

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY **RECEIVED**
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

JAN 25 2016
SC Court of Appeals

Case No. 2013-CP-32-01272

Case No. 2014-CP-32-00399

Alexander Guice, Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT PROPERLY AFFIRMED THE COMMISSION DECISION?
- II. WHETHER THE CIRCUIT COURT ERRED IN ISSUING ITS ADMINISTRATIVE ORDERS?
- III. WHETHER THE CIRCUIT COURT PROPERLY INTERPRETED THE SEPTEMBER 25, 2014 ORDER TO GRANT AND ORDER A NEW TRIAL?
- IV. WHETHER THE CIRCUIT COURT ERRED BY MAKING INDEPENDENT FINDINGS OF DISPUTED FACT?
- V. WHETHER THE CIRCUIT COURT ERRED BY AFFORDING THE PARTIES LESS THAN 30 DAYS' NOTICE OF THE MARCH 27, 2015 HEARING?

STATEMENT OF THE CASE¹

This case has a long and complicated procedural history. Appellant Alexander Guice, Claimant below, was employed by US Food Service, Inc. when he was injured in the course of his employment on May 5, 2005.² Respondents US Food Service and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.³ provided medical treatment and temporary compensation payments. Appellant's claim before the Commission was assigned Commission File No. 0506205.

Appellant reached Maximum Medical Improvement on October 27, 2005 and was assigned a 5% medical impairment rating to the whole person by his treating physician. Thereafter, Appellant and Respondents entered into a Settlement Agreement and Release, "in full and final satisfaction of all claims whatsoever as a result of the alleged accident." (Settlement Agreement and Release, signed by Appellant on Dec. 22, 2005) ("Settlement Agreement"). Appellant was represented by counsel at this time. Under the Settlement Agreement, dated December 22, 2005, Respondents paid \$20,000 (which was divided between Appellant and his counsel \$13,333.34/\$6,666.66 respectively). In return, Appellant released Respondents from "any and all claims,

¹ Appellant's Statement of the Case contains many factual assertions for which there is no evidence and which are disputed by Respondents, as well as legal argument, all in violation of Rule 208(C), SCACR. These include, without limitation: 1) statements Appellant alleges were made by and to his former counsel, Robert G. Bacon, Esq.; 2) the allegation that Respondents suspended Temporary Total Disability ("TTD") payments to Appellant; 3) that there was an error in Appellant's average weekly wage and/or corresponding compensation rate; 4) the timing of when Appellant received a formal discharge notice; 5) that Gary Cannon's March 27, 2013 letter served as a de facto decision of the Commission; 6) legal arguments contained in footnotes 2 & 3 on page 11, footnote 4 on page 13, footnote 5 on page 15 of Appellant's Brief; and 7) legal conclusions concerning, among other things, the September 25, 2014 Circuit Court order and Respondents' subsequent Motion to Alter/Amend that Order.

² Because Petitioner's injury occurred in 2005, the version of the South Carolina Workers' Compensation Act ("Act"), S.C. Code Ann. § 42-1-10, *et seq.*, in existence at that time controls this claim, and the 2007 amendments to that Act do not apply.

³ In 2005, US Food Service's carrier was MAC Risk Management, Inc., which is now ACE American Insurance Company c/o Gallagher Bassett Services, Inc.

demands, actions or causes of action under the South Carolina Worker's [sic] Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by the Claimant on or about May 5, 2004 ..." The Settlement Agreement was "full, final and complete regardless of whether the Claimant is able to keep any employment whatsoever, or is able to earn any wages at any time in the future ..." Appellant signed the Settlement Agreement, which was filed with and, on January 5, 2006, approved by the Commission, pursuant to S.C. Code Ann. § 42-9-390. (Settlement Agreement) (Order & Award, filed Jan. 5, 2006) ("2006 Commission Decision"). The Commission's approval of the Settlement Agreement was not appealed within 30 days of January 5, 2006.

Nearly six years later, on November 1, 2012, Appellant filed a Form 30, Request for Commission Review, alleging numerous issues on appeal, including that the approval of the Settlement Agreement violated the Act, the Settlement Agreement was the result of an illegal settlement offer submitted by the Respondents, criminal conspiracy on the part of the Respondents, and a request that the Commission vacate the Settlement Agreement. (App. Form 30, dated Nov. 1, 2012). All of Appellant's recent filings with the Commission have been made under the prior W.C.C. File No. 0506205.

On December 7, 2012, Appellant filed a Form 50 Request for Hearing, (App. Form 50, dated Dec. 7, 2012), and then an Amended Form 50 dated January 5, 2013, (App. Amended Form 50, dated Jan. 5, 2013), alleging entitlement to additional medical

examination and treatment, temporary total disability benefits, and permanent disability as a result of injuries sustained arising out of his May 5, 2005 accident, as well as attacking the validity of the Settlement Agreement and raising issues of unlawful termination of employment, unlawful reduction in his average weekly wage calculation, unlawful termination of temporary total compensation payments, inadequate legal representation, and seeking penalties. Respondents filed a timely Form 51 and Amended Form 51. (Resp. Form 51, dated Dec. 27, 2012) (Resp. Amended Form 51, dated Jan. 14, 2013).

Appellant filed two separate motions with the Commission. The first motion sought to transfer jurisdiction within the Commission from Charleston County to Richland County, (App. Motion for Transfer of Jurisdiction, dated Feb. 3, 2013), and the second was to conduct the hearing via telephone as he currently resides in Tampa, Florida. (App. Motion for Telephonic Hearing, dated Feb. 3, 2013).

Appellant's Form 50's were set for hearing on March 28, 2013. However, on February 22, 2013, Commissioner Susan S. Barden issued an Order holding that, as Appellant had "settled on a Full and Final basis on or about January 6, 2006, [Appellant's] hearing request is hereby denied." Commissioner Barden cancelled the hearing and dismissed "any and all motions filed pertaining to WCC# 0506205." (Single Commissioner Order, dated Feb. 22, 2013) ("Commissioner Barden's February 22 Order").

At this point, Appellant began pursuing two separate avenues to have his claims heard. First, on February 28, 2013, he filed a Form 30 Request for Commission Review of Commissioner Barden's February 22 Order. In his notice of appeal to the Full

Commission, he alleged seven different points of appeal, including whether Commissioner Barden had jurisdiction to decide his claim, whether Commissioner Barden's February 22 Order violated certain rules of civil procedure, and whether Appellant had been subjected to a conspiracy. (App. Form 30, dated Feb. 28, 2013).

Second, on March 4, 2013, before any action had been taken by the Commission on his Form 30 appeal, Appellant mailed a Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments to the Commission. Styled as a circuit court complaint, Appellant's Motion for Reinstatement raised many of the same issues he raised in his Form 50's, including but not limited to: unlawful termination of his employment; unlawful reduction in his average weekly wage/compensation rate; unlawful termination of temporary total compensation payments; challenges to the Settlement Agreement; complaints about his former legal counsel; and a request for penalties. (Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments, dated March 4, 2013) ("Motion for Reinstatement"). Respondents opposed Appellant's Motion for Reinstatement. (Defendants' Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments, dated March 14, 2013). Appellant filed an answer. (Claimant's Answer to Defendant's [sic] Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments, dated March 17, 2013).

On March 18, 2013, Appellant sent the Commission a proposed order granting his Motion for Reinstatement. (Letter from A. Guice to Virginia Crocker, dated March 18, 2013 with proposed "Order Granting Claimant's Motion for Reinstatement of

Employment and Release of Temporary Total Compensation Payments”). In a letter dated March 25, 2013, Respondents responded in opposition to his proposed order. (Letter from E. Hantske to V. Crocker, dated Mar. 25, 2013). On March 27, 2013, Mr. Gary Cannon, Executive Director of the Commission, returned Appellant’s Motion for Reinstatement, along with the filing fee submitted by Appellant. In his letter, Mr. Cannon stated that he was “returning the Motion and the filing fee because the Commission does not have subject matter jurisdiction for the issues set forth in the Motion.” (Letter from G. Cannon to A. Guice, dated March 27, 2013) (“March 27 Letter”).

