

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY JUN 08 2016
Court of Common Pleas

SC Court of Appeals

J. Mark Hayes, II, Circuit Court Judge

Case No.: 2015-CP-42-1015

Raquel Martinez, Employee, Respondent,

v.

Spartanburg County Sheriff's Office, Employer,
And South Carolina Association of Counties,
Self Insurance Fund, Carrier, Appellants.

REPLY

The Respondent filed a Motion to Dismiss this Appeal as Interlocutory in accordance with Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) on May 20, 2016. The Appellants filed a Return to the Motion to Dismiss on May 31, 2016. The Respondent files this Reply to address new issues raised therein.

ARGUMENT

- I. The application of Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) does not violate the Appellants' equal protection or due process rights.
 - A. Interlocutory decisions are not appealable.

As instructed by the Supreme Court in Bone v. U.S. Food Service, 404 S.C. 67, 73 - 74, 744 S.E.2d 552, 556 (2013), the Administrative Procedures Act (APA) was enacted to provide

uniform procedures for judicial review after the exhaustion of administrative remedies. Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). The APA establishes the standards for judicial review of the Workers' Compensation Commission. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010); Lark, 276 S.C. at 135, 276 S.E.2d at 306; Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E.2d 390 (Ct.App.2003). Under the APA, only "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review...." S.C.Code Ann. § 1-23-380(A) (Supp.2007). The Appellants ask this Court to overlook the express language of the APA and overrule the Supreme Court's decision in Bone, *supra.*, on the grounds it violates their rights to equal protection and due process of law.

B. The Application of Bone Does Not Violate the Appellants' Right to Equal Protection.

Bone, *supra.*, applies equally to claimants and defendants. It was applied to the Respondent in the Supreme Court's decision in this case on January 8, 2014. Claimants and defendants are treated equally because neither can appeal until the administrative agency has reached a final decision. The Appellants' tables do not show disparate treatment because they omit rows and columns showing, when all issues are not decided, neither party can appeal. Cloaking the argument with Article 1, Section 9 of the South Carolina Constitution does not mandate a different result. Just as the right of access to the courts is not offended when the claims of injured workers are adjudicated by the Commission in the first instance, access to the Courts is preserved for claimants and defendants alike after the Commission reaches a final decision.

C. The Application of Bone Does Not Deny the Appellants' Right to Due Process.

Although pending since April 21, 2006, the Appellants have not paid any benefits in this case. They haven't been deprived of anything. The Appellants' argument

is the application of Bone, supra., may deprive them of property in the future. “Before any action can be maintained, a justiciable controversy must be present.” Sloan v. Greenville County, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App.2003). “A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). A court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all. Thrifty Rent-A-Car Sys., Inc. v. Thrifty Auto Sales of Charleston, Inc., 849 F.Supp. 1083, 1085–86 (D.S.C.1991); *see also*: Waters v. S. Carolina Land Res. Conservation Comm'n, 321 S.C. 219, 228, 467 S.E.2d 913, 918 (1996). The court should not consider and pass upon hypothetical and abstract questions dependent upon the existence of facts not yet determined. 74 S.C. Jurisprudence, Action § 22.

CONCLUSION

For the reasons stated in the Respondent’s Motion to Dismiss Appeal as Interlocutory filed on May 20, 2016 and stated herein, the Respondent requests that the Appellants’ Notice of Appeal filed on May 19, 2016 from the decision of the Honorable J. Mark Hayes, II, remanding the case to Commission be dismissed as interlocutory under the holding in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).

By: 

J. Kevin Holmes
The Steinberg Law Firm L.L.P.

61 Broad Street
Post Office Box 9
Charleston, South Carolina 29402
(843) 720-2800
Attorneys for the Respondent

Charleston, South Carolina

June 6, 2016.

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PROOF OF SERVICE

I certify that I have served the Reply to the Appellants Return to the Motion to Dismiss Appeal as Interlocutory on the Appellants by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2016, addressed to their attorney of record, Richard B. Kale, Jr., Willson Jones Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

By: 

J. Kevin Holmes
The Steinberg Law Firm L.L.P.
61 Broad Street
Post Office Box 9
Charleston, South Carolina 29402
(843) 720-2800
Attorneys for the Respondent

Charleston, South Carolina

June 6, 2016.

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN



BENJAMIN W. AKERY
CATHERINE D. MEEHAN
KELLY M. ALFREDS
CHARLES S. GOLDBERG, LLC,
OF COUNSEL
HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)

61 Broad Street | P.O. Box 9 | Charleston | SC | 29401 | (843) 720-2800 | (843) 722-1190 fax | steinberglawfirm.com

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SC Court of Appeals

Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Raquel Martinez v. Spartanburg County and S.C. Association of
Counties
2015-CP-42-1015

Dear Ms. Kitchings:

Enclosed for filing are the following:

- (1) Reply;
- (2) Proof of Service.

Sincerely,

J. Kevin Holmes

JKH/gdm
Enclosures

cc: Richard B. Kale, Jr., Esquire
Chadwick D. Pye, Esquire
David T. Pearlman, Esquire

Kevin Holmes, Esquire
STEINBERG
LAW FIRM | LLP

61 Broad Street | PO Box 9 | Charleston SC | 29402

CHARLESTON SC 29402

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Honorable Jenny Abbott Kitchings ^{JUN 08 2016} Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211
SC Court of Appeals

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