

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

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

RECEIVED
MAR 18 2016
SC Court of Appeals

Alexander Guice,Appellant,

v.

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

**RESPONDENTS' RETURN IN OPPOSITION TO
APPELLANT'S MOTION TO STRIKE
RESPONDENTS' INITIAL BRIEF AND LEAVE TO STAY**

Pursuant to Rule 240(e), SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. submit their Return in Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay ("Motion to Strike"). Although Appellant's lengthy Motion to Strike ostensibly seeks to strike Respondents' Initial Brief on the basis of Rule 269, SCACR, Appellant provides no grounds that would justify such action. Instead, Appellant argues the merits of his claim in place of simply filing an initial reply brief pursuant to this Court's appellate rules. Many of the arguments raised in Appellant's Motion to Strike respond substantively to

arguments raised by Respondents in their Initial Brief. Finally, although Appellant characterizes his Motion to Strike as being a “Rule 269 strike motion,” that rule does not apply to the filing of Respondents’ Initial Brief, as is explained in more detail below.

Appellant sets out a long list of what he asserts are uncontested “facts,” and then he proceeds to argue some of those “facts.” This in itself shows that the facts are not uncontested but, instead, simply Appellant’s view of the facts and record below. Furthermore, Respondents dispute a number of Appellant’s alleged “mutually agreed upon facts stipulated between the parties,” (Motion to Strike, p. 5), including but not limited to the fact that at the time of the Settlement Agreement, his average weekly wage was \$1,154.00 (with a corresponding compensation rate of \$592.56) (*see* Exhibit “D” to Appellant’s Motion for Summary Judgment), not \$1,161.00. The circumstances under which Appellant ceased working for US Foods have not been stipulated and, moreover, are irrelevant to this appeal. The December 22, 2005 Settlement Agreement and Release, signed by Appellant, was not a “**proposed** Settlement Agreement and Release,” as characterized by Appellant. (Motion to Strike, p. 6) (emphasis added). It was a fully executed contract between the parties.

Respondents do not address every argument or assertion raised in Appellant’s 49-page Motion to Strike as most of his arguments have nothing to do with whether Respondents’ Initial Brief should be stricken but, instead, go to the substance of Appellant’s appeal. Respondents address some of the more egregious allegations contained in the Motion to Strike and, for the remaining arguments, Respondents submit a general denial: 1) of all of Appellant’s arguments that the Settlement Agreement is not a valid and enforceable order of the Workers’ Compensation Commission, and 2) that

Respondents and/or their counsel have engaged in any sanctionable behavior in this case. In particular, Respondents deny, as they have all along, that Appellant is entitled to any additional workers' compensation benefits. Respondents continue to maintain their position that Appellant's employment retaliation/reinstatement claims are completely without basis, that the Commission has no jurisdiction to consider such claims and, on this appeal from the Commission, neither does this Court.

Appellant cites McCreery v. Covenant Pres. Church, 299 S.C. 218, 383 S.E.2d 264 (Ct. App. 1989), where this Court determined it had jurisdiction to determine whether an employer/employee relationship existed at the time of injury some six months after the Commission approved a settlement agreement between the parties. However, this Court's opinion was overruled by the Supreme Court in McCreery v. Covenant Pres. Church, 303 S.C. 271, 400 S.E.2d 130 (1990), where the Supreme Court confirmed that, "once the Commission approves a compensation agreement, the factual issue of liability under the act is finally adjudicated and cannot be retried on collateral attack." 303 S.C. at 273, 400 S.E.2d at 131. A Commission-approved settlement "becomes a[s] binding as a judicial decree and the facts contained therein are as definitely settled as factual findings incorporated in a decree." Id. Appellant's argument that the facts in this case are "inapposite" to those under consideration in this Court's McCreery opinion does not alter the fact that that opinion was reversed on the very points on which Appellant relies.

The basis for much of Appellant's argument in his Motion to Strike appears to be his erroneous assumption that the Commission lacked subject matter jurisdiction to approve the Settlement Agreement because his employment relationship with US Foods ceased prior to the signing and approval of the Settlement Agreement. Clearly, an

employer/employee relationship existed at the time of Appellant's injury,¹ which is the relevant inquiry to determine whether the Commission has subject matter justification to adjudicate a compensation claim. *E.g.*, Shatto v. McLeod Reg. Med. Ctr., 406 S.C. 470, 475, 753 S.E.2d 416, 419 (2013) (determining whether the claimant was an employee at the time of injury in order to sustain a workers' compensation award); Alewine v. Tobin Quarries, Inc., 206 S.C. 103, 109, 33 S.E.2d 81, 83 (1945) (holding that "[n]o award under the Act is authorized unless the employer-employee relationship existed at the time of the alleged injury for which claim is made"); McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 469, 313 S.E.2d 38, 39 (Ct. App. 1984) (same). This premise cannot be disputed seriously. In fact, in Alewine, the worker was deceased – and clearly no longer an employee – at the time his surviving widow and child brought a successful workers' compensation claim. 206 S.C. at 106, 33 S.E.2d at 82. Under long-standing precedent, the Commission had subject matter jurisdiction in this case at the time the Settlement Agreement was approved. Even if it did not, which Respondents do not concede, the holding in McCreery confirms that the Settlement Agreement is final and binding and cannot be "retried on collateral attack." 303 S.C. at 273, 400 S.E.2d at 131.

Appellant's substantive arguments alleging civil conspiracy, intentional/negligent misrepresentation, fraud, and insurance fraud between and by his own prior counsel, Attorney Bacon, and Respondents' prior and current counsel, Attorneys Barefoot and Hantske, are incorrect, unsupported and irrelevant to his Motion to Strike. Respondents deny all such allegations. Respondents and their counsel did not and do not owe Appellant the fiduciary obligations he alleges. Neither State v. Scott, 330 S.C. 125, 497

¹ Appellant acknowledges that he was hired in 2001 and his injury occurred on May 5, 2005, almost six months before his employment relationship with US Foods ceased. (Motion to Strike, p. 5).

S.E.2d 735 (Ct. App. 1998) nor the other cases cited by Appellant in his Motion to Strike hold otherwise. Furthermore, as explained above and in Respondents' Initial Brief, the Settlement Agreement was properly entered into and approved by the Commission.