Appellant appealed the March 27 Letter to the Circuit Court, (Summons; Complaint; and Supplement, dated April 8, 2013), which was assigned C.A. # 2013-CP-32-1272. Respondents moved to dismiss the appeal pending before the Circuit Court. (Defendants’ Motion to Dismiss, dated May 1, 2013, C.A. # 2013-CP-32-1272). Judge Thomas A. Russo conducted a hearing on June 3, 2013 to consider Respondents’ Motion. (Transcript of June 3, 2013 Hearing). Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present. Counsel for Respondents attended the hearing. Based on the arguments and pleadings before him, Judge Russo granted Respondents’ Motion to Dismiss on the basis that the court lacked jurisdiction to hear the appeal, as Appellant had failed to exhaust all of his administrative remedies. (Order Granting Defendants’ Motion to Dismiss, filed June 13, 2013, C.A. # 2013-CP-32-1272). Appellant moved for reconsideration of that Order, which was denied after a motions hearing that Appellant did not attend. (Transcript of September 3, 2013 Hearing) (Form 4 Order, filed Sept. 6, 2013, C.A. # 2013-CP-32-1272).

Appellant timely appealed to this Court. (App. Notice of Appeal, dated Nov. 13, 2013, Ct. App. No. 2013-002491).⁴ Respondents moved to dismiss for failure to exhaust administrative remedies and for lack of finality. (Resp. Motion to Dismiss Appeal, dated Feb. 28, 2014, Ct. App. No. 2013-002491). This Court granted Respondents' motion, and remanded the matter to the Circuit Court, "which shall consider the merits of this appeal in conjunction with Appellant's appeal from the commission's final order." (Order, filed April 24, 2014, Ct. App. No. 2013-002491). Appellant moved to reinstate his appeal, which was denied. (Order, filed June 5, 2014, Ct. App. No. 2013-002491).

Subsequently, Appellant sought certiorari review before the Supreme Court. (Notice of Petition for Writ of Certiorari, dated July 5, 2014, Sup. Ct. No. 2014-001450). Respondents filed a Return in Opposition. (Respondents' Return in Opposition to Petitioner's Petition for Writ of Certiorari, dated July 17, 2014, Sup. Ct. No. 2014-001450). The Supreme Court denied his Petition, which effectively remanded this matter to the Circuit Court. (Order, filed Aug. 27, 2014, Sup. Ct. No. 2014-001450).

Meanwhile, the parties briefed Appellant's Form 30 appeal before the Commission. (Appellant's Brief (to the Full Commission), dated Apr. 22, 2013) (Respondents' Brief to the Full Commission, dated May 7, 2013) (Appellant's Reply Brief (to the Full Commission), dated May 11, 2013). In their Brief, Respondents argued that "[p]ursuant to Reg. 67-801(E), an agreement and final release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation for medical expenses, unless the agreement and final release specifically provides otherwise," and that the approved Settlement Agreement "is as binding on the

⁴ Appellant also submitted what was styled as a "Complaint-Lexington County Clerk's Office" to S.C. Court Administration raising issues concerning "the actions and conduct of the Lexington County Clerk's Office." (Letter from A. Guice to R. Frierson, dated Dec. 23, 2013).

parties as an order ...” (Respondents’ Brief to the Full Commission, p. 4). This matter proceeded to hearing before the Full Commission on May 21, 2013. The Full Commission issued its Decision on July 17, 2013, denying Appellant’s current claims on the basis that he had settled his workers’ compensation claim “on a Full and Final basis on or about January 6, 2006,” which was approved by the Commission, and that Commissioner Barden’s cancellation of the March 28, 2013 hearing was appropriate. The Commission also held that “any and all motions filed pertaining to WCC No. 0506205 are hereby dismissed as well.” (Commission Decision & Order, filed July 17, 2013) (“2013 Commission Decision”).

Appellant subsequently appealed the 2013 Commission Decision to this Court. (App. Notice of Appeal, dated Aug. 19, 2013, Ct. App. No. 2013-001804). That appeal was transferred to the Circuit Court, since this workers’ compensation matter involves a pre-2007 injury. (Order, filed Dec. 6, 2013, Ct. App. No. 2013-001804).

Appellant then filed a Notice of Appeal of the 2013 Commission Decision with the Circuit Court, along with a Motion to Proceed in Forma Pauperis, (Notice of Appeal, and Motion to Proceed in Forma Pauperis, both dated Dec. 23, 2013, C.A. # 2014-CP-32-399), which was assigned C.A. # 2014-CP-32-399. He filed an amended Notice of Appeal. (Amended Notice of Appeal, dated Dec. 31, 2013, C.A. # 2014-CP-32-399). On January 3, 2014, Judge Russo denied Appellant’s Motion to Proceed in Forma Pauperis. (Order, dated filed Jan. 3, 2014, C.A. # 2014-CP-32-399).

Appellant filed a “Summons; a Form SCAA/234 dated 01/26/29014; an Appellant’s Brief; [and] an APA Index List of Exhibits” with the Circuit Court. (Summons; Brief of Appellant; APA Index List of Exhibits, all dated Jan. 26, 2014, C.A.

2014-CP-32-399). Respondents filed an Answer, (Defendants' Answer, dated Feb. 24, 2014, C.A. # 2014-CP-32-399), and moved to dismiss the appeal. (Motion to Dismiss, dated Feb. 24, 2014, C.A. # 2014-CP-32-399).

Appellant subsequently moved to disqualify Judge Russo from hearing this appeal, accusing Judge Russo of unfairness, impartiality and incompetence, and taking issue with Judge Russo's denial of Appellant's motion to proceed *in forma pauperis*. (Motion to Disqualify, dated March 15, 2014, C.A. # 2014-CP-32-399). Judge Russo denied Appellant's Motion to Disqualify, (Order Denying Appellant's Motion to Disqualify, filed Apr. 4, 2014, C.A. # 2014-CP-32-399), prompting a letter from Appellant disagreeing with Judge Russo's ruling. (Letter from A. Guice to Judge Russo, dated April 10, 2014, C.A. # 2014-CP-32-399). Although a hearing initially was scheduled for April 3, 2014, that hearing was continued. (Form 4 Order continuing hearing scheduled for 4/3/14, filed April 3, 2014, C.A. # 2014-CP-32-399).

The motions hearing was rescheduled for May 27, 2014 before Judge Brian M. Gibbons. (Notice of Motion or Status Conference Scheduling, dated May 5, 2014, C.A. # 2014-CP-32-399). Appellant filed a Notice to the Court demanding, among other things, a written explanation of why Judge Russo would not be presiding over the motions hearing. (App. Notice to the Court, dated May 12, 2014, C.A. # 2014-CP-32-399). Judge Russo sent Appellant a letter explaining the South Carolina "Circuit Court System wherein judges rotate throughout the various Circuits of the State holding Court." (Letter from Judge Russo to A. Guice, dated May 20, 2014, C.A. # 2014-CP-32-399).

The Circuit Court rescheduled the hearing for June 16, 2014 before Judge Gibbons. (Notice of Motion or Status Conference Scheduling, dated May 30, 2014, C.A.

2014-CP-32-399). Respondents filed a memorandum in support of their position. (Resp. Memorandum in Support of Respondent's [sic] Position on Appeal, dated May 20, 2014, C.A. # 2014-CP-32-399). Appellant filed a memorandum in support of his position raising many of the same issues he had raised to the Commission in his Form 50, Form 30 and Motion for Reinstatement, and to the Circuit Court in both proceedings before that forum. (App. Memorandum in Support of Appellant's Position on Appeal, dated May 22, 2014, C.A. # 2014-CP-32-399). He also filed another Notice to the Court, setting forth his position on various points, advising that he would not attend the schedule motions hearing, and asking that the court accept his written submissions as his oral argument. (App. Notice to the Court, dated June 2, 2014, C.A. # 2014-CP-32-399).

Appellant failed to attend or arrange to have counsel present at the June 16, 2014 hearing. Counsel for Respondents attended the hearing. Judge Gibbons affirmed the 2013 Commission Decision in its entirety and dismissed Appellant's appeal with prejudice. (Order, filed July 30, 2014, C.A. # 2014-CP-32-399) ("July 30, 2014 Order").

