

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

Markley Dennis, Jr., Circuit Court Judge

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Case No. 2014-CP-10-2954

DARRELL EDWARDS,

Appellant,

v.

E. PAUL GIBSON, REISEN LAW FIRM, E.  
PAUL GIBSON PC and JOHN DOES 1-5,

Respondent.

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REPLY TO BRIEF OF APPELLEE

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## ADDITIONAL FACTS

In "Fact" portion of their brief, Defendants-Appellants assert, "On September 23, 2014, Administrative Law Judge Kenneth A. Krantz granted employer Marine Repair Services' Motion for Summary Judgment for failure to notify the employer of the settlement of the third party personal injury claim, as required by Section 33(g)(2) of the Longshore Act." ALJ Krantz' Order was attached to Defendants' Memorandum in Support for Summary Judgment and considered by the Court. The recitation of the facts further states, "Thus, Plaintiff Edwards' Longshore Act claim was dismissed due to his new attorneys' failure to put Edwards' employer on notice of the settlement of the third party personal injury claim. . . . Plaintiff Edwards' expert was apparently not provided with this Order, and he did not address the impact of this ruling on Edwards' negligence claim."

In fact, the Court references this "fact" in its Order for Summary Judgment:

Section 33(g) acted as a complete bar to Mr. Edwards' claims pursuant to the Longshore Act as evidenced by the Order Granting Respondent's Motion for Summary Judgment issued on September 23, 2014. . . . The opinion . . . was also cited by Attorney Mr. Hubert Wood in his Affidavit denying benefits under the Longshore Act.

It is undisputed that Defendants' own expert based his opinion, at least in part, on the Order. It is undisputed that the trial tribunal grounded its ruling, based on ALJ Krantz' Order, as it specifically refers to it. Consequently, the validity of that Order is paramount in determining whether the trial tribunal made an error of law in this case, and any appellate rulings on such an Order should be disclosed to this Court.

On September 30, 2015, the U.S. Department of Labor Benefits Review Board issued its ruling the appeal of ALJ Krantz' Order by Mr. Edwards. In its Decision and Order, which has not been disclosed to this Court by Appellees, the Board held, "Thus,

although the claimant [Edwards] did not notify employer of the third-party settlement at the time of the settlement, his notification predated any payment by employer and any action by the administrative law judge. Therefore, claimant has complied with Section 33(g)(2) notice provision.” Consequently, the very Order upon which Defendants’ experts rely for their Motion for Summary Judgment has been expressly overturned on appeal. While Defendants’ argument is fraught with suggestions that Krantz’ Order was kept from Plaintiff’s expert, Defendants simply ignore the present ruling in the Longshore Act case and fail in their affirmative duty to disclose to this Court its present posture.<sup>1</sup>

#### ARGUMENT

BECAUSE THE ORDER IN WHICH THE TRIAL COURT RELIED UPON FOR GROUNDS TO DISMISS PLAINTIFF’S CASE HAS BEEN REVERSED, THE ORDER DISMISSING PLAINTIFF’S CLAIMS MUST BE REVERSED AS WELL.

Plaintiff-Appellant Edwards contends the trial court based its ruling to dismiss on Judge Krantz’ Order, which itself dismissed Edwards’ Longshore Act claim. That Order has now been reversed. Despite its reversal and their knowledge of its reversal, Defendants maintain in their brief that it still serves as a basis for a dismissal. Plaintiff asserts that the dismissal must be overturned based on the new posture of the Longshore Act claim.

In *Stokes-Craven Holding Corp. v. Robinson*, 2015 S.C. Lexis 328 (Dec. 10, 2014), the South Carolina Supreme Court reversed a lower court ruling, dismissing a time-barred malpractice action, where the court had adopted a new standard for

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<sup>1</sup> In full disclosure, Defendants’ expert, Hubert Wood, has filed a Motion for Reconsideration, which is presently pending. Counsel for the U.S. Department of Labor has filed a brief in opposition to the Motion to Reconsider.

calculating the running of the statute of limitation. Similarly here, the underlying order by ALJ Krantz has been overturned. Therefore, the case must be remanded.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

This the 19<sup>th</sup> day of February, 2016.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via  
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