

AS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1312352

Timothy York, Employee, Appellant,

v.

Longlands Plantation a.k.a. Knollwood, Inc., Employer, and
Companion Property and Casualty Group, Carrier, Respondents.

REPLY TO RETURN IN
OPPOSITION TO
MOTION FOR ORDER OF SUPERSEDEAS

RECEIVED

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SC Court of Appeals

Pursuant to Rules 240 and 241, SCACR, Respondents Longlands Plantation a.k.a. Knollwood, Inc. and Sussex Insurance Company (F/K/A Companion P&C) ("Employer Respondents") hereby reply to Respondent Shirley York's return in opposition ("Return") to their Motion for Order of Supersedeas ("Motion") of the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission filed January 20, 2016 ("Commission Decision"), which is on appeal to this Court.

The grounds for Respondent York's Return were that: 1) the Motion was not verified; 2) the Motion was not accompanied by a certified copy of the Commission's Order; 3) the Motion was not accompanied by a copy of the notice of appeal with the proof of service. Those items are attached hereto, as Attachments C, D, and E. In addition, attached hereto is movants' Motion for Commission to Direct Payment of

Award, filed with the Commission, along with a certified copy of the Commission's denial of the same. Those items are attached hereto as Attachments F and G.

The Return also alleges that there is no need for supersedeas, because the Employer Respondents can bring a claim for restitution against Respondent York if she loses on appeal. Although Respondent York cites *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995), that case dealt with starkly different facts and was resolved on jurisdictional grounds. In *Moore*, the Commission held that, although the employer was headquartered in Indiana, the claimant had been hired in South Carolina, providing it jurisdiction to hear his claim.¹ The claimant was awarded benefits, which the employer paid while the matter was on appeal. On appeal, the circuit court held the South Carolina Commission did not have jurisdiction to hear the claim and/or award any benefits. The Supreme Court upheld that jurisdictional ruling and, furthermore, affirmed the circuit court's authority to adjudicate the employer's claim for restitution, reasoning that, "[w]hen the award of the Commission was reversed by the circuit court, it became of no effect and was no longer in existence." 319 S.C. at 448, 462 S.E.2d at 276. In essence, the employer was entitled to restitution because the Commission had no authority to order benefits in the first place. Here, in contrast, there is no question of the Commission's jurisdiction or that the Employer Respondents owe benefits; the main question on appeal is to whom they should be paid.

As previously noted, there is some dispute as to whether the directive in Section 42-17-60 that, while on appeal, "the employer is required to make weekly payments of compensation" applies in this case involving a deceased employee. Nonetheless, Respondents have been placed in the untenable position of facing demands to pay the

¹ The claimant filed a claim for benefits in Indiana as well.

award as outlined in the Commission Decision, (Feb. 24, 2016 email from A. Mickle to B. Hylton, Att. A to Motion), or face fines and penalties while, at the same time, should this Court overturn the Commission Decision, being required to pay those very same benefits again to the other party.

Furthermore, as the Employer Respondents explained in their Motion, the Commission did not find that Respondent York was primarily dependent on Decedent Timothy York; instead, benefits were awarded to her solely on the basis that she was Decedent's mother. (Commission Decision, Att. D, pp. 69, 62-63 (finding as a matter of fact that Respondent York received social security disability benefits as well as assistance from another son and that, of the two, Appellant Yvonne Burns' financial dependency on Decedent was greater)). In fact, the Commission specifically stated that, "the financial dependency of the parties is NOT determinative of the ultimate ruling in this case ..." (Commission Decision, Att. D, p. 63).

Although Respondent York alleges that granting the Employer Respondents' Motion for supersedeas would provide "leverage" to Appellant Burns, she fails to explain how that would occur and/or what kind of leverage would be gained. In any event, Respondent York's assertion simply highlights the fact that the Employer Respondents are caught unfairly in the cross-fire of the dispute between Appellant Burns and Respondent York. The Employer Respondents do not have any position regarding or interest in the ultimate resolution of the question of to whom the benefits should be paid; they do, however, have a justifiable interest in not being required to pay the benefits out more than once, or face fines and penalties or even subsequent litigation in hopes of

recovering any amounts paid to the wrong party should the Commission Decision be reversed on appeal.

Respondent York's position basically is that she demands immediate commencement of weekly payments under threat of penalties, (Feb. 24, 2016 email from A. Mickle to B. Hylton, Att. A to Motion), and all the other parties are free to sue her later should she lose on appeal. Because she is not primarily financially dependent on the Decedent's benefits, this approach is judicially inefficient and unjustly places the Employer Respondents in the untenable position of potentially having to pay double benefits despite having conducted a "reasonable, due, and diligent investigation to determine those persons entitled to benefits under the Workers' Compensation Act." (Commission Decision, Att. D, pp. 70, 72). Practically, it is highly unlikely that, in the event the Commission Decision is overturned, the Employer Respondents would ever be able to collect any restitution judgment they might be able to obtain, as Respondent York has never worked and, instead, relies primarily on social security disability and financial assistance from another son, Tyrone York. (Commission Decision, Att. D, p. 62).

As previously conveyed, Respondents are willing to pay, during the pendency of this appeal, the requested weekly payments into an escrow account approved by the Court should the Court deem that necessary or advisable.

Finally, in a letter dated May 9, 2016, Respondent York asserts that she might be deprived unfairly of an opportunity to respond if the undersigned provides the required information/documents in their Reply. This Court is eminently qualified to determine whether the Employer Respondents have supplied adequate information/documentation in order to perfect their Motion for Order of Supersedeas. Respondent York has availed

herself of her opportunity to substantively argue against the Motion, and there is no need to provide her another opportunity to respond.


CONCLUSION

For all the reasons stated herein and in their Motion, Respondents request that this Court issue an order imposing supersedeas of the Commission Decision while this matter is pending on appeal.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

May 12, 2016



Helen F. Hiser, S.C. Bar No.: 76124

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

J. Brandon Hylton, S.C. Bar No.: 70295

P.O. Box 7489

Florence, SC 29502

(843) 519-1800

*Attorneys for Respondents Longlands Plantation
a.k.a. Knollwood, Inc. and Companion Property
and Casualty Group*