Respondents prepared a proposed order pursuant to Judge Gibbons' instructions. Appellant provided comments to the Court and to Respondents alleging, among other things, that the proposed order violated this Court's April 24, 2014 remand. (Memorandum of Comments and Exceptions Regarding Proposed Order on Appeal, dated June 27, 2014, C.A. # 2014-CP-32-399). As noted above, this Court previously remanded Appellant's appeal concerning Mr. Cannon's March 27 Letter to the Circuit Court, instructing the court to, "consider the merits of this appeal in conjunction with Appellant's appeal from the commission's final order." (Order, filed April 24, 2014, Ct. App. No. 2013-002491).

Appellant filed a motion for new trial, again asserting that the July 30, 2014 Order violated this Court's April 24, 2014 remand Order. Appellant requested an order, "granting a new hearing in the instant case, **or in the alternative**, immediately issuing [an] appropriate order setting aside all decisions in the instant case, to include ordering the Respondents to comply with R. 67-506(D) and reinstate Appellant's employment and release the unlawfully withheld temporary total compensation payments, as well as 25% interest penalty [assessed], ..." Appellant's Motion also asserted numerous allegations against Judge Gibbons' handling of this case, accusing Judge Gibbons of, among other things, "intentional acts of abuse of discretionary authority, fraud upon the court, and failure to perform his required disciplinary duties," which Appellant alleged "may be the result of subornation," and sought Judge Gibbons' recusal. (App. Motion for New Trial, dated Aug. 4, 2014, C.A. # 2014-CP-32-399) (emphasis added).

Respondents filed a reply to Appellant's motion for a new trial. (Defendants' Reply to Appellant's Motion for a New Trial, filed Aug. 15, 2014, C.A. # 2014-CP-32-399). Appellant filed an answer to Respondents' Reply to his motion for a new trial, again raising the contention that Judge Gibbons failed to properly comply with this Court's April 24, 2014 remand Order, as well as allegations concerning Judge Gibbons' handling of this case. (App. Answer to Reply to Motion for New Trial, dated Aug. 25, 2014, C.A. # 2014-CP-32-399).

Appellant filed a verified notice to the court, demanding that Judge Gibbons certify that he "does not suffer from any disability which would serve to incapacitate the abilities to adjudicate the instant appeal in a fair and impartial manner," and that he provide various explanations of his actions in this matter. (App. Verified Notice to the

Court, dated Aug. 21, 2014, C.A. # 2014-CP-32-399). Respondents filed a response, with supporting documents. (Memorandum in Response to Appellant's Verified Notice to the Court and Motion for New Trial, dated Sept. 8, 2014, C.A. # 2014-CP-32-399). Appellant filed a reply. (Reply to Respondent's [sic] Memorandum in Response to Appellant's Verified Notice to the Court and Motion for New Trial, dated Sept. 18, 2014, C.A. # 2014-CP-32-399).

On September 29, 2014, Judge Gibbons issued an Order granting Appellant's Motion for New Trial. Judge Gibbons specifically granted "Appellant/Claimant's motion for new trial to allow everything to be developed, on the record, for the Court of Appeals to consider if these matters continue to move on through that appellate process." (Order Granting Appellant/Claimant's Motion for New Trial and Order for Recusal, dated Sept. 25, 2014 and filed Sept. 29, 2014, C.A. # 2013-CP-32-1272 & # 2014-CP-32-399, p. 3) ("September 25, 2014 Order"). Judge Gibbons also ordered that, "[t]he Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion and that my Order of July 30, 2014 be and hereby is VACATED ..." In light of what he deemed "numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant," Judge Gibbons recused himself from further participation in this case on his own motion. (*Id.* p. 4).

Subsequently, Appellant provided Respondents with a Notice of Demand, asserting that the September 25, 2014 Order required Respondents to "reinstate the undersigned's employment and immediately release the unlawfully withheld temporary total compensation payments, to include the 24% interest penalty assessed on the

withheld compensation payments.” (App. Notice of Demand, dated Oct. 8, 2014, C.A. # 2013-CP-32-1272 & # 2014-CP-32-399).

Respondents filed a motion to alter or amend Judge Gibbons Order. In particular, Respondents sought clarification as to the apparent conflict between the grant of a new hearing to consider the entire record and Appellant’s position that the September 25, 2014 Order had granted him the substantive relief he demanded before the Commission. (Resp. Rule 59(e) Motion to Alter/Amend Circuit Court Order dated September 25, 2014, dated Oct. 16, 2014, C.A. # 2013-CP-32-1272 & # 2014-CP-32-399) (“Motion to Alter/Amend”).

Appellant filed an opposition to Respondents’ Motion to Alter/Amend. In his opposition, Appellant asserted that the September 25, 2014 Order had granted Appellant the substantive relief he sought. (App. Reply to Defendants’ Motion to Alter/Amend Circuit Court Order dated September 25, 2014, dated Oct. 19, 2014, C.A. # 2013-CP-32-1272 & # 2014-CP-32-399).

On the same date, Appellant filed a Motion for Sanctions, asserting that the September 25, 2014 Order had awarded him the substantive relief he was seeking before the Commission, and advising the court that he had served a Notice of Demand on Respondents, who had failed to comply. He argued that, as a result, Respondents’ counsel was subject to a daily monetary fine. (Motion for Sanctions, dated Oct. 19, 2014, C.A. # 2013-CP-32-1272 & # 2014-CP-32-399).

Thereafter, Chief Judge for Administrative Purposes, William P. Keesley, filed several administrative Orders, including one filed on October 23, 2014 setting out various matters. (Administrative Order, filed Oct. 23, 2014). He then consolidated the two files

previously designated as C.A. # 2013-CP-32-1272 and C.A. # 2014-CP-32-399, (Administrative Order Consolidating the Files, filed Oct. 24, 2014),⁵ designating this matter as complex litigation and assigning himself to hear this case, (Administrative Order Designating cases as Complex Litigation, filed Oct. 24, 2014), directing the Commission to provide and maintain its files in this matter, (Administrative Order to Obtain File From the South Carolina Workers Compensation Commission and Directing that the Files not be Destroyed Until Final Resolution of the Appeal, filed Oct 24, 2014), and continuing the previously scheduled hearing. (Administrative Order to Continue the Hearing Scheduled for November 10, filed Oct. 24, 2014). In addition, Judge Keesley filed an administrative order indicating that Judge Gibbons would be contacted to determine whether, in light of his recusal, he would be able to hear the motion for reconsideration of the September 25, 2014 Order. (Administrative Order filed Oct. 24, 2014).

Judge Keesley wrote a letter to Judge Gibbons, advising him of the pending motions for reconsideration and inquiring whether he would decide the pending motions. (Letter from Judge Keesley to Judge Gibbons, dated Oct. 24, 2014). Judge Gibbons declined to hear the motions, as he had recused himself from this case. (Letter from Judge Gibbons to Judge Keesley, dated Oct. 29, 2014).

Appellant filed a motion objecting to Judge Keesley's Administrative Orders, arguing that the September 25, 2014 Order had granted him the substantive relief he sought. In his motion, he objected to various of Judge Keesley's Administrative Orders, alleging, among other things, racial bias, unlawful and fraudulent actions and an abuse of

⁵ All further references herein to Circuit Court orders issued after September 29, 2014 refer to the consolidated hearing to consider C.A. # 2013-CP-32-1272 and C.A. # 2014-CP-32-399.

discretion by Judge Keesley, fraud upon the court by Judge Keesley, Clerk of Court Beth Carrigg, and Counsel for Respondent. (Appellant's Motion in Objection to Administrative Order, dated Oct. 31, 2014).⁶ Appellant then wrote Judge Keesley a letter asking the court to set aside the Administrative Orders filed on October 24, 2014 and seeking an immediate order. (Letter from A. Guice to Judge Keesley, dated Nov. 25, 2014).

Appellant also filed a Motion for Judgment on the Pleadings, invoking South Carolina Rule of Civil Procedure 12(c) regarding same. (Motion for Judgment on Pleadings, dated Dec. 3, 2014).

