

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 16 2016

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1312352

Timothy York, Employee..... Employee, Claimant/Appellant,

v.

Longlands Plantation aka Knollwood, Inc., and
Companion Property and Casualty Group, Carrier, Defendants/Respondents.

**CLAIMANT-APPELLANT YVONNE BURNS' RESPONSE TO
LONGLANDS PLANTATION AKA KNOLLWOOD, INC.'S AND
COMPANION PROPERTY AND CASUALTY GROUP'S
MOTION FOR ORDER OF SUPERSEDEAS**

Yvonne Burns responds to, Longlands Plantation aka Knollwood, Inc.'s ("Employer") and Companion Property and Casualty Group's ("Carrier") Motion for Order of Supersedeas as follows:

Employee Timothy York ("Decedent") died in a workplace accident on August 26, 2013. His mother, Shirley York ("Mother") and his girlfriend/common law wife, Yvonne Burns ("Yvonne") claimed death benefits. The final decision of the full Commission, entered January 20, 2016, awarded all benefits to Mother, in a lump sum, despite its finding that Yvonne was dependent on Decedent and had a greater level of dependency than Mother, who receives social security benefits and financial help from her other son. It denied these benefits to Yvonne on the basis of its unsupported finding of fact that Yvonne and Decedent had been "engaging in fornication" in

violation of S.C. Code Ann. §16-15-60 and §16-15-80.

Yvonne appeals the Commission's decision to this Court because (1) no evidence was presented which could support the Commission's finding of "fornication"; and, (2) South Carolina's fornication statutes are unconstitutional and cannot provide a basis for depriving a dependent of death benefits.

On April 18, 2016, Employer and Carrier moved this Court for an Order of Supersedeas so as to protect themselves from liability for double payment and/or fines and penalties following completion of the appeal; and they offered to pay "weekly payments into an escrow account." (See Motion for Order for Supersedeas pp 3-4) Yvonne contends that the Commission's January 20, 2016 final decision appealed from does not authorize Employer and Carrier to accede to Mother's demand for weekly payments, and, therefore, does not require such payments into an escrow account, because the final decision orders payment of a lump sum of death benefits. But, Yvonne agrees that an order for supersedeas should be entered.

On April 28, 2016, Mother responded contending that, if the Commission's decision is ultimately reversed on appeal, Employer and Carrier will not have been prejudiced by having made payments to Mother during the appeal, because they will have a claim against Mother for restitution of benefits paid to her; and Mother claims that Yvonne may also have a similar claim.

Yvonne contends that any theoretical claim for restitution that any party might have against Mother has no meaningful chance to succeed, given Mother's advanced age and financial dependency on social security benefits and help from her other son, as established in the record through Mother's own testimony and the findings of the Commission. Moreover, Yvonne contends that she herself is in impecunious circumstances (also established in the record through her own testimony), having been deprived for what is now nearly three years, of the support she received

from Decedent; and she cannot afford the expense and further delay of bringing a claim against any party after the completion of this appeal.

Most importantly, Yvonne contends that S.C. Code Ann. § 42-17-60 (2016) does not preclude supersedeas in appeals such as this, where (1) there is a meritorious appeal on an issue of fact; (2) there are no "weekly payments of compensation ... ordered by the commission"; (3) there is no claim for (let alone order for) the Employer/Carrier to "provide medical treatment ordered by the commission"; and, (4) the award at issue is for death benefits and related attorney's fees, only¹.

This statute has evolved over time since its first iteration in 1938²; but there is very little jurisprudence offering guidance to us. Sixty years ago the South Carolina Supreme Court addressed the question of whether a predecessor statute required payment of death benefits pending appeal from the Commission to the Circuit Court, prior to entry of the Court's decision and after expiration of a supersedeas period already in place. In *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 168, 174, 87 S.E.2d 583, 586 (1955), the Court answered this question requiring payment on the basis of the legislative intent apparent from the specific, broad statutory language applicable in 1955: "If it was the intention of the Legislature that such payment was to be only after final judgment was entered, it could have said so, and there would have been no occasion for the use of the following language: '**and thereafter the employer shall be required to make payment of the award** involved in the appeal or certification *until the questions at issue therein shall have been fully determined.*' " *Id.* (italics in original) (emphasis added). Compare that statute to the current statutory language, which does *not* appear to remove the automatic stay in appeals on issues

¹ Yvonne does not appeal the Commission's award of reimbursement for funeral expenses to Mother.

² HISTORY: 1962 Code § 72-356; 1952 Code § 72-356; 1942 Code § 7035-63; 1936 (39) 1231; 1988 Act No. 677, § 3, eff June 27, 1988; 1990 Act No. 439, § 1, eff April 24, 1990; 2007 Act No. 111, Pt I, § 30, eff July 1, 2007, applicable to injuries that occur on or after that date. S.C. Code Ann. § 42-17-60.

of *fact* and does not require payment of the broader "*award*":

In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title.

S.C. Code Ann. § 42-17-60 (2016) (emphasis added).

