

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Casey L. Manning

Case No: 2015-CP-40-07178

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NOV 21 2016

SC Court of Appeals

Clarence B. Jenkins, Jr., Appellant,.....Appellant,

v.

South Carolina Workers' Compensation Commission,.....Respondent.

**REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE AND/OR
FOR CORRECTION OF DESIGNATION OF MATTER AND INITIAL
BRIEF AND FOR EXTENSION OF TIME**

On October 28th, 2016, Respondent filed a Motion to Strike and/ or for Correction of Appellant's Designation of Matter and Initial Brief. On November 2nd, 2016, Appellant *pro se* sent the Court a letter. It is the position of Respondent that this letter does not constitute a Return to Motion as contemplated by Rule 240(e), SCACR. However, out of an abundance of caution, Respondent offers this memorandum as its Reply under Rule 240(f), SCACR.

Respondent moved that, pursuant to Rules 208, 209, 210 and 240, SCACR, the Court order Appellant's Designation of Matter to be Included in the Record on Appeal ("Designation") and the Initial Brief of the Appellant

(“Appellant’s Brief”) be corrected and/or that items be stricken. Respondent’s argument in its Motion is that Appellant has designated and made reference to items that were not part of the record that was presented to the Circuit Court. These non-record items may not be included in the Record before this Court pursuant to Rules 209(b) and 210(c), SCACR, which limit the Designation and the Record on Appeal solely to matter presented to the lower court. Further, non-record items may not be referenced in Appellant’s Initial Brief pursuant to Rule 208(b)(4).

Appellant’s letter offers to the Court nine “Notice of Motion Scheduling” forms that were issued by the Circuit Court and a portion of the transcript of the March 22nd, 2016 Hearing before Judge Manning on those motions. It was following the Hearing held to consider these Motions that Judge Manning “ORDERED that [Respondent’s] Motion to Dismiss the Complaint is GRANTED pursuant to Rules 12(b)(1) and 12(b)(6), SCRCR. Accordingly, [Appellant’s] Summons and Complaint is hereby DISMISSED WITH PREJUDICE. As this Order dismissing [Appellant’s] Complaint is dispositive of all issues pending in this matter, [Appellant’s] remaining Motions are hereby DISMISSED as being moot.” Order of Judge Manning, May 27th, 2016, p. 2. The Order makes clear that Appellant’s Motions were rendered moot by the dismissal; therefore, the Circuit Court did not consider documents offered by Appellant in those motions

and referenced in his Designation of Matter and Initial Brief, and they did not become part of the record.

Further, it is Respondent's position that the portion of the transcript of the March 22nd, 2016 Hearing before Judge Manning that Appellant includes with his November 2nd, 2016 Letter supports Respondent's argument that the items requested to be stricken in its Motion were not part of the record and that Appellant was advised of such. The transcript includes the following exchange:

THE COURT: Now, Mr. Jenkins, these documents that are attached to your motion, these are the materials that you want included for me to consider?

THE PLAINTIFF: Yes, sir.

...

THE COURT: And this includes all of the information that you want me to consider?

THE PLAINTIFF: Well, at the moment. At the moment. I have a list of documents.

THE COURT: Okay. **So these document attached to your motion you want me to consider that have not been included in the record;** is that correct?

THE PLAINTIFF: **That's correct.**

Transcript, p.5, lines 12-25, p.6, lines 1-5. (Emphasis added).


It was explained on the record to the Appellant that the documents he was attempting to submit were not part of the record. It is obvious from his Order that Judge Manning did not admit any documents offered by Appellant into the record at the Hearing. For the reasons stated in Respondent's Motion, Appellant should not be permitted to designate items as part of the matter before the Court or refer to them in his briefs if they were not part of the record before the Circuit Court.

CONCLUSION

Respondent's position is that the Order of Judge Manning and the Transcript of the Hearing make it clear that the only items that are part of the record on review are the Order of Judge Manning, dated May 27th, 2016, the transcript of the Hearing which was held on March 22nd, 2016, Respondent's Motion to Dismiss dated December 31st, 2015, and Appellant's Summons and Complaint dated December 1st, 2015. Respondent respectfully moves this Court to limit Appellant's Designation of Matter and references in his briefs to items actually contained in the record.

For these reasons, Appellant's Designation of Matter and Initial Brief should be stricken.

November 21st, 2016



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Casey L. Manning, Circuit Court Judge

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Clarence B. Jenkins, Jr.,Appellant,

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PROOF OF SERVICE

I, the undersigned counsel for Respondents, hereby certify that I have served a copy of the MOTION TO EXCLUDE APPELLANT'S NOVEMBER 2ND, 2016 LETTER AS A RETURN TO MOTION AND/OR MOTION TO ALLOW FOR LATE FILING OF RESPONDENT'S REPLY by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, address to the *pro se* Appellant on this the 21st day of November, 2016:

Clarence B. Jenkins, Jr.
945 Wire Road
Neeses, SC 29107

11/21/, 2016



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Workers' Compensation Commission **RECEIVED**

November 21st, 2016

South Carolina Court of Appeals
The Hon. Jenny Abbott Kitchings, Clerk of Court
1220 Senate St.
P.O. Box 11629
Columbia, SC 29211

NOV 21 2016
SC Court of Appeals

Re: Clarence B. Jenkins, Jr., Appellant v. S.C. Workers' Compensation Commission,
Respondent.
Appellate Case No.: 2016-001382

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent the South Carolina Workers' Compensation Commission's Motion to Exclude Appellant's Letter Dated November 2nd, 2016 as a Return to Motion under Rule 240(e) and/ or Motion to Allow for Late Filing of Respondent's Reply, which I would appreciate your filing with the court. Respondent understands that, as an agency of the State of South Carolina, it is exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted. Also enclosed are the original and six (6) copies of Respondent's Reply to Appellant's Return which I would appreciate you filing with the Court.

By copy of this letter to the last known address for Mr. Clarence B. Jenkins, Jr., Claimant *pro se*, I am hereby serving him with a copy of our Motion and Reply. Please see the attached Certificate of Service.

If there is anything further the court requires from the Respondent at this time, please do not hesitate to ask.

With warmest regards,

Sincerely,

A handwritten signature in cursive script that reads "J. Keith Roberts".

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure

Cc: Mr. Clarence B. Jenkins, Jr.
945 Wire Rd.
Neeses, SC 29107

South Carolina Workers' Compensation Commission

1333 MAIN STREET, SUITE 500
P.O. Box 1715
COLUMBIA, SOUTH CAROLINA 29202-1715

RETURN SERVICE REQUESTED

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NOV 21 2015

SC Court of Appeals

South Carolina Court of Appeals
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