Judge Keesley responded to Appellant's Nov. 25, 2014 letter advising that he had prepared an Administrative Order regarding Rule 63, SCRCF. Judge Keesley's letter also advised that he had received the file from the Commission and that it contained over 100 documents and that "the sheer volume of the filings has required huge amounts of

⁶ Meanwhile, Appellant filed an emergency petition with the South Carolina Supreme Court, seeking that Court's original jurisdiction. In his emergency petition, Appellant asked the Supreme Court to set aside Judge Keesley's Administrative Orders, filed Oct. 24, 2014, deny Respondents' Motion to Alter/Amend, and adjudicate his Motion for Sanctions. (App. Emergency Petition for Writ of Mandamus, dated Dec. 8, 2014, Sup. Ct. No. 2014-002625). Appellant subsequently filed a separate Motion for Sanctions with the Supreme Court. (App. Motion for Sanctions and Memorandum, filed Dec. 31, 2014, Sup. Ct. No. 2014-002625). The Supreme Court denied Appellant's Petition and Motion for Sanctions. (Order filed Jan. 14, 2015, Sup. Ct. No. 2014-002625). Appellant sought rehearing, (App. Petition for Rehearing, dated Jan. 21, 2015, Sup. Ct. No. 2014-002625) and, when Respondents advised the Supreme Court in a letter dated January 28, 2015 that they did not intend to file a return in opposition, (Letter from E. Hantske to Hon. D. Shearouse, dated Jan. 28, 2015, Sup. Ct. No. 2014-002625), Appellant emailed Ms. Hantske demanding that the January 28, 2015 letter be withdrawn. (Email from A. Guice to E. Hantske, dated Feb. 2, 2015, Sup. Ct. No. 2014-002625). In addition, Appellant filed a Motion for Judgment on the Pleadings with the Supreme Court, asking that his Petition for Rehearing be granted. (App. Motion for Judgment on the Pleadings, dated Feb. 15, 2015, Sup. Ct. No. 2014-002625). Appellant's Motion was denied, (Order, filed Feb. 25, 2015, Sup. Ct. No. 2014-002625 (denying Motion for Judgment on the Pleadings), and he was cautioned about filing future petitions asking the Supreme Court to exercise its original jurisdiction. (Order, filed Feb. 25, 2015, Sup. Ct. No. 2014-002625 (cautioning Appellant)).

time.” (Letter from Judge Keesley to A. Guice, dated Dec. 11, 2014). That Administrative Order was subsequently filed on December 11, 2014. (Administrative Order Regarding Rule 63, SCRCF, filed Dec. 11, 2014).

Appellant followed up with Judge Keesley on January 12, 2015, asking about the status of the appeal. Judge Keesley responded that he had reviewed the Commission file and that he intended to act on Appellant’s case in the appropriate manner. (Emails from A. Guice to Judge Keesley, and from Judge Keesley to A. Guice, dated Jan. 12, 2015). Appellant responded by asking Judge Keesley to recuse himself, due to his alleged inability to perform the functions of his office. Judge Keesley responded that, if Appellant wished to seek his recusal, he needed to file a motion for same. (Emails from A. Guice to Judge Keesley, and from Judge Keesley to A. Guice, dated Jan. 13, 2015).

Judge Keesley filed a supplemental order setting forth the process by which this matter would be resolved, following the Court’s review of the full Commission file. He set a *de novo* hearing for March 27, 2015 at the Lexington County Judicial Center to consider all pending motions. Judge Keesley advised the parties that all submissions had to be filed in advance of the hearing and that “the failure to appear may be deemed an abandonment of any claims made in any pending motions.” (Supplemental Administrative Order Regarding Rule 63, SCRCF, and Determination to Hold a *de novo* Hearing on the Pending Rule 59 Motion of the Employer/Carrier, and Setting the Date for Hearing the Rule 59 Motion and all Pending Motions, filed March 5, 2015) (“Supplemental Administrative Order”).

In advance of the hearing, Appellant submitted multiple filings, including: 1) a Memorandum in Response to the Supplemental Administrative Order Regarding Rule 63,

SCRCF, and Determination to hold a *de novo* Hearing on the Pending Rule 59 Motion of the Employer/Carrier, and Setting the Date for Hearing the Rule 40 Motion and All Pending Motions; 2) a Notice of Cancellation of Hearing; 3) a Motion for Relief from Administrative Orders; and 4) a Motion to Stay; and 5) Verified Motion to Disqualify.⁷ Respondents duly filed a Response to Appellant's submissions and motions. (Respondent's [sic] Reply to Appellant's Pre-Trial Motions and Submissions, dated March 20, 2015).

A hearing was held before Judge Keesley on March 27, 2015. Appellant did not attend the hearing, nor did he have counsel present. Counsel for Respondents attended the hearing. Judge Keesley made several rulings from the bench, (Transcript of March 27, 2015 Hearing), and followed with a written order. (Circuit Court Order, filed July 17, 2015) ("Circuit Court Order").

Among other things, Judge Keesley held that "it is apparent that the relief sought in the motion for reinstatement of employment and release of temporary total compensation payments concerned the same 2005 settlement and is the identical relief sought in the current appeal," and the two appeals in the two Circuit Court files "are seeking the same relief." (Circuit Court Order, p. 10-1). Judge Keesley determined Appellant's interpretation of the September 25, 2014 Order as having granted him substantive relief "is without support," and denied Appellant's various motions to overturn the Administrative Orders, and for judgement on the pleadings and sanctions.

⁷ (Memorandum in Response to the Supplemental Administrative Order Regarding Rule 63, SCRCF, and Determination to hold a *de novo* Hearing on the Pending Rule 59 Motion of the Employer/Carrier, and Setting the Date for Hearing the Rule 40 Motion and All Pending Motions, dated March 7, 2015) (Notice of Cancellation of Hearing, dated March 7, 2015) (Motion for Relief from Administrative Orders, dated March 7, 2015) (Motion to Stay, dated March 7, 2015) (Verified Motion to Disqualify, dated March 7, 2015).

Finally, Judge Keesley granted Respondents' motion to dismiss the appeal, as well as their request for attorney fees and costs.

Appellant timely appealed to this Court.

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2012). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992). It is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999).

ARGUMENTS

Many of Appellant's arguments are the apparent result of Appellant's misunderstanding or misapplication of workers' compensation law and proceedings

and/or appellate law and proceedings.⁸ Appellant's arguments mistakenly assume the Commission has subject matter jurisdiction to resolve his employment termination/reinstatement claims, which it clearly does not. Other of Appellant's arguments to this Court arise out of his erroneous reading and interpretation of Judge Gibbons' September 25, 2014 Order. In short, Appellant would have this Court construe the September 25, 2014 Order by narrowly focusing on and giving a strained and unreasonable interpretation to only one phrase in a five-page order. However, orders should be read in their entirety. City of North Myrtle Beach v. East Cherry Grove Realty Co., LLC, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012). At the end of the day, Appellant raises no valid reason for this Court to overturn the Circuit Court Order, which should be upheld in its entirety.

I. The Circuit Court properly affirmed the Commission Decision.

Appellant continues to attack the validity of the 2006 Settlement Agreement that resolved his underlying workers' compensation claim. However, the Commission specifically found that Appellant "settled his claim ... through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006." In addition, because he settled his workers' compensation claim in 2006 "on a Full and Final basis ... the hearing set for March 28, 2013 in Summerville, South Carolina was appropriately cancelled. Further,

⁸ For example, Appellant asserts that, because Respondents did not cross-appeal the 2013 Commission Decision, any issues raised in Respondents' Brief to the Commission that were not specifically addressed by the Commission are not preserved for appellate review. (App. Br. p. 13 n.4). On the contrary, although a party may petition the Commission for rehearing, such is not required and points not specifically addressed by the Commission may still be raised on appeal. Rhame v. Charleston County Sch. Dist., 412 S.C. 273, 276, 772 S.E.2d 159, 161 (2015). Furthermore, an appellate court can affirm a lower court or commission decision on any basis appearing in the record. I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 417-422, 526 S.E.2d 716, 721-724 (2000).

any and all motions filed pertaining to WCC No. 0507205 are hereby dismissed as well.” (2013 Commission Decision).