As to Appellant's assertion that the undersigned engaged in negligent misrepresentation and fraud by excluding from Respondents' Initial Brief certain factual allegations asserted by Appellant, this claim is without merit as well. Rule 208(b)(1)(C), SCACR, provides that the appellant's brief "shall contain a concise history of the proceedings," which "statement shall not contain contested matters ..." Rule 208(b)(2), SCACR, allows a respondent to provide a counter-statement of the case and/or issues. Rule 208 (b)(1)(D), SCACR, provides that "[a] party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contentions." Therefore, Appellant is entitled to present the procedural and factual bases in the record that support his claim and Respondents are entitled to do likewise. There is no rule requiring Respondents to make Appellant's case for him or to include facts that he desires to be presented to the Court. Finally, the factual allegations that Appellant asserts Respondents omitted from their brief are not determinative or relevant to the issue of whether the Settlement Agreement can be challenged nearly six years after it was approved by the Commission as a final and binding order. *See McCreery*, 303 S.C. at 273, 400 S.E.2d at 131 (explaining that, "once the Commission approves a compensation agreement, the factual issue of liability under the act is final adjudicated and cannot be retried on collateral attack").

Appellant's Exhibit "R," dated September 21, 2015, and Exhibit "U" are improperly before this Court, as they were not submitted to the Commission in the underlying proceeding. Furthermore, Appellant's arguments based on "Exhibit U," found on pages 38-39 of his Motion to Strike, have never been presented to any tribunal below and, therefore, are not preserved for appeal.

Finally, Rule 269, SCACR, provides in pertinent part that, "[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Respondents have filed their Initial Brief as provided for in this Court's rules, responding to Appellant's Initial Brief. Respondents have not filed any "appeal, petition, motion or return" in this case that was either frivolous or taken solely for the purposes of delay. In fact, it is Appellant who should be sanctioned under Rule 269 for repeatedly filing frivolous motions. As the circuit court found, "from the outset, the relief sought by the Appellant was unsupported by law or procedure." However, "Respondents have been forced to respond to multiple duplicative and redundant filings submitted by Appellant over approximately three years since Appellant sought to reopen his original settlement," and "the defense [of this case] was made needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations." Circuit Court Order, filed July 17, 2015, p. 26 (Att. A).

At its essence, Appellant's Motion to Strike is yet another attempt to convince this Court to decide the substance of his appeal outside of the normal briefing and argument process, which attempt should be denied and discouraged. At a minimum, Appellant's Motion to Strike should be denied, and Appellant should be ordered to file his Initial Reply Brief or, if he chooses not to file a reply brief, the Record on Appeal in a timely fashion.

CONCLUSION

Respondents respectfully request this Court to deny Appellant's Motion to Strike, caution and/or sanction him against filing further frivolous motions, and order him to promptly file his Initial Reply Brief or, if he chooses not to file a reply brief, the Record on Appeal in a timely fashion.

Respectfully submitted,

ER



Erin L. Hantske, S.C. Bar No.: 76313
McANGUS GOUDELOCK & COURIE, LLC
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200 (29464)
Mt. Pleasant, South Carolina 29465
(843) 576-2900
Attorney for Respondents

March 17, 2016.

Att. A

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-32-00399
2013 CP-32-01272

2015 MAR 17 11 3 16

ALEXANDER GUICE

US FOOD SERVICE, INC. AND ACE
AMERICAN INSURANCE COMPANY C/O
GALLAGHER BASSETT SERVICES, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
US FOOD SERVICE, INC. AND ACE AMERICAN INSURANCE COMPANY C/O GALLAGHER BASSETT SERVICES, INC.	ALEXANDER GUICE	\$32,933.13
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

W/Plc #1

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of July, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of July, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Guice

Erin Hantske

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Beth Carnaghi

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

#2

Multiple horizontal lines for additional information.

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

ALEXANDER GUICE,)

Claimant,)

v.)

US FOODSERVICE, INC.,)

Employer,)

and)

ACE AMERICAN INSURANCE)
COMPANY C/O GALLAGHER)
BASSETT SERVICES, INC.,)

Carrier,)

Respondents.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-01272

Civil Action No. 2014-CP-32-00399

ORDER

FILED
2015 JUN 17 PM 3:16
LEXINGTON SC

JPG
#1

These two cases were consolidated and came for hearing on various issues detailed below. The court finds in favor of the Respondents and dismisses these cases.

The foundational claims of Mr. Guice (the Appellant) relate to his assertion that he is entitled to be relieved from a full and final settlement agreement that resolved his original workers' compensation claim in its entirety. The Appellant is self-represented. He did not appear for the hearing.

This matter has a convoluted and detailed procedural history, which is further complicated by the existence of two separate files that overlap to a large degree. The length of this order is an effort to make sure that any issues that have been raised are ruled upon and to provide context and clarify the basis for rulings, particularly as they relate to the Appellant's claims of misconduct against this court that are in pending motions.

Mr. Guice was injured on May 5, 2005, and filed a workers' compensation claim. The Respondents provided medical treatment and temporary compensation payments. The parties entered into a comprehensive Settlement Agreement and Release ("settlement") "in full and final satisfaction of all claims whatsoever as a result of the alleged accident." ¹ Appellant signed this settlement, which was approved by the Commission pursuant to S.C. Code Ann. §42-9-390, and the Commission's order was filed on January 5, 2006. At the time, Appellant was represented by counsel. The Commission's approval of the settlement was not timely appealed.

WPK #2
Nearly seven years later, the Appellant sought to reopen his claim by filing submissions without the assistance of counsel. On December 7, 2012, Appellant filed a Form 50, Request for Hearing, and then an Amended Form 50 dated January 5, 2013, alleging entitlement to additional medical examination and treatment, temporary total disability benefits, and permanent disability as a result of his May 5, 2005 work-related accident. He also attacked the validity of the settlement and raised issues of unlawful termination of employment, unlawful reduction of his

¹ Under the settlement, dated December 22, 2005, Respondents paid Twenty Thousand and No/100 (\$20,000.00) Dollars and, in return, Appellant released the Employer and its workers' compensation insurance carrier from "any and all claims, demands, actions, or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expenses, 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 Claimant on or about May 5, 2005" The settlement 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"

average weekly wage calculation, unlawful termination of temporary total compensation payments, inadequate legal representation, and he sought penalties.

A workers' compensation hearing was scheduled for March 28, 2013, based upon Appellant's submission to the Commission. 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 canceled the hearing date and dismissed "any and all motions filed pertaining to WCC No. 0506205," which was the Commission's file number for this matter. Appellant then began pursuing two separate avenues to have his claim heard.

