

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Appellate Case No. 2016-001497

Ignacio RodriguezEmployee, Claimant, Respondent,

v.

Robert T. Pierson d/b/a Robert T. Pierson Constr. Co., Employer, and
ABC Care, Inc., Employers, Respondents,

and

South Carolina Uninsured Employers' Fund, Property & Casualty
Insurance Co. of Hartford, Carriers, Defendants

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OCT 24 2016

SC Court of Appeals

Of which Property and Casualty Insurance Co. of Hartford., is theAppellant.

REPLY BRIEF OF APPELLANT

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753 S.E.2d 416, 419, (S.C. 2013)1, 2

REPLY¹

Appellant's Reply Brief addresses assertions raised in the joint Response Brief filed by Ignacio Rodriguez (hereinafter "Claimant"), Robert T. Pierson d/b/a Pierson Construction Co., and the South Carolina Uninsured Employers Fund. Specifically, this Reply Brief will address Respondents' assertions regarding Claimant's employment status and Respondents' rationale for why ABC Care, Inc. (hereinafter "ABC Care") built the residential home in question.

First, Respondents assert, on page 10 of their Response Brief, that Pierson, Claimant, Chavez, and Bello were all employees of ABC Care operating in South Carolina. The South Carolina Supreme Court provided the framework for analyzing an employer/employee relationship in *Shatto v. McLeod Reg'l Med. Ctr.* The Court provided four "right to control" factors to consider: "(1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment and (4) right to fire." 406 S.C. 470, 476, 753 S.E.2d 416, 419, (S.C. 2013).

Despite Respondents' assertions, Claimant testified that he believed he worked for Robert Pierson Construction Co. (Hr. Tr. p. 35, ll. 6-11). In addition, Claimant testified that he looked to Pierson for directions about the job. (Hr. Tr. p. 24, ll. 8-11). Similarly, the record is clear that Pierson provided Chavez, Claimant, and Bellow with at least some of the equipment and tools used in the construction of 149 Lake Wood Lane. (Hr. Tr. p. 58, ll. 2-25). This is, of course, logical because Pierson owned a construction company, Robert Pierson Construction Co.. Third, it is undisputed that Claimant, and the two other employees, were paid with Robert Pierson Construction Co. checks. (Hr. Tr. p. 61, ll. 23-25, p. 62, ll. 1-6, p. 75, ll. 7-23). Finally, Chavez testified that he had the power to terminate Claimant. (Hr. Tr. p. 64, ll. 4-6).

¹ Respondents' Response Brief violates SCACR Rule 208. Specifically, Respondents failed to comply with Rule 208(b)(4) by failing to properly reference transcripts, pleadings, orders, exhibits, or other materials to support the factual basis of their brief.

Under the factors set forth in *Shatto*, Claimant was not an employee of ABC Care because ABC Care did not meet any of the four *Shatto* "right to control" factors. Appellant's argument is aided by the fact that Claimant had never heard of ABC Care during his employment, and that he did not initially file a claim against ABC Care. (Hr. Tr. p. 35, ll. 12-20). Claimant believed he was an employee of Robert T. Pierson Construction Co. and the overwhelming evidence on record points to the same conclusion. The only evidence which links Claimant to ABC Care is the fact that ABC Care owned 149 Lake Wood Lane. Claimant did not consider himself an employee of ABC Care at the time of his injury.

Second, Respondents assert, on pages 2 and 6 of their Response Brief, that ABC Care's board of directors made a decision to build a residential house on Lake Keowee to significantly reduce the cost of food and lodging for the summer camp employees. Pierson testified that during the first week of camp, ABC Care had one employee working the camp and that this employee would drive ABC Care's van to the county park and take care of the camp attendees, whose parents dropped them off at the county park. (Hr. Tr. p. 136, ll. 17-25). Pierson and his wife were also present for the summer camp and would relieve the one employee throughout the day. (Hr. Tr. p. 141, ll. 3-10). Pierson then testified that the camp had four attendees for a week of camp, six attendees in another week of camp, and nine attendees in another week of camp. (Hr. Tr. p. 145, ll. 2-18).

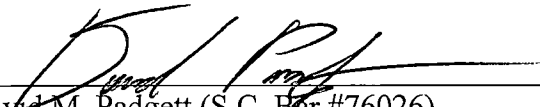
Appellant points out the absurdity of this argument. Pierson and his wife, ABC Care's executive director, intend to retire at Lake Keowee. (Hr. Tr. p. 137, ll. 4-11). The assertion that, by constructing a home worth thousands of dollars, if not hundreds of thousands or millions of dollars, they would significantly reduce their cost of food and lodging for one to three summer camp employees, is ridiculous. The camp had less than twenty attendees over the course of a

summer. Pierson built this home so he and his wife could retire to Lake Keowee, and he is attempting to disguise this venture as a business investment at the cost of Claimant's injuries.

CONCLUSION

For the reason stated in Appellant's initial brief and this Reply Brief, this Court should reverse the decision of the South Carolina Workers' Compensation Commission.

Respectfully submitted,



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October 20, 2016

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South Carolina Uninsured Employers' Fund, Property & Casualty Insurance Co. of
Hartford, Carriers, Defendants

Of which Property & Casualty Insurance Co. of Hartford is the Appellant.

PROOF OF SERVICE

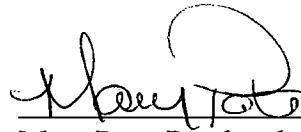
The undersigned hereby certifies that the Reply Brief of Appellant. in the above referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 20th day of October, 2016, addressed as follows:

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A handwritten signature in cursive script, appearing to read "Mary Pate", written over a horizontal line.

Mary Pate, Paralegal
Holder, Padgett, Littlejohn + Prickett, LLC

October 20, 2016

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
PO Box 11629
Columbia, SC 29211

**RE: *Ignacio Javier Rodriguez, employee, claimant, Respondent, v.
Robert T. Pierson, d/b/a Robert Pierson Construction Co., Employer, and ABC Care,
Inc., Employers, Respondents, and South Carolina Uninsured Employers' Fund,
Property & Casualty Insurance Co. of Hartford, Carriers, Defendants of which Property
& Casualty Insurance Co. of Hartford is the Appellant.
Appellate Case No. 2016-001497***

Dear Clerk:

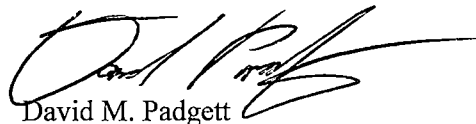
Enclosed is the original and six (6) copies of Reply Brief of Appellant.

By copy of this letter, we are serving one copy of each upon all counsel of record.

Thank you for your assistance in this matter and please do not hesitate to contact our office if you have any questions.

Very truly yours,

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC



David M. Padgett

DMP:mp
Enclosures

cc: William H. Ehlies Esq.
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