Bagwell, thus, deepens the question of how this statute is intended to be applied. Only one other death benefits appeal addressing supersedeas was found. In *dicta*, *Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013) addressed supersedeas with regard to death benefits in a case where the issue actually decided was whether the underlying decision was appealable under a prior statute. *Id.* at 83, 744 S.E.2d at 561. See, also *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 474, 753 S.E.2d 416, 418 (2013) ("The parties contend that ...*Bone* has no application. We agree. *Bone* addressed appealability under the predecessor to section 1-23-390 of the South Carolina Code, (1986)." Because *Bone* addressed a prior statute and only addressed supersedeas in *dicta*, in a case where there was no final order subject to appeal, Yvonne contends that it does not apply here either.

Here, in addition to appealing from errors of law, Yvonne Burns appeals due to the complete absence of evidence to support the Commission's finding of fact, that she and the decedent were engaging in "fornication", on which the Commission, stepwise, based its denial of benefits to Yvonne, applying S.C. Code Ann. §16-15-60 and §16-15-80. This Court is not a trier of fact in compensation cases, but its review of a factual finding by the Commission does determine whether there is any competent evidence to sustain it. See, *Wynn v. Peoples Nat. Gas Co. of S. C.*, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961). "[A]n award may not rest on surmise, conjecture or speculation; it must be founded on evidence of sufficient substance to afford a reasonable

basis for it." *Id.* (citations omitted) (emphasis added). This Court must affirm the Commission's factual findings **if they are supported by substantial evidence.** *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009) (emphasis added) (citing *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010)). “ ‘**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 conclusion that the administrative agency reached or must have reached in order to justify its action.” *Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000) (emphasis added) (quoting *Lark*, 276 S.C. at 135, 276 S.E.2d at 306).

Because the issue of "fornication" was not before the Commissioner or the full Commission and no evidence whatsoever was presented on that issue, the Commission's finding of fact subjects its decision to reversal - and the automatic stay on appeal is not explicitly governed by S.C. Code Ann. § 42-17-60 (2016). Because the fornication statutes themselves are unconstitutional, the Commission's conclusions and decision are reversible. Yvonne thus contends that the Commission's decision will, eventually, be overturned on appeal. Meanwhile, years have passed and she continues to struggle without the much-needed benefits to which the Commission determined that she is entitled - but for its reversible determination of "fornication". Yvonne may *never* receive those benefits if they are paid to Mother (whom the Commission determined is not substantially dependent upon them) pending this appeal. Requiring or allowing Employer/Carrier to pay Mother any benefits now, thus risks irreparable harm to Yvonne, even though Yvonne has shown a likelihood of success on the merits of her appeal of issues of fact and of law.

The Commission's errors of fact and of law are, by definition, material and prejudicial to Yvonne's substantial right to death benefits. *See Visual Graphics Leasing Corp. v. Lucia*, 311 S.C.

484, 489, 429 S.E.2d 839, 841 (Ct.App.1993) (“An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant.”). This material harm to her substantial rights will be exacerbated if, after success on appeal, she is then required to pursue a new legal claim against Mother, Employer and/or Carrier - thereby further delaying receipt of her benefits, further increasing the legal costs incurred to obtain them, and further increasing the time of suffering without the benefits she is entitled to. There would be no compensation for this unnecessary post-appeal time of suffering. It would be a wrong without a remedy. Surely this is not the intent of S.C. Code Ann. § 42-17-60 (2016), which is clearly meant to protect employees and to provide for weekly benefits and medical care to injured workers pending appeals of issues of law only.

The equities clearly lie with Yvonne, who was substantially dependent on Decedent during his lifetime and has been without his financial help in the years since his death. They do not lie with decedent's Mother, who received small sporadic financial help during his lifetime and was not substantially dependent on him.

Even if § 42-17-60 were to apply to this appeal, Rule 241 SCACR contains provisions allowing for supersedeas on Employer and Carrier's motion and it may be granted subject to conditions imposed to protect the parties' rights as determined in the Court's discretion: "The granting of supersedeas or the lifting of the automatic stay under this Rule **may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking**, as the lower court, administrative tribunal, appellate court, or judge or justice of the **appellate court may deem appropriate.**" Rule 241(c)(3) SCACR (2009) (emphasis added). And, where, as here, there is some question as to whether the Employer and Carrier may be held liable for the full amount after having paid it or some of it to Mother; and substantial doubt that there could be any meaningful claim against Mother for restitution or the like, by Employer, Carrier or Yvonne, this Court may

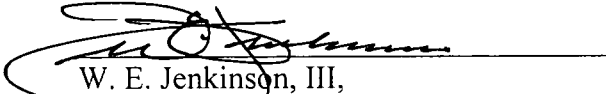
impose other protections of its own design: "Further, **where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief**, the lower court, administrative tribunal, appellate court, or judge or justice of **the appellate court may order other affirmative relief upon such terms as are deemed appropriate.**" *Id.* (emphasis added).

Thus, Mother's objections to an order of supersedeas should be dismissed and supersedeas should be entered, giving full protection to Yvonne's claim to benefits.

CONCLUSION

On the basis of all of the above and foregoing it is respectfully requested that this honorable Court enter an order of supersedeas, protecting Yvonne's rights to full and prompt payment of death benefits in the event of success in this appeal; and, the Order should include any and all conditions or affirmative relief as the Court deems to be necessary in order to accomplish the protection of Yvonne's rights.

All of which is submitted in good faith by:


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May 10, 2016