

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.: 2012-CP-32-02093
2012-CP-32-02111
Appellate Case No. 2014-001258

RECEIVED
DEC 18 2015
SC Court of Appeals

Ricky Kneece,.....Respondent.

v.

Kneece Farms, Employer, and Legion Insurance Co. in liquidation through the S.C.
Property and Casualty Insurance Guaranty Association.....Appellants.

MEMORANDUM

Pursuant to the Court's request dated December 10, 2015, the Appellants in the above-referenced workers compensation case hereby submit the following MEMORANDUM addressing appealability of the Worker's Compensation Commission Appellate Panel ("Commission") decision. The Appeal currently pending before this Court is an appeal from the Circuit Court Order REVERSING the Commission's decision and entering its own findings. Specifically, this Court inquires whether this case was appealable to the Circuit Court in the first instance, the implication being that perhaps the Court of Appeals may not have jurisdiction over the matter now. For the foregoing reasons, Appellants respectfully submit that appeal from the Commission was properly made to the Circuit Court.

The issue raised by the Court's current inquiry was addressed by the Supreme Court in the case of Pee Dee Regional Transportation v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007). Via Order dated August 24, 2007 the Supreme Court held that workers compensation matters with dates of accident before July 1, 2007 are appealable to the Court of Common Pleas for the county in which the underlying accident occurred or in which the Employer resides or has his principal office. Conversely, decisions of the Commission with dates of accident occurring after July 1, 2007 are appealable to the Court of Appeals. *See* 2007 Act No. 111 amending §42-17-60 (Except as otherwise provided for in this Act, this act takes effect July 1, 2007, or if ratified after July 1, 2007, and except as otherwise stated, upon approval of the Governor and applies to injuries that occur on or after this date" *emphasis added*). As Appellants submit that Pee Dee Regional Transportation, supra, is dispositive of the issue presented, a copy of the case is attached for the Court's reference.

In this case, the underlying date of accident that is the subject of this Appeal occurred on November 22, 1999, prior to the 2007 amendments to §42-17-60 shifting jurisdiction of workers compensation appeals from the Circuit Court to the Court of Appeals, as well as the effective date of that statutory amendment- July 1, 2007. Pee Dee Regional Transportation supra is the authority upon which the Appellants in this case, and the Bar in general, specifically relies when assessing the proper forum for appeal for workers compensation matters with dates of accident before and after July 1, 2007. As such, Appellants filed their appeal of the Commission's decision with the Court of Common Pleas for Lexington County in 2012, as that is the venue where the accident occurred and the Employer is located.

It should also be noted that both parties filed appeals to the Circuit Court. Neither party raised any objections as to jurisdiction or venue of the cross-appeals. Likewise, no questions were raised by the presiding Circuit Court Judge.

For the aforementioned reasons, Appellants respectfully submit that initial appeal of the Commission's Order was properly made to the Circuit Court by both parties. Thereafter, Appellants properly appealed the Circuit Court Order to this Court. Hopefully, this MEMORANDUM satisfies the Court's inquiry, but if Appellants have misapprehended the issue then they will gladly provide further elucidation.

Respectfully Submitted,



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December 18, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
COURT OF COMMON PLEAS
The Honorable R. Knox McMahon

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Appellate Case No. 2014-001258

Ricky Kneece,

Respondent,

v.

Kneece Farms and Legion in Liquidation
And the South Carolina Property and Casualty
Insurance Guaranty Association,

Appellants.

PROOF OF SERVICE

I certify that I have served the Memorandum upon counsel for the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on December 18, 2015 addressed to Scott Elliott, Esquire, Elliot & Elliott, 1508 Lady Street, Columbia, SC 29201.

December 18, 2015



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As of: December 18, 2015 3:43 PM EST

Pee Dee Reg'l Transp. v. S.C. Second Injury Fund

Supreme Court of South Carolina

August 24, 2007, Decided

No Number in Original

Reporter

375 S.C. 60; 650 S.E.2d 464; 2007 S.C. LEXIS 315

Pee Dee Regional Transportation, Employer, and State Accident Fund, Appellants, v. S.C. Second Injury Fund, Respondent, In re: Clinton Gaskins, Jr., Employee/Claimant, v. Pee Dee Regional Transportation, Employer, and State Accident Fund, Carrier.