Appellant argues that the Commission lacked subject matter jurisdiction when it considered and approved the 2006 Settlement of his underlying workers’ compensation claim. He bases his allegations on assertions that, among other things, the Commission did not have his full medical files at the time it approved the Settlement Agreement; that his “permanent lifting restriction” constituted an injury or issue that was not addressed; that Respondents failed to submit his final permanent impairment rating pursuant to S.C. Code Reg. § 67-1301(B); and allegations of delay in payments of TTD. Even if Appellant could prove those allegations (which Respondents do not concede), they do not deprive the Commission of subject matter jurisdiction. “Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’” Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). The Commission is empowered to determine all questions arising under the Act. S.C. Code Ann. § 42-3-180.

Furthermore, even if Appellant could prove any of his allegations that the Commission did not have or review his full medical file and/or his final impairment rating at the time it approved the Settlement Agreement (which Respondents do not concede), the time to raise these issues has long passed. *See, e.g., Reese v. CCI Constr. Co.*, 334 S.C. 600, 604, 514 S.E.2d 144, 145 (Ct. App. 1999) (an unappealed ruling, whether right or wrong, becomes the law of the case and cannot be challenged later on appeal); Gallagher v. Evert, 353 S.C. 59, 68, 577 S.E.2d 217, 221-222 (Ct. App. 2002) (the failure to timely appeal a ruling deprives an appellate court of jurisdiction to hear the

appeal). Timely filing and serving a notice of appeal is a jurisdictional requirement, and courts have no authority to extend or expand the time in which a notice of intent to appeal must be filed. Conner v. City of Forest Acres, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002); Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (same).

In reality, Appellant cannot “prove” what was in the Commission file as of January 2006 and/or that Respondents failed to submit any necessary medical reports to the Commission, and his assertions of what was or was not in the Commission file at the time it approved the Settlement Agreement are no more than speculation. In fact, the version of Section 42-3-230 that was in effect at the time this claim was settled provided that, “[t]he Commission may from time to time as it may deem advisable destroy any of its inactive files that are at least five years old.” S.C. Code Ann. § 42-3-230 (2006). For injuries occurring after July 1, 2006, that timeframe has been extended to 15 years. S.C. Code Ann. § 42-3-230 (2012). As Appellant’s FOIA request was made more than five years after his case was closed at the Commission, his assertions that what was produced to him in response to his 2012 FOIA request, (Letter from A. Guice to SC Workers’ Compensation Commission, dated Nov. 18, 2012) (Letter from A. Guice to E. Hantske, dated Jan. 17, 2013, transmitting a List of Exhibits & Exhibit 1 (36 pages)), was all that the Commission had before it when it approved the Settlement Agreement are no more than speculation. Appellant’s presentation of the Commission’s FOIA response, made over five years after the close of his file, does not prove what the Commission did or did not have before it when it approved the Settlement Agreement. A workers’ compensation award cannot “rest on surmise, conjecture or speculation; it must be founded on evidence

of sufficient substance to afford a reasonable basis for it.” Bundrick v. Powell’s Garage & Wreckage Serv., 248 S.C. 496, 503, 151 S.E.2d 437, 441 (1966).

Appellant also argues that he had an “injury of ‘permanent lifting restrictions’” that was not referenced in the Settlement Agreement. However, a lifting restriction does not constitute an “injury” as contemplated by the Act. The term “injury” is defined to “mean only injury by accident arising out of an in the course of employment ...” S.C. Code Ann. § 42-1-160. A lifting restriction that is the result of an injury simply is not an injury in and of itself. The cases relied on by Appellant do not hold otherwise. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987) (considering whether severe physical injuries received when the claimant was hit by a car as she was crossing a street were compensable); Oliver v. South Carolina Dept. of Hwys & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992) (tort case that does not discuss the concept of “injury” as defined in the Act); Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000) (whether physical injury to the claimant’s eye arose out of and in the course of employment).

In addition, S.C. Code Reg. § 67-803(A)(2) provides that the settlement must include “[a] statement of the facts at issue,” but does not require an exhaustive statement of every fact pertaining to a claim. Here, there is no evidence that Appellant’s lifting restrictions were contested or, in other words, “at issue.” Thus, there is no merit to Appellant’s argument that, in not referencing his permanent lifting restrictions, the Settlement Agreement omitted a material term.

Appellant’s reliance in this respect on Patricia Grand Hotel, LLC v. MacGuire Enter., Inc., 372 S.C. 634, 643 S.E.2d 692 (Ct. App. 2007) and Ozyagcilar v. Davis, 701

F.2d 306 (4th Cir. 1983) is misplaced. The critical difference between those cases and the instant case is that both Patricia Grand Hotel and Ozyagcilar involved a “settlement in principle” where disagreements arose in drafting the final settlement agreement. Here, the Settlement Agreement was a final agreement and was signed by Appellant. Similarly, Aperm of South Carolina v. Roof, simply stands for the proposition that, “for a contract to be binding material terms cannot be left for future settlement.” 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App. 1986). Here, there were no material terms left for future resolution; instead, the Settlement Agreement described the dispute between the parties, the amount and terms of the agreement, and was signed by Appellant.⁹

Appellant’s assertion that the Settlement Agreement constitutes an unlawful suspension/termination of his TTD benefits is both misplaced and incorrect. South Carolina courts have a long history of upholding Commission-approved settlements. McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 273, 400 S.E.2d 130, 131 (1990) (rejecting a collateral attack on a Commission-approved settlement alleging lack of subject matter jurisdiction, because “[o]nce the Commission approves a compensation agreement, the agreement becomes a[s] binding as a judicial decree and the facts contained therein are as definitely settled as factual findings incorporated in a decree”); Singleton v. Young Lumber Co., 236 S.C. 454, 463, 114 S.E.2d 837, 841 (1960) (holding that an agreement between a claimant and employer to pay compensation “when approved by the Commission, was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed

⁹ Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E.2d 804 (1977), also cited by Appellant, does not advance his position, as it applied to a Commission decision in a contested case, not the Commission’s approval of a settlement agreement pursuant to S.C. Code Ann. § 42-17-10.

upon appeal”)¹⁰; Atkins v. Charleston Shipbuilding & Drydock Co., 206 S.C. 63, 67-68, 33 S.E.2d 46, 47-48 (1945) (holding that the Commission has the power to approve “a lump sum settlement to once and for all time settle the rights of the parties ...” and that “a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, ... [is] valid and enforceable”);¹¹ Lloyd v. AT&T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct. App. 1989) (rejecting attempt to correct error in approved settlement agreement where the party failed to timely appeal the error, in order to prevent parties “from reopening the amount of compensation long after the initial agreement has been settled”).

Appellant’s reliance on Ecclesiastes Prod. Ministries v. Outparcel Assoc., LLC, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007), and Poston v. Barnes, 294 S.C. 261, 363 S.E.2d 888 (1987), is misplaced. The discussions he relies on in those cases concern the need to carefully scrutinize covenants not to execute or proceed, not a traditional settlement agreement and release. Ecclesiastes, 374 S.C. at 493, 649 S.E.2d at 499;

¹⁰ The agreement in Singleton is substantively different from the Settlement Agreement that Appellant signed in this case. There, the agreement was for weekly benefits “until terminated in accordance with the provisions of the workmen’s Compensation Law of the State of South Carolina.” 236 S.C. at 458, 114 S.E.2d at 838. Here, the Settlement Agreement provided for a lump sum payment of all of Appellant’s remaining compensation benefits, (Settlement Agreement), which was duly paid.

¹¹ In Atkins, the claimant and his employer entered into a settlement agreement that included a stipulation that the agreement was “subject to the limitations and conditions set out in the Workmen’s Compensation Act.” 206 S.C. at 67, 33 S.E.2d at 47. Within 12 months of settling, the claimant brought a change of condition for the worse claim. The Supreme Court held that, except for the stipulation quoted above, “there would be no question that the intent of the settlement was to make it final and conclusive, and not subject to review, because the release specifically covers all types of disability, past, present and future resulting from the accidental injury.” Id. Thus, Atkins confirms that a settlement agreement that completely resolves a workers’ compensation claim, resolving past, present and future claims and **without** any reservation such as “subject to the limitations and conditions set out in the Workmen’s Compensation Act,” and which is approved by the Commission, is a final order that cannot be reopened some five or six years later. In the instant case, Appellant did not file a claim for a change of condition for the worse within 12 months of the final payment to him.

