

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Case No. 2017-001135

Jacob Tisdale, Deceased Claimant, Appellant,

v.

Williamsburg County Department of Special Needs, Employer, and State Accident Fund,
Carrier, Respondents.

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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March 28, 2018

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STATEMENT OF THE CASE

Jacob Tisdale (“Deceased”), who was employed for the Williamsburg County Department of Special Needs (“Department”) as a residential facility manager in Kingstree, South Carolina, died as the result of a in a single vehicle accident on October 16, 2008 while travelling west on U.S. Highway 521 just outside of Greeleyville, South Carolina. At the time in question it is undisputed that Deceased was driving a van owned by the Department and provided for him to carry out his employment duties. It is likewise undisputed that the Department has no record or knowledge of any business-related task that would have required Deceased to be travelling toward Greeleyville. Deceased’s surviving spouse, Ms. Edna Tisdale (“Spouse”), filed a claim for death benefits under S.C. Code § 42-9-290. Relying, in part, on the “unexplained death presumption,” Spouse alleges Deceased’s accident and subsequent death arose out of and in the course of his employment for the Department.

Department denies compensability under the Act for Deceased’s accident and death. Specifically, the “unexplained death presumption” still requires proof that Deceased was killed at a time and place where his employment reasonably required him to be. To that extent, the burden is still on Spouse to establish the accident leading to the death occurred “in the course of employment.” Since that burden cannot be met, death benefits under the Act must be denied. Moreover, Department argues the “unexplained death presumption” is rebuttable. Specifically, even if Spouse can establish that that Deceased’s job duties generally *may* have required him to be in the vicinity of his accident, the Department can successfully rebut that presumption with evidence that the Department had no business in that area on the *specific date in question* to which Deceased would have been required to tend. In the alternative, Department submits the claim should be barred by the equitable doctrine of *laches*, given the unreasonable delay and resulting

prejudice stemming from bringing a claim for death benefits to a Hearing nearly eight years after the accident/death.

The Commission's eCase Case Status system, which is part of the "Commission's File" incorporated into the Record of this claim ("eCase"), confirms this matter was initially scheduled for a Hearing on the merits for May 22, 2009 but was postponed for reasons not reflected on eCase. (R., p. 142). The parties concede the postponement was due to mutual requests for protection and/or continuances by counsel- Ronnie Sabb and Murrell Smith- due to their respective legislative duties. Thereafter, eCase confirms the Department filed a Form 19 confirming denial of claim on December 16, 2010 and the Commission administratively "closed" the file on January 15, 2011. Thereafter, the claim was "reopened" four years later upon the filing of a Form 52 Request for Hearing dated January 5, 2015 by Spouses new attorney-Helen McFadden. The matter was thereafter referred to current defense counsel. The claim was finally reset for a hearing on January 14, 2016 after a failed mandatory Mediation on September 15, 2015. The eCase status report confirms that no action was taken on this claim (requests for hearing or WCC filings) after it was closed by the Commission on 1/15/11 and a Form 52 was refiled on 1/5/15. (R., p. 142).

By Order dated July 21, 2016, the Hearing Commissioner awarded Spouse death benefits, finding, *inter alia*, that Deceased's motor vehicle accident and resulting death occurred during the course and scope of his employment for the Department. The Commissioner dismissed Defendants *laches* defense, finding that the substantial delay in adjudicating the claim was not unreasonable because such delay was the result of continuances and requests for protections initiated by both parties. The Commissioner also found that Department was not prejudiced by the delay regardless.

Department thereafter appealed to the Full Commission Appellate Panel ("Full Commission") on the merits and the affirmative laches defense. By Order dated April 7, 2017 the

Full Commission reversed the Hearing Commissioner on the laches defense. Specifically, the Full Commission found that Spouse's delay in prosecuting her claim for four years after it was administratively closed by the Workers Compensation Commission was unreasonable. The Full Commission further found that such unreasonable delay prejudiced Department's defense of the claim, since a key witness (Claimant's immediate supervisor) became "unavailable" during that interim. The Full Commission therefore entered a denial of the claim. The Full Commission did not address the merits. Spouse now appeals to this Court.

