

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. No. 1605900

RECEIVED

SEP 05 2017

SC Court of Appeals

George C. Leggette, Jr., Employee, Respondent,

v.

Three D Machinery Installers, LLC, Employer
and Amerisure Mutual Insurance Company, Carrier Appellants.

**RETURN IN OPPOSITION TO
MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Appellants Three D Machinery Installers, LLC and Amerisure Mutual Insurance Company hereby oppose Respondent George C. Leggette, Jr.'s Motion to Dismiss Appeal ("Motion"). Respondent's Motion is based on the erroneous notion that the Appellants' Notice of Appeal failed to invoke this Court's jurisdiction because it did not specifically state the grounds of appeal or alleged errors of law, pursuant to S.C. Code Ann. § 42-17-60.

However, what Respondent fails to apprehend is that appeals from the South Carolina Workers' Compensation Commission are controlled by the South Carolina Administrative Procedures Act ("APA") and, where the provisions of the South Carolina Workers' Compensation Act ("WCA") conflict with provisions of the APA, the APA controls. Pringle v. Builders Transp., 298 S.C. 494, 496, 381 S.E.2d 731, 732 (1989); *see also* Williams v. South Carolina Dep't of Wildlife, 295 S.C. 98, 99, 367 S.E.2d 418 (1987) (where the provisions of the

WCA and the APA conflict, “the APA controls”); Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) (holding that the legislature intended for the APA “to repeal the scope of review provisions of *Section 42-17-60*” because the two standards were inconsistent). This is true with regard to the content and format of appeals from the Commission, Wofford v. City of Spartanburg, 410 S.C. 102, 103, 763 S.E.2d 53, 54 (Ct. App. 2014), as well as in other respects. *See* Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012) (finality requirement); Lark, 276 S.C. at 134, 276 S.E.2d at 306 (standard of review). In fact, this precise argument was raised to the Court in Wofford and rejected. There, this Court cited to an order in Allen v. Florence Pole & Piling, Inc., S.C. Sup. Ct. Order dated November 6, 2008, which held that “because section 42-17-60 conflicts with the APA, ‘failure to state grounds for appeal or alleged errors of law in the[] notice of appeal does not require dismissal of the appeal.’” Wofford, 410 S.C. at 103, 763 S.E.2d at 54.¹

Section 1-23-380 of the APA currently provides that a party that has exhausted its administrative remedies and is aggrieved by a final agency decision “is entitled to judicial review pursuant to this article and Article 1 Except as otherwise provided by law, an appeal is to the court of appeals.” Subsection (1) provides, in pertinent part, that “[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency.” S.C. Code Ann. § 1-23-380. Rule 203, SCACR, specifically identified in Section 1-23-380(1) as controlling, does not

¹ Note that, under the version of the APA that applied in Pringle, Section 1-23-380(b) simply provided that “[p]roceedings for review are instituted by filing a petition in the circuit court within thirty days after the final decision of the agency ...” *E.g.*, Midlands Util., Inc. v. South Carolina Dep’t of Health & Env’tl Control, 287 S.C. 483, 485, 339 S.E.2d 862, 863 (1986). Because that provision did not conflict with the WCA, the requirement in Section 42-17-60 that an appellant state the grounds for appeal applied. That is no longer true under the current version of the APA.

require a separate statement of the grounds for appeal or alleged errors of law. Instead, Rule 203(e) specifies that the form and content of a notice of appeal, “shall be substantially in the form designated in the Appendix to these Rules.” Rule 203(e), SCACR. Appellants’ Notice of Appeal is substantively similar to the form set out in SCACR App. C, Form 6, applicable to appeals from administrative agencies. Nowhere in Rule 203, SCACR, or in any of this Court’s other Appellate Court Rules, is there a requirement that an appellant seeking review of a Commission Decision state the specific grounds for appeal in the Notice of Appeal.

There is a direct conflict between Section 42-17-60 of the WCA and Section 1-23-380 of the APA with respect to the content of a notice of appeal from the Commission to this Court. As a result, the APA controls, Wofford, 410 S.C. at 103, 763 S.E.2d at 54, and Appellants’ Notice of Appeal in this case effectively invoked this Court’s jurisdiction.

CONCLUSION

For all the reasons stated herein, this Court should deny Respondent’s Motion.

August 31, 2017

MCANGUS GOUDELICK & COURIE, LLC

By: 

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Inc. and Palmetto Timber Fund*

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PROOF OF SERVICE

I certify that I have served Appellants' **Return in Opposition to Motion to Dismiss Appeal** on Respondent George C. Leggette, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on the 31st day of August, 2017, addressed as follows:

Stephen J. Wukela, Esq.
WUKELA LAW FIRM
P.O. Box 13057
Florence, South Carolina 29504-3057



Kathy Aldrich
Assistant to Helen F. Hiser
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Reply To

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August 31, 2017

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

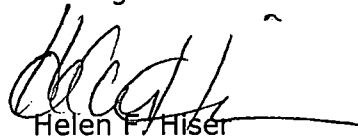
RE: George Leggette v. Three D Machinery Installers, LLC and Amerisure
Mutual Insurance Company c/o Amerisure Insurance
Date of Accident: March 28, 2016
WCC File No.: 1605900
Our File No.: 20493.16096
Claim No.: 2042150
Appeal No.: 2017-001730

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants' Return in Opposition to Motion to Dismiss Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the enclosed self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Stephen J. Wukela, Esquire



mgc | INSURANCE
DEFENSE

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MT PLEASANT, SC 29465

20493.16096 /HFH/kea
The Honorable Jenny Abbott Kitchings
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