First, on February 28, 2013, he filed a Form 30, Request for Commission Review, of Commissioner Barden's February 22, 2013 Order. In his notice of appeal to the Full Commission, he alleged seven different points of appeal, including: (1) "Did Commissioner Susan S. Barden have proper jurisdictional authority to make any judgments regarding WCC No. 0506205"; (2) "Was Commissioner Barden's Order invalid due to no regulatory or statutory grounds stated to support canceling the hearing"; (3) "Did the Order signed by Commissioner Barden on 02/22/2013 violate Rule 5(b)(3) SCRCP"; (4) "Did the Order signed by Commissioner Barden on 02/22/2013, with respect to canceling the hearing, violate Rule 7(b)(1) SCRCP"; (5) "Did Commissioner Barden's Order dated 02/22/2013 violate the Appellant's right to a hearing"; (6) "Was the Appellant subjected to a conspiracy involving Commissioner Barden, Virginia L. Crocker, Judicial Director, and Erin L. Hantske, Esquire, the representative for the Respondent"; (7) "Is Commissioner Barden's conduct subject to be reported to the SC Ethics Commission IAW Rule 501(3)(D)(1) SCRCP with respect to the Order dated 02/22/2013."

Second, on March 4, 2013, before any action had been taken by the Commission on

Appellant's Form 30 appeal, Appellant mailed a Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments ("Motion for Reinstatement") to the Commission. It lists many of the same issues he raised in his Form 50, including but not limited to the following: 1) unlawful termination of his employment; 2) unlawful reduction in his average weekly wage/compensation rate; 3) unlawful termination of temporary total compensation payments; 4) challenges to the settlement; 5) complaints about his former legal counsel; and, 6) a request for penalties. Respondents opposed Appellant's motion for reinstatement.

On March 18, 2013, Appellant mailed a proposed Order granting his motion for reinstatement to the Commission. On March 27, 2013, Mr. Gary Cannon, Executive Director of the Commission, wrote to the Appellant, returning Appellant's motion for reinstatement, along with the filing fee. The letter stated that Mr. Cannon 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." It is this March 27, 2013 letter from Mr. Cannon that Appellant appealed to the circuit court and ultimately the Court of Appeals. The Court of Appeals remanded that case as discussed herein. The first circuit court complaint was filed in April 2013 (Case Number 2013-CP-32-01272).

On May 3, 2013, the Respondents filed a motion to dismiss the appeal pending before the circuit court. That motion is now before this court and is decided, *de novo*, as discussed below.

On May 8, 2013, the Appellant filed a motion seeking entry of default. He is not entitled to default, this being an appeal.² Mr. Guice then sent letters objecting to the court's roster.

A hearing was held before The Honorable Thomas A. Russo on June 3, 2013. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present.

Judge Russo decided to proceed with the hearing, and he granted Respondents' motion to dismiss based on lack of jurisdiction because the Appellant had failed to exhaust all of his administrative remedies. Judge Russo also ordered that, "Upon exhaustion of all administrative remedies, the above-referenced Claimant may have an appeal to the circuit court once that agency has reached a final decision." Judge Russo issued that order on June 13, 2013.

On July 1, 2013, the Appellant filed a motion to reconsider or to alter or amend. Judge Russo held a hearing on September 3, 2013, which the Appellant did not attend. Judge Russo denied the motion in a Form 4 order entered on September 6, 2013.

Appellant timely appealed Judge Russo's order to the South Carolina Court of Appeals by way of Notice of Appeal dated November 13, 2013. Respondents filed a motion to dismiss the appeal before the South Carolina Court of Appeals dated February 28, 2014. The Respondents asserted that the Appellant's appeal should be dismissed because he failed to exhaust his administrative remedies before filing his appeal to the circuit court and because neither the March 27, 2013 letter from Mr. Cannon, nor the circuit court order, was a final order for purposes of appeal. When Appellant initiated his appeal to the Court of Appeals concerning the March 27, 2013 letter from Mr. Cannon, he had already filed a Form 30 appeal of Commissioner Barden's dismissal of his claims to the Full Commission. That process was not final. In fact, it was pending at the time he appealed Director Cannon's March 27, 2013 letter.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. At the time the Appellant filed his appeal to the Court of Appeals, the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

2 Mr. Guice sometimes places a summons on documents which are inappropriate to be accompanied by a summons.

WPK
#5

On July 17, 2013, the Full Commission entered a final order and Appellant appealed the July 17, 2013 order to the South Carolina Court of Appeals, which was not the correct forum at that point. Since Appellant's injury occurred prior to July 1, 2007, he should have filed this appeal with the Court of Common Pleas. Accordingly, the Court of Appeals *transferred* Appellant's appeal to the circuit court (see Rule 204(a) SCACR) by way of an order dated December 6, 2013. Based upon this previous transfer from the Court of Appeals to the circuit court, the Court of Appeals granted Respondents' motion to dismiss because the Appellant had another appeal pending under the same workers' compensation file number. Accordingly, the case was remanded to the circuit court with the notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order."

At that point, Mr. Guice had the pending 2013 action in Common Pleas, but he decided to file another action in circuit court on January 31, 2014. He filed several documents, and the new file was given Case Number 2014-CP-32-00399. He filed a document dated December 23, 2013, which is captioned as a Notice of Appeal. He filed a document dated December 26, 2013, which is captioned as an Amended Notice of Appeal. A document dated January 2, 2014, is captioned as a Notice of Demand, which is addressed to Respondent's counsel. He filed a Summons, which is attached to a Brief, with numerous attachments. The Summons and Brief are dated January 26, 2014.

These documents constituting the beginnings of the new file are difficult to put into a normal procedural framework. It appears that the Respondents moved to dismiss under Rule 12(b)(1) and 12(b)(6), SCRCR, stating that if the filing is deemed to be a Complaint, the court lacks jurisdiction. It also raises the fact that no Complaint was attached to the Summons and that any statute of limitations for a complaint would have expired. The motion to dismiss seeks

attorney's fees and costs. The dismissal request was filed with the Clerk of Court on March 11, 2014. The Respondents also seemed to wrestle with how to construe the initial filings in the 2014 case because they filed an Answer on March 11, 2014.

Apparently, Mr. Guice received a copy of the motion to dismiss before it was filed as evidenced by the fact that he filed separate responsive documents five days before the motion to dismiss and the Answer were filed. On March 6, 2014, the Appellant filed documents captioned as a Reply and as an Answer. In any event, the court determines that the Summons filed to begin the 2014 case was not appropriate. The action was not accompanied by a Complaint. It is dismissed for the reasons discussed below.

