

IN THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT OF APPEALS

RECEIVED

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
Casey L. Manning, Circuit Court Judge

NOV 15 2016
SC Court of Appeals

Case No. 2016-001382

Clarence B. Jenkins Jr,

Appellant,

v.

South Carolina Worker's Compensation
Commission,

Respondents,

REPLY BRIEF OF APPELLANT

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Pro Se Appellant

TABLE OF CONTENTS

Table of Authorities.....ii
Statement of Issues on Appeal.....P. 1
Statement of the Case.....P.1-3
Standard of Review.....P. 3-4

Arguments

I. SOUTH CAROLINA WORKER’S COMPENSATION COMMISSION
VIOLATED THEIR OWN POLICY OF R67-611 REQUIRING APPELLANT
TO SUBMIT A PRE-HEARING BRIEFP. 1,3 4

II. SOUTH CAROLINA WORKER’S COMPENSATION COMMISSION
VIOLATED THEIR OWN POLICY OF REGULATORY ADVISORY
REQUIRING FORM 14B WHEN CLAIMANT IS SELF
REPRESENTED.....P. 2,3,4

III. APPELLANT HAS SUBSTANTIATED STATED A PRIMA FACIE CLAIM
FOR ABUSE OF PROCESS AGAINST RESPONDENT.....P. 5

III. RICHLAND COUNTY COURT OF COMMON PLEAS VIOLATED
SOUTH CAROLINA SUPREME COURT RULE 601 (3) REQUIRING
ALTERNATIVE DISPUTE RESOLUTION.....P. 5

Conclusion.....P. 5

TABLE OF AUTHORITIES

CASES

Mylan Laboratories, Inc. v. Matkari,
7 F 3d 1130, 1134 (4th Cir. 1993).....P. 3

STATUTES

S.C. Code Ann. 15-78-60 (17).....P. 1
S.C. Code Ann. 15-78-70 (b).....P. 1,3
S.C. Code Ann. 42-9-10.....P. 1,3

OTHER AUTHORITIES

SCACR Rule 12 (b)(6).....P. 1,3
SCACR Rule 601 (3).....P. 4
South Carolina Worker's Compensation Commission Regulatory Advisory Form 14b
.....P. 2,3,4
South Carolina Worker's Compensation Commission R67-611..... P. 1.3.4.5
South Carolina Worker's Compensation Commission R67-612..... P. 2.3

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT IMPROPERLY APPLY THE SOUTH CAROLINA TORT CLAIMS ACT?
- II. DID THE TRIAL COURT IMPROPERLY DISMISS UNDER RULE 12(b)(6), SCRPC?
- III. DID THE TRIAL COURT IMPROPERLY CONSIDERED SUFFICIENT EVIDENCE THAT WAS MADE AVAILABLE BY APPELLANT?
- III. DID THE TRIAL COURT IMPROPERLY FAILED TO FIND AN ESTABLISHED A PRIMA FACIE CASE IN SUPPORT OF APPELLANT FOR ABUSE OF PROCESS?
- V. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-60(17).
- VI. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-70(b).
- VII. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 42-9-10.

STATEMENT OF THE CASE

Appellant filed a lawsuit against South Carolina Worker's Compensation Commission for failure to protect him from fraudulent, actual malice and intent to harm from Amazon.Com, employer and American Zurich Insurance, carrier regarding his worker's injury claim. South Carolina Worker's Compensation Commission failed to comply with their own policies of R67-611 which does not require a self represented

