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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Doraine E. Martin,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Corrections)
and State Accident Fund,)
)
Respondents.)
)

Docket No.: 17-ALJ-30-0038-IJ

ORDER

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to a Petition and Rule to Show Cause for Enforcement of Subpoena for Production of Documents and to Compel Discovery, by Answering Questions Posed During Discovery Examination, and Rulings on Objections Based on Privilege (“Petition”) filed by Doraine E. Martin (“Martin” or “Petitioner”). The South Carolina Department of Corrections (“SCDC”) and the State Accident Fund (“SAF”) (collectively referred to as “Respondents”) jointly responded to Martin’s Petition and argued that ALC lacks jurisdiction. A hearing on the Petition was held on March 1, 2017.

FACTS

Martin has two claims (WCC File Nos. 1520218 and 1422034) that are currently pending before the South Carolina Workers’ Compensation Commission (“SCWCC”). The deposition of the adjuster for SAF was scheduled for February 8, 2017. At the deposition, Respondents objected to some of Petitioner’s questions and directed that the adjuster not answer several questions on the bases that the answers were protected by attorney-client privilege and/or the work product doctrine.

Pursuant to Rule 30(j)(3), SCRCF, Respondents had five business days from the suspension of the deposition to file a motion for protective order to preserve the objections made by counsel during the deposition. On February 14, 2017, Respondents, pursuant to Rule 26(c), SCRCF, moved before the SCWCC for a protective order. On February 21, 2017, Martin filed her Petition in this Court, seeking enforcement of the subpoena.

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DISCUSSION

The first issue before this Court is whether it has jurisdiction to entertain this Petition. To determine whether the ALC has jurisdiction, the Court must interpret the governing statutes using the rules of statutory construction.

“The question of statutory interpretation is one of law for the court to decide.” *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012). “The cardinal rule of statutory construction is to give words used in a statute their plain and ordinary meaning without resort to subtle or forced construction.” *Tillotson v. Keith Smith Builders*, 357 S.C. 554, 558, 593 S.E.2d 621, 623–24 (Ct. App. 2004). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent. Every technical rule as to construction of a statute is subservient to and must yield to the expression of the will of the legislature, since all rules of statutory construction have for their sole object the discovery of the legislative intent and are valuable only insofar as in their application they aid the courts in their endeavor to ascertain that intent.

City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 391–92, 154 S.E.2d 674, 676 (1967).

S.C. Code Ann. § 1-23-320(D) (Supp. 2016) states:

The agency hearing a contested case may issue subpoenas in the name of the agency for the attendance and testimony of witnesses and the production and examination of books, papers, and records on its own behalf or, upon request, on behalf of another party to the case.

A party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court pursuant to Section 1-23-600(F).

S.C. Code Ann. § 1-23-600(F) (Supp. 2016) reads:

Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action

filed in the court of common pleas.¹

“Agency” for the purposes of S.C. Code Ann. § 1-23-320(D) is defined as, “each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases.” S.C. Code Ann. § 1-23-310(2) (Supp. 2016). A “contested case” is defined as, “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” S.C. Code Ann. § 1-23-310(3). Although neither SCDC nor SAF is an agency as defined by S.C. Code Ann. § 1-23-310(2), the state agency that issued the subpoena, SCWCC, is such an agency. Thus, a party to the proceeding before the SCWCC, here Martin, can seek enforcement of an agency subpoena before the ALC.

The Court is mindful of the language in S.C. Code Ann. § 1-23-600(F). By use of the introductory phrase, “notwithstanding any other provision of law...” the legislature intended that S.C. Code Ann. § 1-23-600(F) “be exclusive of other provisions of law...” *Mosteller v. Cty. of Lexington*, 336 S.C. 360, 364, 520 S.E.2d 620, 622 (1999). However, the ALC “will not construe a statute in a way which leads to an absurd result or renders it meaningless.” *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). This Court “should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.” *Hinton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004). Thus, the limitations of S.C. Code Ann. § 1-23-600(F), “a state agency... may apply to the Administrative Law Court for injunctive or equitable relief...” appears to only grant a state agency the ability to apply to the ALC for injunctive relief. However, that interpretation would render S.C. Code Ann. § 1-23-320(D) meaningless, because a non-agency party would not be able to go before the ALC to seek enforcement of or to obtain relief from a subpoena. Therefore, this Court will read the statute as a

¹ S.C. Code Ann. § 1-23-630 (Supp. 2016) reads:

(A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure.

whole as allowing, under S.C. Code Ann. § 1-23-320(D), Martin to seek enforcement of a subpoena before the ALC. *See S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (“the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”).

Although the ALC has jurisdiction to enforce the subpoena at issue, the Court chooses to defer to the discovery proceeding before the SCWCC. SCWCC has jurisdiction to hear the discovery issue by way of Respondents’ Motion for Protective Order filed on February 14, 2017. Therefore, there is concurrent jurisdiction to determine the enforcement of or relief from the subpoena at issue.²

The Court believes that it would be imprudent to render a decision on this issue while the SCWCC is also attempting to resolve the issue, especially considering the potential for inconsistent results. Additionally, the decision reached by the SCWCC will be preserved for appellate review after the contested case becomes a final decision. *C.f. Tucker v. Tucker*, 264 S.C. 172, 177-78, 213 S.E.2d 588, 590 (1975) (“As a rule the exercise of concurrent jurisdiction is controlled by the principle of priority. According to this principle the court of concurrent jurisdiction that first exercises it thereby acquires exclusive jurisdiction to further proceed in the case. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case its authority to deal with the action is, subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction may interfere with the proceedings thus pending. . . .”) (citation omitted); *see also Richardson, Plowden, Grier & Howser v. Pyle*, 322 S.C. 371, 374, 472 S.E.2d 232, 233 (1996) (“To allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney’s fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.”).

Because SCWCC is the agency hearing the contested case, it has jurisdiction and authority to issue rulings on enforcement of its subpoenas. In addition, Respondents’ Motion for Protective Order, filed prior to this Petition, will resolve the dispute as to whether Respondents must produce

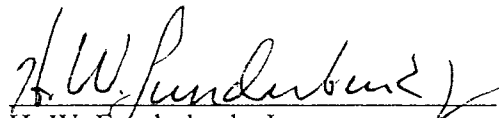
² SCWCC has the authority and power to enforce its subpoenas. S.C. Code Ann. § 42-3-150 (2015); *See also* 8 S.C. Code Ann. Regs. 67-215 (2012).

documents and whether the adjuster must answer questions that were objected to by Respondents. Thus, to minimize the possibility of inconsistent decisions, this Court declines to invoke its jurisdiction. It is therefore,

ORDERED that the discovery in this matter must remain in the exclusive jurisdiction of the South Carolina Workers' Compensation Commission.

AND IT IS FURTHER ORDERED that this matter before the ALC is **DISMISSED**.

AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

March 9, 2017
Columbia, South Carolina

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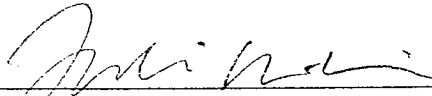
CERTIFICATE OF SERVICE

I, Julia M. Miller, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

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March 9, 2017
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Julia M. Miller
Judicial Law Clerk

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