Since motions and appeals were pending in the Court of Common Pleas, the staff of the Clerk of Court for Lexington County properly and routinely docketed matters for a hearing. Mr. Guice raised strenuous objections. Any objections raised by Mr. Guice to the methodology by which these cases were docketed are misguided and based on incorrect assumptions about how cases are called for hearings and trials. A notice of hearing was dated March 13, 2014, scheduling the hearings for April 3, 2014.

On March 19, 2014, the Appellant filed a motion to disqualify, seeking to remove Judge Russo from the case. Mr. Guice's motion is twenty pages long. It asserts that Judge Russo is not fair and impartial regarding his case, and demands that the April 3 hearing have a different judge assigned. The file reflects that Mr. Guice had complained to South Carolina Court Administration about the Lexington County Clerk of Court's office, and a copy of the response from Court Administration, which includes references to Judge Russo, was filed with the Clerk on March 20, 2014.

Judge Russo issued a Form 4 order dated and filed April 3, 2014, in which he continued the hearing. No reason was specified. The motion to disqualify was decided in a written order filed on April 4, which denied the motion. It appears that the pending matters were then set, in the normal course, to be heard at a succeeding non-jury term over which The Honorable Brian M. Gibbons was scheduled to preside. That notice was generated on May 5, 2014.

By letter dated May 12, 2014, the Appellant transmitted a document entitled Notice to the Court. He used that format later with Judge Gibbons, though it has no basis in practice and does not follow permissible actions under the Rules of Civil Procedure. It is directed to "The Honorable Thomas A. Russo, apparent former presiding judicial officer." It "DEMANDS" that a written explanation be placed into the official record of why Judge Russo is no longer the presiding officer and "DEMANDS" that Judge Gibbons enter a written certification that he is familiar with the file and can complete the hearing without prejudice. This court is not clear whether Mr. Guice is confused by the fact that the judicial assignments for circuit court in this state system are unlike the methodology of the federal system and some other states. In any event, having considered his repeated objections to the assignment of judges and docketing of hearings, this court concludes that he is fundamentally mistaken in his assumptions and apparent beliefs that improprieties have taken place regarding the administrative handling of his files.

Judge Russo wrote Mr. Guice a letter dated May 20, 2014, attempting to explain the procedure. He addressed the issues raised in the Appellant's correspondence and Notice regarding the subject of Judge Russo's alleged bias and the handling of these files.

On June 6, 2014, the Appellant filed a written brief addressing the issues concerning his appeal. It discusses the claims of alleged flaws in the decision of the Full Commission rendered July 17, 2013. It argues unlawful termination of employment, improper cessation of temporary

total benefits, raises challenges to the settlement and clincher, attacks the conduct of Appellant's counsel in the original workers' compensation action, challenges the sufficiency of the order of the Commission, and argues against the motion to dismiss. In short, the Appellant addressed the issues that seem to be asserted in both circuit court files.

The hearing in circuit court was rescheduled for June 16, 2014. Although Appellant was notified of the hearing, he failed to attend or arrange to have counsel present, though he submitted a lengthy memorandum. Judge Gibbons presided over the hearing. The order issued by Judge Gibbons lists only one case number in the caption, 2014-CP-32-00399. However, the body of the order included the issues raised in both files. The order begins by stating that the issue before the court was the Appellant's Amended Notice of Appeal dated December 23, 2013. Later, Judge Gibbons' order states that he is entertaining the Respondents' motion to dismiss. It seems clear that Judge Gibbons heard the Appellant's Amended Notice of Appeal dated December 23, 2013, and Respondents' motion to dismiss dated February 24, 2014. After reviewing all submissions presented by the parties and considering briefs and arguments of counsel and Appellant, Judge Gibbons granted Respondents' motion to dismiss and affirmed the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission dated July 17, 2013. Judge Gibbons was more than accommodating to the Appellant, apparently considering issues raised in written communication and, perhaps, in emails.

WPK
#9

When counsel for the Respondents submitted a proposed order, Mr. Guice filed his memorandum of comments and exceptions. Judge Gibbons' issued his order on July 21, 2014.

Appellant then filed a motion for new trial dated August 4, 2014, alleging that the circuit court's July 21, 2014 order failed to consider the Court of Appeals remand order and demanded that Judge Gibbons' order be set aside for a new trial. Appellant's motion for new trial also

lodged accusations of impropriety against Judge Gibbons. The accusations against the judge and attorney include abuses of discretion, fraud upon the Court, and dishonesty.

As for the merits of the motion for new trial, the gist of the Appellant's assertion is that Judge Gibbons' July 21, 2014 order should be set aside because it did not take into consideration Appellant's prior motion for reinstatement of employment and release of temporary total compensation benefits. This was asserted to be at issue because of the letter from Mr. Cannon denying any additional motions based upon Commissioner Barden's February 22, 2013 order. Again, because of the overlapping claims, it should be noted that Appellant's motion for reinstatement of employment and release of temporary total compensation payments requested relief based upon essentially the same positions. Those included the alleged invalidity of the original 2005 settlement, the Appellant's attempt to reinstate Appellant's employment effective November 2, 2005, immediate release of unlawfully withheld temporary total compensation payments of \$1,154.00 per week effective November 2, 2005, immediate payment of a twenty-five percent penalty for unlawfully withheld temporary total compensation payments, and other relief and actions the Commission deemed just and proper.

The Respondents filed their Reply to the motion for new trial on August 20, 2014.

Having now reviewed the matter *de novo*, 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. Judge Gibbons' Order dated July 21, 2014, noted that the Appellant instituted his appeal with the Court of Common Pleas requesting, among other things, to set aside the decision and order dated July 17, 2013, by the Appellate Panel of the South Carolina Workers' Compensation Commission, which fully affirmed Commissioner Barden's February 22, 2013 decision and

order; set aside the decision and order from Commissioner Barden dated February 22, 2013; and, reinstate his employment and temporary compensation. The issues set for determination and the facts in controversy at the time Judge Gibbons considered them, and now at the *de novo* hearing stage, appear to be identical in all material respects to the issues set for determination and the facts in controversy contained in Appellant's pleadings filed with the Court of Appeals. What the Court of Appeals had done was to note that Appellant had a pending appeal with the circuit court based upon the transfer order of December 6, 2013, and remanded the case to the circuit court for consideration. Both circuit court files are seeking the same relief.