claimant to submit a pre-hearing brief, Regulatory Advisory requiring Form 14B to be completed by treating physician when self represented due to employer stating maximum medical improvement. Appellant was sustained a work injury to the head on February 10, 2013 at Amazon.Com in West Columbia, South Carolina. Amazon.Com, employer and American Zurich Insurance, carrier received treatment from various health care providers for a concussion which was accepted. Amazon.Com, employer and American Zurich Insurance, carrier approved Dr. Mahmoud Abu-Ata as assigned worker compensation doctor to treat Appellant. Appellant was treated by Dr. Mahmoud Abu-Ata for many months and is still in need of additional care as determined by assigned worker's compensation doctor but has been denied by Amazon.Com, employer and American Zurich Insurance, carrier therefore he has not completed and submitted a Form 14B to South Carolina Worker's Compensation Commission as required. Legal Counsel J. Russell Goudelock has stated to South Carolina Worker's Compensation Commission and accepted that Appellant has not received disability benefits and maximum medical improvement has been obtained which are distortions by compelling evidence.

Amazon.Com, employer access to work site on February 19, 2014 because of work restrictions from assigned worker's compensation doctor, Dr. Mahmoud Abu-Ata without paying worker's compensation benefits. J. Russell Goudelock, legal counsel for Amazon.Com, employer and American Zurich Insurance, carrier stated to and accepted by South Carolina Worker's Compensation Commission that medical records already obtained by them was an expert's documentations under R67-612 is a distortion therefore

denied submission. Commissioner Michael Campbell II stated in his instructions on Proposed Order not to mention credibility even though a substantial amount of compelling evidence was provided and on record therefore denying worker's compensation benefits. Keith Roberts, legal counsel for South Carolina Worker's Compensation Commission stated to Officer JR Brock of Lexington County Sheriff Office that Appellant was suffering from post stress traumatic disorder (PSTD) based on medical documentations provided which is a filed report therefore he, commissioners and his agency becomes liable for negligent in providing medical care needed and the payment of worker's compensation benefits.

STANDARD OF REVIEW

The Trial Court totally disregarded South Carolina Worker's Compensation Commission's violations of their R67-611, R67-612, Regulatory Advisory requiring Form 14b, S.C. Ann 42-9-10 and Form 50. The Trial Court to dismiss under Rule 12 (b)(6) should not be granted unless it appears certain that the plaintiff can prove no set of facts which would support its claim and would entitle it to relief. In considering a motion to dismiss, the court should accept as true as well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff, Mylan Laboratories, Inc. v. Matkari, 7F 3d 1130, 1134 (4th Cir. 1993). S.C. Ann 15-78-70 (b) Nothing in this chapter

maybe construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that is constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Richland County Court of Common Pleas was negligent when it violated South Carolina Supreme Court Rule 601 (3) required that all civil cases filed in Richland County are subject to Alternative Dispute Resolution that was never held before being dismissed by Honorable Judge Casey L. Manning (see attachments). The lawsuit filed against South Carolina Worker's Compensation Complaint was a justifiable claim under South Carolina Tort Act

ARGUMENT

I. SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION VIOLATED THEIR OWN POLICY OF R67-611 REQUIRING APPELLANT TO SUBMIT A PRE-HEARING BRIEF.

COMMISSIONER MICHAEL CAMPBELL II STATED THAT APPELLANT HAD TO SUBMIT DOCUMENTS THROUGH A PRE-LEGAL BRIEF.

II. SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION VIOLATED THEIR OWN POLICY OF REGULATORY ADVISORY REQUIRING FORM 14B WHEN CLAIMANT IS SELF REPRESENTED.

SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION DOES NOT HAVE A FORM 14B FROM ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA.

III. APPELLANT HAS SUBSTANTIATED STATED A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST RESPONDENT.

SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION
DENIED PERTINENT MEDICAL AND SUPPORTIVE
DOCUMENTATIONS BY EGREGIOUS ERROR OF R67-611

III. RICHLAND COUNTY COURT OF COMMON PLEAS VIOLATED SOUTH CAROLINA SUPREME COURT RULE 601 (3) REQUIRING ALTERNATIVE DISPUTE RESOLUTION.