Poston, 294 S.C. at 264, 363 S.E.2d at 890. In fact, in Ecclesiastes, this Court explained that “[a] release is a contract and contract principles of law should be used to determine what the parties intended.” 374 S.C. at 497, 649 S.E.2d at 501. As such, a “court must enforce an unambiguous release according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.” 374 S.C. at 500, 649 S.E.2d at 503. Appellant has never alleged, and none of the lower tribunals have found, that the Settlement Agreement and accompanying release were ambiguous on their face. He cannot do so now. In fact, there is no ambiguity in the Settlement Agreement or Release which Appellant signed.

In settling his claim, Appellant acknowledged, among other things, that Respondents “have fully, finally and completely paid and discharged each and every one of their obligations, liabilities and responsibilities under the South Carolina Workers’ Compensation Act,” and that the payment of the settlement amount was “in full and final satisfaction of all claims whatsoever as a result of the alleged accident.” (Settlement Agreement). In the Order and Award approving the Settlement Agreement, the Commission found that the Settlement Agreement was reasonable and fair and that Respondents “are forever discharged from each and every liability or responsibility under the South Carolina Workers’ Compensation Act on account of the Claimant’s injuries on or about May 5, 2005, whether for compensation, disfigurement or for medical or related services or for any account whatsoever and each and every consequence or result thereof, past, present or future, whether for continuation, aggravation, recurrence or otherwise as a result of this accident.” (2006 Commission Decision). As noted above, the Commission has the power to approve lump sum settlements which, if not timely

appealed, become final, enforceable orders of the Commission. McCreery, 303 S.C. at 273, 400 S.E.2d at 131; Atkins, 206 S.C. at 67-68, 33 S.E.2d at 47-48.

Appellant was represented by counsel when he entered into the Settlement Agreement. To the extent Appellant has raised issues with his counsel's representation during the settlement process, that dispute is between himself and his former counsel, and cannot serve as a basis to revisit Appellant's release of Respondents. In addition, the Commission is not authorized to hear complaints regarding attorney malpractice or misrepresentation. As Appellant acknowledges, the Commission only possesses those powers granted in its authorizing statute. South Carolina Ambulatory Surg. Ctr. Assoc. v. South Carolina Workers' Compensation Comm'n, 389 S.C. 380, 392, 699 S.E.2d 146, 153 (2010). Nowhere in the Act is the Commission authorized to hear legal misrepresentation complaints. There are forums where a party can raise allegations concerning counsel's representation, but that is not an issue the Commission can adjudicate.

To the extent Appellant claims there were errors in calculating his TTD benefits or delays in making compensation payments prior to the settlement, which Respondents strongly deny,¹² it is far too late for him to raise those issues now. Lloyd, 299 S.C. at 209, 383 S.E.2d at 259 (rejecting attempt to correct error in approved settlement agreement where the party failed to timely appeal the error); *see also* McCreery, 303 S.C. at 273, 400 S.E.2d at 131 (rejecting a collateral attack on a Commission-approved settlement). Appellant had 30 days from the date of the Commission Order approving the

¹² There is no evidence substantiating any of Appellant's assertions that he was "coerced" or pressured into entering into the Settlement Agreement, and particularly no evidence of any such actions attributable to Respondents.

Settlement Agreement to contest its validity or accuracy. There is no evidence that he filed an appeal within that 30-day window.

Furthermore, Appellant fundamentally misunderstands the difference between a lump sum settlement agreement that resolves all of the compensation issues between the parties – past, present and future – and an agreement to pay benefits until properly terminated under the Act. Had the Settlement Agreement stated that weekly payments would be made until terminated pursuant to the Act, as was the case in Singleton, 236 S.C. at 458, 114 S.E.2d at 838, then Appellant’s allegations concerning “unlawful suspension/termination of TTD benefits,” S.C. Code Ann. § 42-9-260(F) and S.C. Code Reg. § 67-506, (App. Br. pp. 27-20), might make sense. Instead, the version of Section 42-9-390 that is applicable to this claim provides that, “[n]othing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission if the employee is represented by an attorney.” S.C. Code Ann. § 42-9-390 (2006). The restriction in S.C. Code Ann. § 42-1-620 simply does not prevent a claimant from settling his workers’ compensation claim for a lump sum payment of all his benefits.

Under Appellant’s reasoning, the only settlement agreements that could resolve a claim completely are those entered into within the first 150 days of TTD payments. Such an interpretation would create absurd results and cannot be what the Legislature intended. Town of Mt. Pleasant v. Roberts, 303 S.C. 332, 342-343, 713 S.E.2d 278, 283 (2011).

The effect of the Settlement Agreement was that all compensation benefits to which Appellant was entitled were paid to him in one lump sum which, by order of the Commission, discharged Respondents from any further responsibility to Appellant as a result of his May 5, 2005 accident. (Settlement Agreement) (2006 Commission Decision).

In the end, Appellant's reliance on S.C. Code Ann. § 42-1-620 is misplaced. He did not waive his right to seek compensation from his employer, which is the purpose of Section 42-1-620. *See Neese v. Michelin Tire Corp.*, 324 S.C. 465, 480, 478 S.E.2d 91, 99 (Ct. App. 1996) (Section 42-1-620 bars contracts that would prevent a claimant from applying for workers' compensation benefits). Instead, Appellant filed a claim, was provided medical treatment, paid TTD payments for a period of time, and then a lump sum settlement payment to resolve the remainder of his claim. He did not waive his rights; he brought, pursued and settled his claim. He was represented by counsel at the time the Settlement Agreement was negotiated and signed.¹³ He accepted payment of his full claim under the terms of the Settlement Agreement.

This Court should hold that the Circuit Court properly affirmed the Commission Decision which: 1) found that Appellant "settled his claim ... through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006"; 2) found that the March 28, 2013 hearing before Commissioner Barden was properly cancelled; and 3) dismissed all motions he had filed with the Commission.

¹³ As noted above, to the extent Appellant alleges he was not represented well by his counsel, the Commission has no authority to adjudicate that issue.

II. The Circuit Court did not err in issuing its Administrative Orders.

Most of Appellant's remaining arguments are based on his incorrect reading of the September 25, 2014 Order, which is specifically titled, "**Order Granting Appellant/Claimant's Motion for New Trial and Order for Recusal.**" (September 25, 2014 Order) (emphasis added). Judge Gibbons ruled that, "in the interest of justice the Court **must grant Appellant/Claimant's motion for new trial to allow everything to be developed, on the record**, for the Court of Appeals to consider if these matters continue to move on through that appellate process." He also held that Appellant's other grounds for a new trial "do not need to be addressed, since Appellant/Claimant **prevailed on his motion for a new trial.**" (*Id.* p. 3) (bold emphasis added). In addition to Ordering Paragraph Number One, on which Appellant focuses exclusively, Ordering Paragraph Number four directs that "this matter be reassigned in the discretion of the Chief Administrative judge of the Eleventh Judicial Circuit **for a de novo hearing on all matters instructed by the SC Court of Appeals** in both pending Case Numbers 13-CP-32-1272 and 14-CP-32-399." (*Id.* pp. 4-5) (emphasis added). Thus, the September 25, 2014 Order clearly ordered a new trial/*de novo* hearing.¹⁴

Judge Keesley's Administrative Orders, which were intended to streamline and fairly adjudicate this matter, were entirely proper. He was not ordering a new trial under Rule 59(d), SCRCP, or ordering relief from a final judgment pursuant to Rule 60(b),

¹⁴ As a result, Appellant's request that this Court reinstate the September 25, 2014 Circuit Court Order "with its full weighted force and effect," (App. Br. p. 49), would only serve to remand this matter to the Circuit Court for yet another hearing on the motions that were pending before the court. As Judge Keesley explained, Appellant has "simultaneously complain[ed] about the case not being administered and being administered." (Tr. of March 27, 2015 hearing, p. 8, lines 9-11).

SCRCP, in the wake of a final decision on the merits but, instead, was proceeding forward as envisioned and ordered in the September 25, 2014 Order.