On August 25, 2014, Mr. Guice filed a document captioned as a Verified Notice to the Court. It cites ethical canons of the Code of Judicial Conduct. It "DEMANDS" that Judge Gibbons certify that he is not operating under any disability that would impair his ability to decide the issues fairly and impartially. It "DEMANDS" that Judge Gibbons provide a written rationale as to why he did not respond to the exceptions and comments that the Appellant filed regarding the proposed order that had been submitted by Respondents' counsel. It "DEMANDS" explanation about why certain alleged facts were not included in the court's ruling. It "DEMANDS" a written explanation as to why the court failed to address the remand notice from the Court of Appeals in Case Number 2013-CP-32-01272. Both sides provided written arguments related to the Appellant's motion for new trial.

The Respondents' brief points out that the procedural history of this case is clouded by the voluminous, repetitive submissions of the Appellant and the duplicitous nature of filings. The Respondents stated that in order to evaluate the Court of Appeals' order of April 24, 2014, "it is necessary to consider the entire procedural background of this matter." This court agrees.

Judge Gibbons considered the motion of the Appellant (the motion for new trial), and he considered the Appellant's assertion that there was a failure to properly consider the remand. Judge Gibbons issued an Order dated September 25, 2014, granting Appellant's motion for new trial. He made reference to the fact that the case has a convoluted procedural history. He noted that the Appellant did not appear for the hearing, but sent numerous documents to the court before and after the hearing, some by email. He did not recall having reviewed two files in the case. The September 25 order contains the following language:

Since my written Order of July 30, 2014 does not appear to set forth the Court's decision in detail and since it 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. This Court of course could have reopened this matter for further consideration, but declines to do so as explained more fully below.

...

Further, for this court to continue to be the presiding judge, after receiving numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant would put the Court in a precarious ethical posture.

The order clearly states that the allegations raised post-hearing against Judge Gibbons were determined to be "baseless and meritless." It also clearly states that the judge recused himself on his own (*sua sponte*) from further involvement in these cases. Specifically, Judge Gibbons stated in the September 25 order that "while categorically denying any unethical behavior in how this matter was heard and decided" and "mindful of the disdain of allowing disgruntled litigants to seek recusal for adverse rulings, the integrity of the Court simply must be upheld in this matter."

These parties had different interpretations of the September 25 order. Specifically, there is a dispute about the portion of the Order that states, "[t]he Appellant/Claimant's motion for new trial or hearing is GRANTED as to all particulars set forth in his motion" The order unequivocally states, "[t]his 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."

At that point, the Appellant seized upon the language of Judge Gibbons' order, including the language about granting relief "as to all particulars set forth in his motion." The Appellant became convinced that he had prevailed on all of his substantive claims. This interpretation is without support. Judge Gibbons did not have the ultimate merits of the case before him when he issued that order. The full sentence reads, "1. The 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." The motion pending before Judge Gibbons was the motion for a new trial (essentially, a Rule 59 motion). It would make no sense for a judge to order a new trial or hearing, if the judge intended to grant all the substantive relief requested by the Appellant.

The Respondents moved to alter or amend by motion filed on October 17, 2014. Since Judge Gibbons had declared himself to be recused, and since his order directed that the Chief Judge for Administrative Purposes provide instructions for a *de novo* hearing to be conducted, the files were provided to the undersigned judge to administer in the role of Chief Judge. Immediately upon receiving the files, the undersigned judge began a process of trying to gain familiarity with the files and to issue directives.

On October 22, 2014, the Appellant filed a motion for sanctions, and Reply to the Respondents' Motion to Alter or Amend. This was based on the Appellant's erroneous interpretation of Judge Gibbons' order of September 25. Since the Appellant believes that Judge Gibbons ruled that the Appellant is entitled to all the money he has claimed, he made a demand upon Respondents' counsel to pay that money. The motion for sanctions is without merit, since Judge Gibbons did not rule that the Appellant is entitled to the sums claimed.

A series of administrative orders followed, beginning on October 23, 2014. The self-represented Appellant, who lives in another state, was repeatedly asserting issues through email and letters, which are not proper filings. It took a long period to review these files, and it became apparent that the best use of judicial resources and the most promising way of having the cases proceed expeditiously would be to have them assigned to one judge. The court issued administrative orders doing the following things.

- 1) The cases were designated as complex litigation and assigned to one judge, the undersigned judge, to avoid having different judges duplicating the effort to follow the difficult procedural history.
- 2) Because of that decision, a hearing that had been routinely scheduled for November 10, 2014 before a visiting judge was continued.
- 3) The two cases were consolidated under Rule 42(a), SCRCP, because they seemed to be seeking essentially the same relief.
- 4) It did not appear that the Clerk of Court's file included the file of the Workers' Compensation Commission. So, an order was issued directing that the Commission files be maintained by the Commission and obtained by the Court of Common Pleas.

The order to maintain the files was entered in an abundance of caution due to the age of the underlying workers' compensation case.

In addition, as noted in Judge Gibbons' last order, it was obvious that the files were more confusing than necessary because of the use of email communications to attempt to raise issues that should be raised by properly filed motions and briefs. So, instructions were issued, including the requirement that any attempt to file a motion had to be raised through a proper filing with the court and that the use of emails was to be curtailed and limited to proper purposes.

Since Judge Gibbons had an outstanding motion to reconsider, but he had recused himself from the case, the parties were advised in an administrative order that Judge Gibbons would be contacted, in writing, to see if he would handle that motion. If he determined not to handle the reconsideration motion, the court advised the parties that it would have to consider Judge Gibbons to be unavailable and commence the process of determining if the court could declare itself sufficiently familiar with the record to make a ruling (citing Rule 63, SCRCP, and the order of Chief Justice Toal (Order 2011-02-04-01) dated February 4, 2011 that established the procedures to follow in such instances).

On November 3, 2014, the Appellant filed a motion, forty-four pages in length, plus attachments, objecting to the court's issuance of these administrative orders. His assertions fall into several categories, none of which have merit. Only one of the points seems to have any foundation in fact, and it relates to a drafting issue.

The drafting in one of the administrative orders could have been more precise. In Paragraph 6 of the October 23, 2014 administrative order, that was filed very late in the afternoon of that day, the court stated, in part:

There is a dispute as to the interpretation to be given to orders issued by The Honorable Brian M. Gibbons. Both the appellant and the respondent have

filed motions for reconsideration of the order(s). It is the undersigned judge's understanding that Judge Gibbons has recused himself from this matter. If he is recused, he may take the position that he is precluded from further involvement in this case. . . .

