and Order was included in the Appellants' Notice of Appeal does not make it part of the Record which the Court will consider this is especially true here because the Notice of Intent to Appeal and the accompanying documents, i.e., Orders appealed are not included in the Designation of Matter. The Appellants' allegation that the Motion is simply an attempt to obtain another extension is improper and not responsive and is an effort to divert the Court's attention from the very reason that the Motion was filed, which is that neither the Court nor the Respondent can properly respond to the Appellants

Brief as written as is set forth in the Motion. It is each parties responsibility to comply with the Rules and the Rules were adopted by the Supreme Court for a reason and compliance with the Rules as lawyers should be and is a basic requirement and responsibility.

3. That as to paragraph #2, the Appellants again argue that, "just as in the first portion of the Brief, were included in the Full Commission Decision and Order and within Appellants' Notice of Appeal." Again the Appellants' argument does not make reference to failure to comply with the Court Rules or as to why these documents were not included in the Record as is required by the Rules. Again, the Appellants do not cite to the Rules or why there was non-compliance. SCACR, Rule 209 specifically requires that all pleadings, Orders, exhibits, transcripts and other materials that will be referred to shall be made a part of the Designation of Matter, which under SCACR, Rule 210 is then incorporated into the Record on Appeal for citation. Again, none of the pleadings referred to by the Appellants were included in the Designation of Matter which is a gross failure of compliance with the Rules.

4. That in reference to paragraph #3 of the Return, the Appellants do not address the issue and do not state wherein the Transcript of the Hearing held before

Commissioner Beck was made a part of the Record and was presented to and considered by Commissioner Barden as part of her Decision. While the Appellants cite numerous references to Commissioner Barden's Hearing and that the Commission File with the exception of self-serving declarations and unstipulated medicals was made a part of the Record, there is simply no reference to the Transcript of the Hearing before Commissioner Beck being made a part of the Record before and/or considered by Commissioner Barden.

The Appellants also make some kind of an argument that Commissioner Barden made decisions, "regarding the background surrounding the Hearing before Commissioner Beck" and the blanket statement that the Hearing Transcript is part of the Commission File. They make no reference and the Respondent would submit there is no reference by Commissioner Barden or anywhere in the Record, Order, or anything before her indicating that the Transcript was a part of the Commission File at the time of that Hearing and/or that it was considered by her.

The Respondent would again point out that while the Appellants make numerous references to the Order of Commissioner Beck as referred to by Commissioner Barden; the Order of Commissioner Beck was not made a part of the

Record on Appeal. Again, the Appellants seek to deflect their responsibility for compliance with the Appellate Court Rules by asking this Court to sanction the Respondent for not filing his Brief when the Appellants should well know that the filing of a Motion stays the perfection of the Appeal until after a decision on the Motion. The Respondent will comply with any Order that the Court directs in its decision on the Motion to Dismiss the Appeal.

5. That as to paragraphs 1, 2, 3, and 4 beginning with the sentence which is found in all four (4) arguments that, "Appellants have herein provided the citation to those specific issues raised by Respondent," the entire remainder of the argument under each paragraph is identically the same; is non responsive to and diverts the Court's attention away from the issue raised by the Motion to Dismiss; and constitutes improper argument on behalf of the Appellants. The issue raised by the Motion is non-compliant with the Court's Rules as to the Appellants' Initial Brief and Designation of Matter with reference to the specific non-compliance to the Court's Rules. The Respondent specifically objects to the arguments contained as being improper; would request that they not be considered; and would request a specific ruling thereon.

Specifically the Respondent would note and object to Appellants arguments:

"The motion appears to be merely a calculated attempt to obtain another extension to file a brief in this matter rather than an actual dispute or controversy worthy of a 'motion to dismiss'".

Also,

"this Court should not only deny the motion presented by Respondent but find Respondent failed to properly and timely serve his Respondent's Brief as ordered by the Court in numerous successive extension and continuances filed and requested by Respondents."