None of the cases Appellant relies on for the proposition that a successor judge cannot overrule another judge in the same circuit – Charleston County Dept. of Soc. Servs v. Father, 317 S.C. 283, 454 S.E.2d 307 (1995); Tisdale v. American Life Ins. Co., 216 S.C. 10, 56 S.E.2d 580 (1949); Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689 (1943); and State v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct. App. 1985) – involved a prior ruling that ordered a new trial, as is the case here. Whether, in an effort to make sense of the convoluted proceedings in this appeal, Judge Keesley overruled the September 25, 2014 Order or not does not make any substantive difference given that that Order granted Appellant’s motion for a new trial. Judge Keesley held a hearing in which he considered the Commission file, all pending motions, as well as Appellant’s claimed interpretation of the September 25, 2014 Order. Judge Keesley determined correctly that, whether he considered Judge Gibbons’ September 25, 2014 Order granting a new trial, or vacated that order, the result would be the same, as it was unclear whether Judge Gibbons had reviewed the entire file and, in fact, Judge Gibbons acknowledged that he had not ruled on all of the issues remanded by the Court of Appeals. Judge Gibbons wrote, “[s]ince my written Order of July 30, 2014 ... does not specifically address matters contained in 2013-CP-32-1272 as instructed by the SC Court of Appeals, the Court agrees with Appellant/Claimant that he should be granted a new trial or hearing in Circuit Court.” (September 25, 2014 Order, p. 3).

Equally important, however, Judge Gibbons’ September 25, 2014 Order had already ordered a *de novo* hearing, such that Judge Keesley was simply complying with

that prior Order in what he determined was the most logical and fair manner possible. Regardless of which prior Order Judge Keesley “reheard,” it reached the correct result in this case, both procedurally and substantively. An appellate court can affirm a lower tribunal’s decision on any basis appearing in the record. *E.g.*, Rule 220(c), SCACR; Chestnut v. AVX Corp., 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015) (appellate courts “can affirm a lower court’s order for any reason appearing in the record”); Thomas v. 5 Star Transp., 412 S.C. 1, 16, 770 S.E.2d 183, 191 (Ct. App. 2015) (appellate court may affirm the lower court’s correct result even if the trial court “erred on some other ground”).

Christy v. Christy, 354 S.C. 203, 580 S.E.2d 444 (2003) does not advance Appellant’s position. First, Christy was decided under a prior version of Rule 63, SCRCRCP. Second, Christy held that, when a judge becomes disabled or incapacitated following a hearing but before an order has been issued, the successor judge must hold a new hearing before deciding the case. Ultimately, here, Judge Gibbons’ September 25, 2014 Order specifically ordered a new trial, with which the Administrative Orders issued by Judge Keesley were in compliance.

In the end, Appellant’s arguments regarding the propriety of Judge Keesley’s administrative orders and conduct of a *de novo* hearing to consider all motions rest on his assertion that Judge Gibbons September 25, 2014 Order granted him the substantive relief he seeks. As explained in more detail below and as was correctly held by the Circuit Court, that reading of the September 25, 2014 Order is both unsupported and incorrect. (Circuit Court Order, pp. 13, 17, 22-23). The Supplemental Administrative Order specifically stated that all pending motions would be considered at the March 27,

2015 hearing. (Supplemental Administrative Order, pp. 2-3). Appellant did not attend the hearing that was scheduled to consider his arguments, so the Circuit Court necessarily was limited to relying on Appellant's written submissions.

Appellant makes the argument that the Circuit Court had no authority to order the entire file from the Commission. He is incorrect. Rule 74, SCRCF, concerning appeals to the circuit court, requires that, "[u]pon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court of administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken." As this had not yet been done, Judge Keesley correctly ordered that the Commission transmit the entire Commission file. Respondents did not need to raise this issue with the Circuit Court in order to "authorize" the Court to proceed. Appellant's citation to cases concerning the requirement that objections concerning admission of evidence or jury instructions be made during trial are misplaced as: 1) transmission of the Commission file to the Circuit Court on appeal is authorized by Rule 74, SCRCF; and 2) this was not a jury trial as the Circuit Court was acting in its appellate capacity.

As Appellant pointed out, appellate courts recognize the rule that "whatever doesn't make any difference, doesn't matter." McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987). Appellant's Motion for New Trial, (App. Motion for New Trial, dated Aug. 4, 2014, C.A. # 2014-CP-32-399), was granted by the September 25, 2014 Order. Since, as is explained below, the September 25, 2014 Order did not grant Appellant the substantive relief he seeks, even if there were procedural errors, which Respondents do not concede, in how Judge Keesley handled what is an admittedly and

unnecessarily complicated appeal, any error was harmless in that Judge Keesley reached the correct result in his July 17, 2015 Circuit Court Order.

This Court should rule that the Administrative Orders issued by Judge Keesley were proper and appropriate.

III. The Circuit Court properly interpreted the September 25, 2014 Order to grant and order a new trial.

Despite Appellant's attempts to narrowly read the September 25, 2014 Order by focusing on one phrase out of a five-page order, the Circuit Court properly rejected his arguments. Although Ordering Paragraph Number One is somewhat ambiguous, in that it both granted Appellant's motion for a "new trial or hearing" but also contains the phrase "as to all particulars set forth in his motion," that latter phrase must be read in the context of the whole Order.

As stated above, orders must be read in their entirety. "The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself." City of North Myrtle Beach, 397 S.C. at 503, 725 S.E.2d at 679. Appellant's reading of the September 25, 2014 Order omits all of that Order except for the phrase "as to all particulars set forth in his motion," including the first part of Ordering Paragraph Number One, which specifically grants his motion for new trial.¹⁵ If, in fact, Judge Gibbons was granting Appellant all of the substantive relief he was seeking, there would be no reason for a new trial or *de novo* hearing. Appellant's reading of the September 25, 2014 Order does not make sense in light of the repeated grant of a

¹⁵ Appellant specifically moved for a new trial pursuant to Rule 59(a), SCRPC. (App. Motion for New Trial, dated Aug. 4, 2014, C.A. # 2014-CP-32-399, p. 5) (App. Answer to Reply to Motion for New Trial, dated Aug. 25, 2014, C.A. # 2014-CP-32-399, pp. 11-12).

new trial/*de novo* hearing in the Order, including the caption of the Order: “Order Granting Appellant/Claimant’s Motion for New Trial and Order for Recusal.”¹⁶

In reality, the Circuit Court could not order the Commission to address Appellant’s employment termination/reinstatement claims. This is because the Department of Labor, Licensing and Regulation is authorized to enforce S.C. Code Ann. § 41-1-80 and the rest of Title 41, South Carolina Labor and Employment laws. *See* S.C. Code Ann. § 41-3-120. The South Carolina Workers’ Compensation Commission is authorized to decide all questions arising under Title 42, not Title 41. *See* S.C. Code Ann. § 42-3-180. As a creature of statute, the Workers’ Compensation Commission can only exercise those powers specifically delegated to it by the Legislature. South Carolina Ambulatory Surg. Ctr., 389 S.C. at 392, 699 S.E.2d at 153. “Any claims of a retaliatory discharge based on [the employee’s] workers’ compensation claims ... are matters that must be resolved in state or federal court, not before the Workers’ Compensation Commission.” Smith v. South Carolina Dept. of Mental Health, 329 S.C. 485, 498 n.6, 494 S.E.2d 630, 637 n.6 (Ct. App. 1997).

Contrary to Appellant’s assertions otherwise, S.C. Code Reg. § 67-506 does not provide any basis or authority for the Commission to adjudicate a wrongful termination claim. That section addresses the procedure for terminating on-going TTD payments. As explained above, a voluntary settlement agreement resolving a pending workers’ compensation claim, filed and approved by the Commission does not violate either S.C. Code Ann. § 42-9-260 or S.C. Code Reg. § 67-506. Instead, voluntary settlements are encouraged by the Act, which provides that, “[n]othing contained in this chapter may be

¹⁶ Since the September 25, 2014 Order did not grant Appellant the substantive relief he sought before the Commission, it also did not constitute an order or directive to Respondents to take any of the remedial acts requested by Appellant.

construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title.” S.C. Code Ann. § 42-9-390. The Workers’ Compensation Commission simply lacks any authority to adjudicate Appellant’s employment termination/reinstatement allegations.