The Appellant challenges two things. He challenges the use of the term "reconsideration." In common parlance in the South Carolina legal community, a motion to alter or amend is called a reconsideration motion, and the Respondents' October 17, 2014 motion to alter or amend Judge Gibbons' order of September 25 was an outstanding motion for reconsideration.

The more significant assertion relates to Mr. Guice's reading as to the statement that both parties had filed reconsideration motions to Judge Gibbons' orders. The wording in that one sentence in the administrative order uses the *plural* - "orders." Judge Gibbons had entered two orders. He entered the first order granting the Respondents' motion to dismiss. In response, the Appellant styled his motion as one for a new trial, but he cited Rule 59, which is a motion to alter or amend. In common parlance, Mr. Guice had filed a reconsideration motion. So, it was a correct statement that both parties had filed reconsideration motions to Judge Gibbons' orders. While the Administrative Order could have been stated with more precision to state exactly what was pending as opposed to what had already been decided, there is nothing in the way it was drafted that is prejudicial to anyone and it does not have any negative impact upon the cases, despite the Appellant's contrived argument that it somehow does. Even if one accepts that the statement is incorrect, it is preposterous to read into those words some sinister intent, incompetence, or abuse of discretion.

More to the point of any motion to set aside the administrative orders, Mr. Guice believes that he had received a ruling in his favor and that the administrative orders were not only

unnecessary, but were an intentional attempt to deny his recovery and to cause him injury. For the reasons stated above and below, the court finds that Mr. Guice is mistaken in his interpretation. He did not receive a ruling in his favor on the merits of his claims. Assertions that administrative orders were entered to cause further delay are unfounded.

The Appellant claims some sort of conspiracy to protect various officials. He accuses the Clerk of Court of improper actions. He accuses the undersigned judge, the Clerk of Court, and the Respondents' attorney of committing fraud. He accuses the undersigned judge of abusing his discretion in issuing the administrative orders and in other actions. He asserts that it was illegal and unethical for the undersigned judge to write a letter to Judge Gibbons asking if Judge Gibbons would be deciding the Respondents' motion to alter or amend. He accuses the undersigned judge of racial bias.

None of these very serious accusations are supported by one scintilla of evidence, nor are they supported by any reasonable reading of an applicable rule or law. Mr. Guice has demonstrated no basis for overturning the administrative orders, and any motion he may have to seek to accomplish the withdrawal of those orders is denied.

The Clerk of Court's staff normally prepares dockets based on the documents that are filed. The Appellant reads impropriety in the actions of the Clerk of Court and the judges regarding how these hearings were scheduled, but no showing of impropriety has been made. He has also complained about information on the Internet website done by the Clerk of Court's staff in conjunction with Court Administration. That website makes it clear that the information is not official.³ He puts unwarranted emphasis upon those entries, and he has been given reasonable

³ The disclaimer that must be accepted to access the information reads, in part: Portions of such information may be incorrect or not current. Any person or entity who relies on any information obtained from this web site does so at his or her own risk. In addition, nothing contained within this web site is an official record of the County or the elected officials responsible therefore. All official records of the County and the offices of countywide elected

explanations about why things are done as they are – he recites some of the explanations in his Motion In Objection to Administrative Order. His complaints are unfounded and do not affect his substantive or procedural rights, as he claims.

When Judge Gibbons responded stating that he would not entertain the Respondents' motion to alter or amend due to the judge's recusal, he did so in a letter filed on November 6, 2014. That answer introduced the process under Rule 63.

However, around that time, the Appellant was submitting various documents to the Supreme Court of South Carolina concerning these cases. Among other things, he filed for something that he denominated as a writ of mandamus to require the undersigned judge to take certain actions. Part of his argument was that Judge Gibbons decided all of Appellant's substantive requests for relief. The difficulty this created administratively is that there was a pending motion before the Supreme Court seeking a determination that there was nothing for the circuit court to do – that Judge Gibbons' order had already decided everything. That does not appear to be a request for mandamus as much as a request for a stay, and the uncertainty caused further delay.⁴ The Appellant also apparently had a motion for rehearing filed with the South Carolina Court of Appeals.

On December 8, 2014, the Appellant filed a motion for judgment on the pleadings. That motion is denied and is addressed on page 23 of this order.

On December 9, 2014, the undersigned judge entered an administrative order related to Rule 63, SCRCP, in response to Judge Gibbons' decision to decline to rule on the Respondents' motion to alter or amend. That administrative order was filed on December 11,

officials are on file in their respective offices and may be reviewed by the public at those offices.

⁴ The order eventually issued by the Supreme Court demonstrates that the difficulty in dealing with these filings was not limited to the Court of Common Pleas.

2014. It referenced the procedure required under Rule 63 and the order of Chief Justice Toal, and it stated that the undersigned judge would have to determine whether sufficient familiarity with the file could be obtained to decide the Respondents' motion.⁵

On December 11, 2014, a copy of the Workers Compensation Commission file was received in the judge's office in digital format. On that day, the undersigned judge wrote a letter to the Appellant concerning the status of the cases. It reads:

This is in response to your letter of November 25, 2014, and the communication that I received today which included copies of your request that the Supreme Court of South Carolina issue a Writ of Mandamus to require me to take certain actions. Earlier this week, I prepared, signed, and mailed to the Lexington County Clerk of Court for filing an administrative order regarding the status of your cases. I am attaching a copy of it, in case you have not received it. If the Supreme Court believes that other directives are appropriate, I will do my best to follow them. In my view, these cases are being properly administered. The sheer volume of the filings has required huge amounts of time.

Any motions that you have properly filed will be scheduled for hearings as necessary and decided, once the court can get over the initial hurdle of obtaining the information required under Rule 63. There is a particular order in which things have to be addressed. Your interpretation of the status of your cases and the law and procedures will be taken into account.

Today, I received the DVD from the Workers Compensation Commission. My law clerk has opened the disc and advises me that there are over 100 documents on it. The attached order explains what procedure the court deems to be appropriate at this time.

On January 16, 2015, a letter from the South Carolina Court of Appeals was filed with the Clerk of Court for Lexington County. When the Supreme Court issued its directive that it

⁵ It stated, "The court has issued administrative orders and directives to obtain the file from the South Carolina Workers Compensation Commission. That commission has advised the court's staff that the file is voluminous, that it is in electronic format, and that a DVD will be sent to the judge's office upon completion. When that is received, the court will issue further procedural directives in conformity with the provisions of Rule 63 and the Chief Justice's administrative order.

was not going to proceed with the request for mandamus, it appeared at that point that there were no appellate stays in effect to further delay the cases going forward.