Then in the CONCLUSION,

". . . as Respondent has missed the deadline to file his brief in response to Appellants' brief without good cause based on an unsupportable and frivolous motion designed merely to again delay the time period for filing his brief . . ."

The Respondent would submit that this is an improper argument which is not based on law or fact; is inflammatory, defamatory, accusatory, and states a personal opinion as to the justness of a cause and impugns the integrity and the credibility of a fellow attorney without basis in fact or law. It should be ruled upon by the Court as such, stricken, and not considered. Young v. Warr, 252 S.C. 179, 165 S.E.2d 797 (1969).

6. That further in the Conclusion, the Appellants

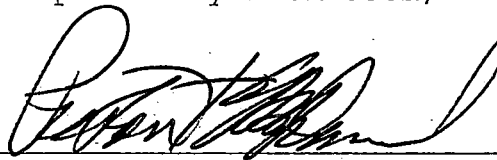
asks only that the Respondent's Motion to Dismiss be denied, cites no references to the Rules; does not make specific citation to the Rules and how the Appellants complied with those Rules. The Appellants do not even ask for any right to further file an Amended Designation of Matter and an Amended Brief in compliance with the Rules as copiously set out by the Respondent in his Motion to Dismiss. Even though the Respondent in his Motion specifically refers to the Appellate Court Rule requirements repeatedly violated with reference to numerous major defects in the Designation of Matter and in the Appellants' Initial Brief, the Appellants (the Respondent would submit most respectfully) have the audacity to call the Respondent's Motion "unsupportable and frivolous"; and without any citation to any Rule, the Appellants argue that the Court should reject any Brief filed by the Respondent. Since the Appellants wants to call the Respondent's Motion "frivolous" by way of reply (but also let us say due to his need to vent), SCACR, Rule 240(b) specifically provides:

"A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided." (Emphasis added).

CONCLUSION

In accordance with the Court Rules, Respondent's Counsel will respectfully wait for the Court's Decision and then will proceed in accordance with the Court's Rules and the direction of the Court at that time. The Respondent verily believes that the appropriate sanction is dismissal of the appeal, especially in light of the unsupported and non-responsive Return of the Appellants which does not address the Rule violations alleged. The Respondent would also request a ruling on the improper arguments and such further relief as the Court deems appropriate in that regard.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent

September 10, 2015

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In the Court of Appeals

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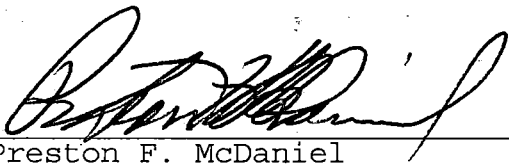
Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the RESPONDENT'S REPLY TO APPELLANTS' RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL by depositing a copy of it in the United States Mail, postage prepaid, on September 10, 2015 addressed to:

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Dated: September 10, 2015


Preston F. McDaniel
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Proudly representing injured workers
for over 30 years.

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

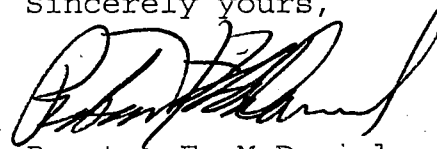
RE: Clarence Winfrey, Employee, Respondent, v. Archway
Services, Inc., Employer, and American Fire &
Casualty Insurance Co., Carrier, Appellants.
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Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of
RESPONDENT'S REPLY TO APPELLANTS' RETURN IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS APPEAL in the above-referenced
matter. I would appreciate you returning the clocked-in copy to
me in the self-addressed, stamped envelope which is enclosed.

By copy of this letter I am notifying and serving Counsel with
a copy of same. As always, I appreciate all the courtesies and
kindnesses shown to me by the Court.

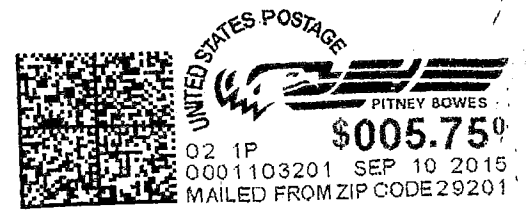
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire



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