Crosby v. Prysmian Comms. Cables & Syst. USA, LLC, 397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012), does not hold otherwise. The plaintiff in Crosby did not raise her retaliatory discharge claim before the Workers’ Compensation Commission but, instead, properly filed a timely complaint in circuit court raising her claim that she had been fired for filing a workers’ compensation claim. 397 S.C. at 105, 723 S.E.2d at 815. Furthermore, Respondents deny Appellant’s allegation that he was fired in retaliation for filing a workers’ compensation claim; instead, even the evidence he relies on indicates his employment was terminated because US Foods could not accommodate his permanent lifting restriction. (Employee Status Notice, dated Nov. 4, 2005). Finally, even if there was any merit to Appellant’s argument, which Respondents do not concede,¹⁷ the time to challenge his termination has expired. The statute of limitations for bringing a claim under Section 41-1-80 is one year. S.C. Code Ann. § 41-1-80.

Appellant’s reliance on State v. Dicapua, 383 S.C. 394, 680 S.E.2d 292 (2009) and Southern Ry. Co. v. Coltex, Inc., 285 S.C. 213, 329 S.E.2d 736 (1985), is misplaced. Those cases both hold that the failure to make timely objections during the course of a trial preclude challenging the objected evidence or procedure on appeal, and that a trial judge cannot order a new trial on grounds not raised by any party. Here, where the

¹⁷Respondents deny any and all allegations raised by Appellant that he was wrongfully terminated.

Circuit Court was acting in its capacity as an appellate forum, it did not conduct an evidentiary trial.

This Court should hold that the Circuit Court properly ruled that the September 25, 2014 Order did not grant Appellant the substantive relief he is seeking but, instead, granted his request for a new trial.

IV. The Circuit Court did not err by making independent findings of disputed fact.

Appellant's argument that the Circuit Court engaged in impermissible fact finding is without merit. The so-called findings that Appellant points to are procedural points and were never disputed below. In particular, the facts: 1) that he signed the settlement agreement, 2) that the Commission approved the settlement agreement pursuant to Section 42-9-390, 3) that the Commission Order approving the settlement agreement was filed on January 5, 2006, and 4) that Appellant did not timely appeal the Commission's approval of the Settlement Agreement, were never contested in any way by either party before the Commission. Therefore, the Circuit Court's recitation of the background of this case does not constitute impermissible fact finding.

The cases Appellant relies on, Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994) and Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct. App. 1991), are readily distinguishable. In both Sigmon and Baldwin, the Circuit Court made findings on the key issues in the cases – in Sigmon, the Circuit Court overturned the Commission and held that the claimant's knee injury was work-related, 316 S.C. at 262, 449 S.E.2d at 498; in Baldwin, the Circuit Court overturned the Commission and reinstated the Single Commissioner's finding regarding compensability. 304 S.C. at 487, 405 S.E.2d at 422. In both cases, the determination made by the Circuit

Court was the key issue in dispute; here, the Circuit Court was merely reciting the procedural background of this case, not making independent factual findings about the merits of this case.

The Commission ruled that, “by signing the Full and Final Settlement Agreement which was approved by the South Carolina Workers’ Compensation Commission, the Claimant does not have the right to ask for additional payments in the future.” (Commission Decision, Concl. Of Law #2). Although the Commission specifically referenced S.C. Code Reg. § 67-801, that Regulation simply provides the process for settlements statutorily authorized by S.C. Code Ann. 42-9-390. *See Spivey v. Carolina Crawler*, 367 S.C. 154, 158, 624 S.E.2d 435, 437 (Ct. App. 2005). Here, the Commission fully considered Appellant’s claims and rejected them in their entirety.

Finally, Appellant’s preservation arguments also fail. First, as noted above, the so-called findings he alleges the Circuit Court made were not disputed facts. Second, the Supreme Court recently held that, while a party can petition the Commission for a rehearing of a Commission decision, it is not required to do so in order to preserve issues for appeal. *Rhame*, 412 S.C. at 277, 772 S.E.2d at 161. Further, Appellant’s reliance on *Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000) (appellate courts should not decide issues not raised below), and *State v. Bray*, 342 S.C. 23, 28 n.2, 535 S.E.2d 636, 639 n.2 (2000) (appellate courts should not decide issues not raised by a party), is curious, as he specifically alleges Respondents raised these issues to the Commission and the Circuit Court, and he has raised them here. (App. Br. pp. 45-46).

This Court should approve the Circuit Court’s affirmation of the Commission Decision.

V. The Circuit Court did not err by affording the parties less than 30 days' notice of the March 27, 2015 hearing.

Appellant asserts the Circuit Court was required to provide the parties 30-days' notice of the March 27, 2015 hearing pursuant to S.C. Code Ann. § 1-23-320(A). However, Section 1-23-320 applies to administrative hearings, not to hearings before the Circuit Court. *See Al-Shabazz*, 338 S.C. at 374, 527 S.E.2d at 752.

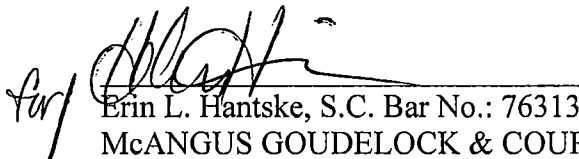
Appellate hearings before the Circuit Court are governed by Rule 74, SCRCP, which provides, in pertinent part, “[t]he proceedings in the circuit court shall be in accordance with these rules ...” In turn, Rule 40(h), SCRCP, provides that “[m]otions may be scheduled for hearing at any time after the period for notice of the motion required by these rules.” Rule 6(d), SCRCP, provides that parties must be provided at least 10-days' notice of a motions hearing. *See also Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (parties are provided 10 days' notice of circuit court hearing and the “grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record”). Appellant was notified of the March 27, 2015 hearing in the March 5 Supplemental Administrative Order. (Supplemental Administrative Order). Thus, Appellant had more than 10-days' notice of the hearing.

This Court should rule that the Circuit Court provided Appellant sufficient notice of the March 27, 2015 hearing.

CONCLUSION

This Court should affirm the Circuit Court Order in its entirety and dismiss this appeal.

Respectfully submitted,


Erin L. Hantske, S.C. Bar No.: 76313

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Attorney for Respondents

January 21, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

RECEIVED

Honorable William P. Keesley, Circuit Court Judge JAN 25 2016

SC Court of Appeals

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice,Appellant,

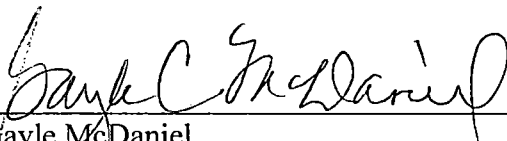
v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I certify that I have served the **Initial Brief of Respondents** and Respondents' **Designation of Matter to be Included in the Record on Appeal** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681



Gayle McDaniel
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Reply To

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January 21, 2016

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JAN 25 2016

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance
Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

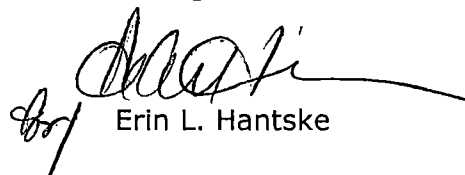
Enclosed for filing please find the following documents:

1. original and one copy of the Initial Brief of Respondents;
2. original and one copy of Respondents' Designation of Matter to be Included in the Record on Appeal; and
3. original and one copy of Respondents' Proof of Service concerning items one and two.

Please file these documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

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

Yours truly,
McAngus Goudelock & Courie, LLC


Erin L. Hantske

Enclosures

cc: Alexander Guice, *pro se*

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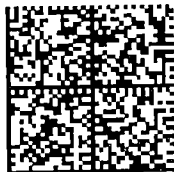
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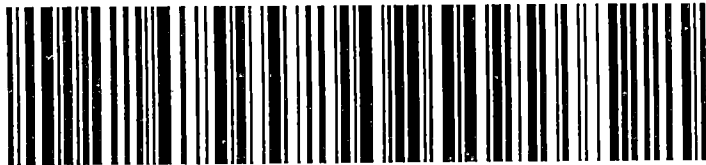
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