So, a supplemental administrative order was issued on March 3, 2015, in which the procedural posture of this claim was outlined, as the parties had been advised in December. The court had evaluated the situation and determined that it should not decide the Respondents' pending motion to alter or amend Judge Gibbons' order. This administrative order gave notice to the parties about the process to be used in handling this matter and deciding this appeal, including notice of a *de novo* hearing to be held on March 27, 2015 at 10:00 a.m. The order made it clear that all pending motions would be heard. The undersigned noted Appellant's belief that the circuit court order of September 25, 2014 granted Appellant all of the relief he sought including back wages and reinstatement of his former employment. Finally, it was noted in the Administrative Order that failure to appear may be deemed an abandonment of any claims made in any pending motions. The parties submitted additional briefs and filings for consideration. At its core, Appellant is seeking to reverse a full and final settlement agreement resolving his original workers' compensation claim in its entirety.

Wfcd
20

On March 9, 2015, the Appellant filed several documents. He filed his memorandum in response to the March 3 order and Motion for Relief from the Administrative Orders. He also filed a document in which he purported to cancel the hearing that had been ordered. A motion to stay was filed, and a motion to disqualify the undersigned judge. The motion for stay asserted that the case should not be heard until a decision was made on the Motion for Relief from Administrative Orders, which the court also considered as a request not to proceed until the Motion to Disqualify was decided. As is routine with the Appellant, he stated that his motions are made without a request for oral argument.

THE HEARING ON MARCH 27, 2015

The hearing was not continued or canceled. On March 27, 2015 at 10:00 a.m., the Appellant was not present. After waiting to make sure that the Appellant was not simply late, the bailiff was instructed to conduct a search of the Judicial Center and to call out Mr. Guice's name. The Appellant was not located.

At the outset of oral arguments, the court considered Appellant's motion to have the undersigned recused from hearing this matter. After reviewing the written submissions of the Appellant, the undersigned finds those accusations and claims are completely unfounded. Not only are they unfounded against the undersigned, but it appears he has a pattern of filing motions for recusal against judges or impugning the integrity of judges who make a ruling adverse to him. The motion to remove the undersigned as presiding judge in this matter is denied.

WPA
#21

Appellant's motion to stay the proceeding and Appellant's motion to disqualify filed March 9, 2015 are denied as the motion is unsupported, not based on any valid claim, and not pursued. There is no reason to stay these proceedings or disqualify the undersigned.

The file reflects that the Appellant requested to have the undersigned recused after learning the undersigned had been in the hospital briefly in January 2015 for a surgical procedure. To the extent that the Appellant has any pending motion to recuse the undersigned due to disability, the motion is denied as there is simply no merit to such assertion. The procedure was done during a week when the undersigned judge was scheduled for vacation, and it only required an overnight stay in the hospital.

The next issue addressed at oral arguments was the Appellant's notice of cancelation of this hearing.⁶ The Appellant had been advised previously that he does not have the authority to cancel a hearing. He may request a continuance of a scheduled hearing, but cannot unilaterally cancel the same. In his notice of cancellation, Appellant accuses the undersigned of not conferring with Appellant prior to setting this hearing and notes he has something else to do. Appellant also indicates he lives in Tampa, Florida and does not have the financial resources to come to South Carolina. The Appellant has provided no valid reason for the postponement of the hearing, and to the extent any of the filings submitted by Appellant can be construed as a motion for postponement or continuance, they are denied.

As addressed above, to the extent that there is a continuing objection to the administrative orders issued or continuing motions for relief from the administrative orders, those objections and motions are denied. The administrative orders issued in this matter were designed to consolidate a claim with a complex procedural history before a single judge and get this matter to a point where the issues could be heard and ruled upon. The administrative orders were proper administrative functions and any objection to the same is denied.

Concerning Judge Gibbons' order which Appellant asserts in his written submissions granted him reinstatement of his job and back due benefits, the Appellant misunderstands that order and is reading it in a way that is contrary to Judge Gibbons' ultimate ruling. It ruled that there be a *de novo* hearing. Judge Gibbons' last order was not a final determination of the merits and there is no reasonable basis to conclude that it granted the Appellant all of the relief he

⁶ This was not the first time that Mr. Guice issued his own notice of cancelation of a hearing. In one instance, Mr. Guice forwarded a notice of cancellation of the November 10 hearing. An order was issued canceling the hearing, but advising the Appellant as follows: "He may move to cancel a hearing, but does not have the power to cancel a hearing on his own. The Clerk of Court is directed to make a copy of the notice sent by Mr. Guice and put it in the files, but to return the original notice to him. The notice, on its face, is not executed by a judicial officer and has no force or effect."

sought in this matter. Had it been Judge Gibbons' intent to grant final and complete relief, he would not have provided for rescheduling of the motion or vacate his order completely.

Judge Gibbons' order was vacated at the Appellant's request. The Respondents agree that any motion concerning Judge Gibbons' order is moot as that order was subsequently vacated.

With regard to Appellant's motion(s) for judgment on the pleadings, it (they) is (are) denied. This matter comes before this Court on appeal from the South Carolina Worker's Compensation Commission. There are no pleadings with which to grant a judgment in favor of Appellant. Appellant asserts Respondents' failure to specifically respond and deny allegations contained in the numerous submissions constitutes an admission of those allegations and he is therefore entitled to the relief sought. That is a misunderstanding of procedure, and the Respondents have made no such admissions. Appellant is not entitled to a judgment as a matter of law, default judgment, or judgment on the pleadings. The improper use of summonses has already been noted, and attaching a summons to something other than a complaint does not have the consequences that the Appellant believes that it should have. Matters that are within the exclusive jurisdiction of the Workers' Compensation Commission have to be raised and ruled on there.

WPC
#23

Having worked through the procedural issues, the question before the court is the Respondents' motion(s) for dismissal of both cases. As discussed above, the Appellant's appeal of Judge Russo's order on November 13, 2013 was at a time when neither the Commission nor the circuit court had entered a final, appealable order. Appellant initiated his appeal to the Court of Appeals concerning Director Cannon's letter after the Appellant had already filed a Form 30 appeal of Commissioner Barden's dismissal to the Full Commission. So, the administrative action was pending at the time he appealed the letter from Mr. Cannon.

