

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

Appellate Case No. 2012-211870
Trial Court Case No. W.C.C. 0922546

RECEIVED
JAN 13 2017
SC Court of Appeals

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Worker's Compensation Uninsured Employer's Fund.....Respondent.

RETURN TO PETITION FOR REHEARING

Pursuant to Rule 221 and 240(e), SCACR, the Appellant, Palmetto Collision, LLC, respectfully request that the Court of Appeals deny the Petition for Rehearing filed by the Respondent, based upon the following in particular:

1. The Respondent argues that, instead of addressing the issues specifically remanded by the Supreme Court, the Court of Appeals should have dismissed the present appeal, based on the Respondent's argument that Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 522 (2013) is applicable to the case *sub judice*.

The Appellant respectfully contends that this argument is without merit.

First, the Supreme Court did not instruct the Court of Appeals to address the Respondent's Bone argument and; therefore, it was not within the jurisdiction of the Court of Appeals to do so. See Prince v. Beaufort Memorial Hosp., 392 S.C. 599, 605 (2011) (quoting S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 231, 250-51 (Ct. App. 2001) for the proposition that a lower court "has no authority to exceed the mandate of the appellate court on remand" (internal citations omitted)). Not only did the Supreme Court not instruct the Court of Appeals to address this argument on remand, but Supreme Court specifically held that, "[t]o the extent that issue is preserved, *Bone* is inapplicable." (Bone, *supra*, fn.1). See Ackerman v. McMillan, 324 S.C. 440 (1996) (quoting 5 C.J.S. *Appeal and Error* § 975(a) (1993) for the proposition that the "decision of the appellate court is final as to all questions decided.").

This ruling by the Supreme Court was in response to the following argument in the Respondent's brief to the Supreme Court: "*Was the Decision and Order of the South Carolina Workers' Compensation Appellate Panel dated March 26, 2012, and appealable final order under South Carolina Code Ann. Secion 1-23-380(A) as interpreted in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2ND 552 (2013)?*" If the Respondent was dissatisfied with the Supreme Court's decision on this argument, a Petition for Rehearing could have been filed pursuant to Rule 221, SCACR, but the Respondent filed no such Petition. Therefore, the Supreme Court's ruling on the Respondent's Bone argument is the law of the case and cannot properly be challenged on remand. Buckner v.

Preferred Mut. Ins. Co., 255 S.C. 159, 160-61 (1970) (holding that “an unappealed ruling, right or wrong, is the law of the case.”).

Furthermore, the Supreme Court was correct in concluding that the Bone case is inapplicable because it deals with the construction of S.C. Code Ann. § 1-23-390, which requires that only a “final judgment” *of the circuit court* is immediately appealable. Here, the Appellant’s appeal was from a final decision *of the Workers’ Compensation Commission* and this appeal was governed by an altogether different statute, S.C. Code Ann. § 1-23-380, which not only does not require a “final judgment,” but specifically permits immediate review of even “preliminary, procedural or intermediate agency action.”

Therefore, the Appellant respectfully contends that the Court of Appeals did not misapprehend or overlook the Respondent’s Bone argument. Instead, this argument was not properly before the Court of Appeals and is otherwise inapplicable, as determined by the South Carolina Supreme Court.

2. The Respondent further argues that the Court of Appeals somehow overlooked or misapprehended his argument that the Court of Appeals should remand this case to the Workers’ Compensation Commission to make additional findings and to receive additional evidence. The Appellant respectfully contend that this argument is without merit. The Workers’ Compensation Commission fully and finally addressed the only claim advanced by the Respondent, *i.e.*, a claim for medical benefits, by making a blanket award of such medical benefits¹--despite

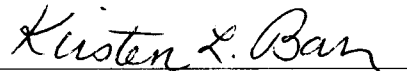
¹ Regardless of the Commission’s stated *purpose* for awarding medical benefits (*i.e.*, to determine “whether he is at MMI and whether he is in need of any additional

the fact that the Respondent did not satisfy his burden of proving his entitlement to those benefits under S.C. Code Ann. § 42-15-60. (R. p.17 #3, p. 36, lines 6-15). The Workers' Compensation Commission did not purport to retain jurisdiction over the claim or otherwise leave the record open on any issue.

Having finally decided that the Worker's Compensation Commission erred as a matter of law in awarding the Respondent medical benefits, there is no need for the Court of Appeals to remand the case further action to be taken, or evidence to be considered, on the question of whether the Respondent is entitled to medical benefits. Therefore, a remand would be unnecessary and improper. Should the Respondent wish to claim other benefits under the Workers' Compensation Act, he should simply comply with S.C. Code S.C. Code Ann. 67-207 by requesting a hearing and identifying the benefits which he seeks.

Therefore, based upon the arguments outlined herein above, the Appellant, Palmetto Collision, LLC, respectfully requests that the Petition for Rehearing be denied.

Respectfully submitted,



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medical treatment together with any benefits under the act”), the award has been reversed and vacated and the Commission’s intent is now irrelevant.



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January 10, 2017

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JAN 13 2017

SC Court of Appeals

Via Facsimile and Regular Mail

Attn.: Lynn
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Richard A. Hartzell v. Palmetto Collision, LLC
W.C.C. File No.: 0922546
COA Case No.: 2012-211870
Date of Accident: February 25, 2009

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and six (6) copies of our Return to Petition for Rehearing and original Proof of Service of the same in the above-named matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Return.

Yours very truly,

Kirsten L. Barr

KLB/cnc/les

Enc.

cc: Mike Stallings, Palmetto Collision, LLC (w/enc.)
Kerry W. Koon, Esq. (w/enc.) (fax/mail)
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PROOF OF SERVICE

The undersigned hereby certifies that the above-named Respondents, Richard A. Hartzell and the S.C. Worker's Compensation Uninsured Employers Fund, were served with a copy of the attached Return to Petition for Rehearing this 10th day of January 2017 by facsimile and by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

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Attention: Lynn
The Honorable Jenny Abbott Kitchings
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