Subsequent History: As Corrected August 30, 2007.

Core Terms

Appeals, extension of time, injuries, applies, notice

Counsel:

Judges: [***1] Jean H. Toal, C.J., James E. Moore, J., John H. Waller, J., E. C. Burnett, III, J., Costa M. Pleicones, J.

Opinion

[*61] [**465] ORDER

On July 13, 2007, appellants served and filed a notice of appeal in the Court of Appeals and with the Florence County Clerk of Court from an order of the South Carolina Workers' Compensation Commission dated June 20, 2007. The appeal pending before the Court of Appeals was certified to this Court pursuant to Rule 204(b), SCACR, by order dated August 3, 2007. Appellants have now filed a Motion to Determine Jurisdiction and Alternatively for an Extension of Time to File Appellants' Initial Brief. Therein, appellants ask this Court to make a determination as to the proper jurisdiction for this appeal.

S.C. Code Ann. § 42-17-60 (Supp. 2006) previously provided that an appeal from a decision of the Workers' Compensation Commission shall be to the Court of Common Pleas in the county in which the alleged accident occurred or in which the employer resides or has his principal office. On June 25, 2007, the statute was amended by 2007 Act No. 111 to require such appeals be made to the Court of Appeals.

However, Part IV, Section 2 of Act 111 states the following: "Except as otherwise [***2] provided for in this act, this act takes effect July 1, 2007, [*62] or, if ratified after July 1, 2007, and except otherwise stated, upon approval by the Governor and *applies to injuries that occur on or after this date.*" (Emphasis added).

The cardinal rule in interpreting Act 111 is to ascertain and effectuate the intent of the Legislature. *Davis v. School Dist. of Greenville County*, 374 S.C. 39, 374 S.C. 39, 647 S.E.2d 219 (2007). Where the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning. *State v. Pittman*, 373 S.C. 527, 373 S.C. 527, 647 S.E.2d 144 (2007).

The language of Act 111 is not ambiguous and clearly states that it applies only to injuries that occur on or after July 1, 2007. Therefore, the change regarding the appeal procedure, like all other provisions of the Act, is only applicable to Workers' Compensation cases in which the injury occurred on or after July 1, 2007.

The injury at issue in the case at hand occurred on January 30, 2002, clearly prior to July 1, 2007. Accordingly, the amendments set forth in Act 111 do not apply and, applying the former version of section 42-17-60, [***3] jurisdiction over this appeal lies in the Court of Common Pleas. We therefore dismiss the notice of appeal filed in the Court of Appeals and certified to this Court, and the appeal shall instead proceed as filed in the Court of Common Pleas. Appellants' request to hold the timelines for this appeal in abeyance or, in the alternative, to grant them an extension of time to file their initial brief, is denied as moot.

IT IS SO ORDERED.

s/Jean H. Toal, C.J.

s/James E. Moore, J.

s/John H. Waller, Jr., J.

375 S.C. 60, *62; 650 S.E.2d 464, **465; 2007 S.C. LEXIS 315, ***3

s/E. C. Burnett, III, J.

August 24, 2007

s/Costa M. Pleicones, J.

Columbia, South Carolina

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December 18, 2015

VIA HAND DELIVERY

The Honorable Jenny Kitchings
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RECEIVED
DEC 18 2015
SC Court of Appeals

Re: *Ricky Kneece v. Kneece Farms*
Appellant Case No. 2014-001258

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Memorandum requested by your letter dated 12/10/2015, along with Proof of Service on behalf of the Appellants in the above-referenced matter. Please return a filed copy to our courier.

By copy of this letter, I am serving a copy of the Memorandum upon Respondent's counsel of record.

Very truly yours,



Mark D. Cauthen

MDC/hrv
Enclosures

cc: Scott A. Elliott, Esquire (w/encl)
Randy Mason (w/encl)