Commissioner Barden's February 22, 2013 order considered and dismissed the issues Appellant raised in his Form 50s, all of which centered on the same issues raised in his motion for reinstatement. Judge Russo noted that an appeal in circuit court could be pursued, once Appellant exhausted his administrative remedies. Yet, the Appellant filed his appeal to the South Carolina Court of Appeals while the Commission was in the process of considering his Form 30 appeal from Commissioner Barden's February 22, 2013 order.

The Full Commission entered a final order on July 17, 2013, and Appellant appealed the July 17, 2013 order to the Court of Appeals, which was the wrong court. That was transferred by the Court of Appeals to the Court of Common Pleas. Since the Appellant had another appeal pending under the same workers' compensation file number, there was also a remand, with a notation to "consider the merits of this appeal in conjunction with Appellant's appeal from the Commission's final Order." Those matters are now in circuit court.

*WPC
#24*
This court believes that it has complied with the Court of Appeals order remanding this matter to the circuit court. At issue before the Court of Appeals was a letter written by the executive director of the South Carolina Workers Compensation Commission on March 27, 2013, returning the Appellant's motion for reinstatement of employment. That letter stated that the motion for reinstatement was being returned as the Commission does not have subject matter jurisdiction for the issues set forth in the motion.

This court had concerns about issues regarding the authority of the executive director to take the action that he did, in the manner that he did, and at the time that he did. The court had questions about the proper procedure to be followed concerning those issues in a Common Pleas proceeding. The court intended to discuss those at the March 27 hearing. Appellant failed to appear to address the court's concerns. Any arguments not raised are abandoned.

Addressing this issue, however, it now appears that all the executive director did was to notify the Appellant that the motion for reinstatement was being returned, with the filing fee. His previously filed claim included a demand for reinstatement of his employment. When the court questioned the only party present at the hearing about the authority of the executive director to make that decision, it was stated that the Appellant's attempted filing was for something the Commission cannot do and that all the director did was return the papers and filing fee. It was asserted that the Commission could not grant the relief that was being requested in the returned documents. So, counsel knew of no authority of the Commission to entertain the proposed filing. More importantly, the merits have been now been addressed by the Commission for the overlapping relief that was being sought.

*WPA
25*
Respondents' motion to dismiss the claims in both cases filed in Common Pleas is granted. Appellant's claims are barred because he signed a full and final settlement agreement and release resolving his workers' compensation claim, which was approved by the South Carolina Workers' Compensation Commission on May 5, 2005. When the Appellant sought to reopen his workers compensation claim in November of 2012 and contest that settlement agreement and release, he also sought reinstatement of his employment and additional compensation benefits for his original work accident and injury. The South Carolina Workers' Compensation Commission, both the single Commissioner and the Appellant Panel, have denied all of Appellant's motions and ruled in favor of Respondents based on this claim having been resolved in its entirety in 2005. The claims all appear to be final resolutions of the matters that were raised and attempted to be raised to the Commission. The file supports the Respondents' contention that the Appellant may not now seek to reopen the workers compensation claim for additional benefits of any kind and that these cases should be dismissed.

To the extent Appellant has additional motions, objections, or issues not addressed herein, Appellant was not present at the hearing, after having been cautioned that the failure to appear may be deemed as an abandonment of those issues. Any motions, objections, or requests for sanctions not addressed herein were deemed abandoned and are denied.

The Respondents' request for attorney fees and costs associated with defending this matter throughout the lengthy and redundant appeal process is granted. Respondents have been forced to respond to multiple duplicative and redundant filings submitted by Appellant over approximately three years since Appellant sought to reopen his original settlement. Respondents requested an order for sanctions, fees, and penalties. They seek sanctions for defending this matter by way of a Reply to Appellant's "Motion For Entry of Clerk's Default" dated May 10, 2013. Since that request, Respondents have appeared for oral arguments on no less than four occasions and have done extensive work to defend against these claims. Appellant has failed to appear for any argument on his behalf. He has been provided with a detailed affidavit in support of the fees and costs requests.

WPA
#26

The Appellant filed documents after the submission of the proposed order. The last one basically asked that the court go ahead and sign the proposed order so that the Appellant can proceed to seek relief in other courts. The proposed order has been modified by the court.

Substantial sanctions are appropriate based on clear and convincing evidence that, from the outset, the relief sought by the Appellant was unsupported by law or procedure. It is also established by clear and convincing evidence that the defense was made needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations.

The court finds that Respondents' request for attorneys' fees and costs in the amount of \$32,933.13 is reasonable, and it is awarded. In awarding attorney's fees, this court has considered the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997). The *Jackson* factors support an award of fees requested by Defendant.

1. Difficulty of case

This case was complex and difficult, primarily due to the repetitive, atypical, and detailed filings and assertions raised by the Appellant. The case required having to be knowledgeable about workers' compensation, circuit court, and appellate court issues and procedures.

2. Time expended

Counsel for Defendant has devoted an extremely significant amount of time over a course of years. It is detailed in the second affidavit submitted. Much of the additional time was occasioned by the filings of the Appellant in multiple courts, frequently based on Appellant's misunderstanding of the proper procedures.

3. Professional Standing

The attorneys enjoy good professional standing. The documents submitted by primary counsel have been very well written and have greatly assisted the court. Counsel has demonstrated high standards of professionalism and civility in the face of what appear to be completely unwarranted attacks upon her integrity.

4. Contingency of compensation

This factor is not pertinent to the Court's decision.

W.P.C.
#27

5. Beneficial Results

There is no question that Respondents' counsel obtained beneficial results. To obtain these results required tenacity and diligence, at the highest level of professional effort.

6. Customary Legal Fees


The hourly rates are reasonable and rather standard for fees charged in such cases.

In summary, the factors in *Jackson v. Speed* support the award of attorneys' fees to Respondents.

THEREFORE, IT IS ORDERED:

- #28
- 1) That the Respondents' motion to dismiss is granted and the appeals are denied and dismissed.
 - 2) That sanctions are imposed and the Appellant must pay to the Respondents' the sum of \$32,933.13. This award of attorneys' fees and costs is a money decree which should be enrolled as a separate judgment and draw interest under S.C. Code Ann. § 34-31-20(B).

AND IT IS SO ORDERED.



William P. Keesley
Judge, 11th Judicial Circuit

July 17, 2015

FILED

2015 JUL 17 10:16 AM
CLERK OF COURT
WINSTON-SALEM, NC