APPELLANT DID NOT RECEIVED ALTERNATIVE DISPUTE RESOLUTION AS REQUIRED BY THE LAW AND JUDGE CASEY L. MANNING, PRESIDING JUDGE BY EMAIL NOTIFICATION HAS AGREED.

CONCLUSION

WHEREFORE, Appellant is requesting this Honorable Court to accept response to Respondent's Initial Brief.

THEREFORE, Respondent's Dismissal should be Reverse and Remanded to the Trial Court for due processing.

November 14, 2016


s/ Clarence B. Jenkins Jr.
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945 Wire Rd.
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Pro Se Appellant

See Attachments

2013-03-14-01 (Superseded by Order 2015-11-12-04)

The Supreme Court of South Carolina

RE: Circuit Court Arbitration and Mediation and Family Court Mediation

ORDER

By order dated February 1, 2006, this Court adopted Court-Annexed Alternative Dispute Resolution (ADR) Rules which govern court-annexed ADR processes in South Carolina Circuit Courts in civil suits, and in South Carolina Family Courts in domestic relations actions in counties designated by this Court for mandatory ADR or as required by statute.

Effective with cases filed in the circuit court and the family court on or after June 1, 2013, the First, Second, Seventh, and Ninth circuits and Georgetown, Marion, Kershaw and Darlington counties join those counties previously designated by this Court for mandatory ADR. Additionally, in Oconee and Pickens Counties cases filed in the circuit court on or after June 1, 2013 shall be subject to mandatory ADR. The counties designated by this Court for mandatory ADR are as follows:

Aiken	Colleton	Lexington
Allendale	Darlington	Marion
Anderson	Dorchester	Oconee
Bamberg	Florence	Orangeburg
Barnwell	Georgetown	Pickens
Beaufort	Greenville	Richland
Berkeley	Hampton	Spartanburg
Calhoun	Horry	Sumter
Charleston	Jasper	Union
Cherokee	Kershaw	Williamsburg
Clarendon	Lee	York

Effective June 1, 2013, this order supersedes the order dated April 7, 2011 listing the counties previously designated for mandatory ADR.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina
March 14, 2013

RE: REF Case# 2015-CP-40-07178

Thursday, September 22, 2016 12:54 PM

From: "Manning L. Casey Law Clerk (John Waites)" <CManningLC@sccourts.org>

To: "Clarence Jr" <upscale81@yahoo.com>

Mr. Jenkins:

Thank you for your inquiry. Judge Manning has been made aware of your situation and believes that this is an issue that can be taken up on appeal if you are so inclined.

Christian Waites
Law Clerk to the Honorable L. Casey Manning
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1774
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-----Original Message-----

From: Clarence Jr [mailto:upscale81@yahoo.com]

Sent: Thursday, September 22, 2016 1:02 PM

To: Manning, L. Casey Law Clerk (John Waites) <CManningLC@sccourts.org>

Subject: REF Case# 2015-CP-40-07178

Honorable Judge Manning:

I sent you an email regarding on 9/21/2016 pertaining to due process that was not received March 22, 2016 in Clarence B. Jenkins Jr. vs. South Carolina Worker's Compensation because Alternative Dispute Resolution (ADR) was not provided by Supreme Court of South Carolina. I have received confirmation that my email sent to Honorable Judge Lee was forwarded to you as well since she is no longer the chief administration judge.

I know that you in a previous email requesting not to be contacted but this information regarding ADR just became available to me therefore justice was not afforded. Please send a response regarding the information provided in this email.


Clarence B. Jenkins Jr.

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Certificate of Service

I hereby certify that a true cop of the above documents was served upon South Carolina  
Worker's Compensation Commission addressed to their attorney of record, Attorney  
Keith Roberts by United States Postal Mail at PO Box 1715 Columbia, SC 29202-1715

On (date) November 14, 2016

Clarence B. Kent Jr.  
Signature

November 14, 2016  
Date



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NOV 15 2016

SC Court of Appeals

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