EVIDENCE OF THE CASE

The primary witness to testify at the Hearing was Clara Faye Dozier, Executive Director of the Department. Ms. Dozier was not Deceased's direct supervisor. (R., p. 75, lines 18-19). That was Karen Hudson, who moved out of state. (R., p. 88, lines 11-21). Ms. Dozier described Deceased's duties as a residential director of four (4) community training homes located in Kingstree, SC. These homes house and serve up to four persons with special needs as they transition from an institutionalized setting to a residential setting with the goal of helping them become more functional in activities of daily living. Deceased was responsible for managing a staff of seven (7) persons per home and ensuring all homes are operational. (R., pp. 78-79).

Ms. Dozier testified that the State Department of Special Needs is ultimately in charge of assessing individuals for their suitability for her Department's services, but all on her staff, including Deceased, were called upon on occasion to assist in that process throughout the various communities in Williamsburg County. (R., pp. 79-80). Ms. Dozier confirmed that 90% of Deceased's job duties/responsibilities required him to split time between the 4 homes within Kingstree, SC. (R., p. 103, lines 17-23). When questioned how often Deceased's job responsibilities called for him to travel beyond Kingstree, Ms. Dozier responded, "that would be

very rarely.” (R., p. 104, line 21). Ms. Dozier further testified the only job duties that would require travel outside of Kingstree would be training and filling in for his staff in transporting their consumers to medical appointments. If Deceased were required to travel for educational purposes, Ms. Dozier confirmed she would have known about it. (R., p. 107, lines 20-23).

Ms. Dozier, a lifelong resident of Williamsburg County, was also familiar with the area where Deceased’s accident occurred. She essentially confirmed the account memorialized in the Accident Report (R., pp. 190-191). On October 16, 2008 Deceased was traveling west on US Highway 521 toward Greeleyville when the van ran off the road, overturned, and struck a utility pole. The accident occurred just outside the city limits of Greeleyville. **Ms. Dozier unequivocally confirmed the Department not was aware of any work-related responsibilities or tasks that would have required Claimant to be travelling beyond Kingstree where the four homes he was tasked with supervising are located.** (R., p. 107, lines 15-19). More specifically, Ms. Dozier confirmed that there is no reason for Claimant to have been traveling toward Greeleyville at the time in question. When opposing counsel posed the question of whether Deceased could have been traveling to meet with prospective clients for the Department’s facilities and services, Ms. Dozier explained, “basically, not at that time, because all the houses were actually filled. So, there would have been no need for assessing or trying to assess individuals for the houses.” (R., p. 80, line 25; p. 81, lines 1-7; p. 81, lines 20-25) (emphasis added).

Ms. Dozier also confirmed that she was not aware of any reason related to the performance of Deceased’s job responsibilities in general that would have required him to be traveling away from his headquarters in Kingstree and toward Greeleyville - “No I can’t. I could not think of any.” (R., p. 107, lines 15-19). Again, in response to opposing counsel’s hypothesis that Deceased may have been transporting a consumer to a medical appointment in Greeleyville, Ms. Dozier reiterated

that Deceased was the only passenger in the van at the time of the accident thus undercutting that speculation. Moreover, she is unaware of any alternative arrangements being made to pick up a consumer after Deceased failed to arrive due to his accident. (R., p. 111, lines 1-21). Finally, Ms. Dozier confirmed there were no Department facilities or needs on the date in question in Greeleyville or beyond on Deceased's westward route on US. Hwy. 521. (R., pp. 112-113).

ISSUES PRESENTED

- I. DID THE HEARING COMMISSIONER ERR IN NOT FINDING THIS CLAIM BARRED BY THE DOCTRINE OF *LACHES*?
- II. AS AN ADDITIONAL SUSTAINING GROUND, IS THE CLAIM BARRED BY THE EQUITABLE DOCTRINE OF STALENESS?

ARGUMENTS

- I. THIS CLAIM IS BARRED BY LACHES BECAUSE SPOUSE'S UNREASONABLE DELAY IN PROSECUTING HER CLAIM FOR FOUR YEARS HAS RESULTED IN SUBSTANTIAL PROJUDICE TO THE DEPARTMENT.

Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Whether a claim is barred by laches must be determined considering the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party. Arceneaux v. Arrington, 284 S.C. 500, 327 S.E. (2d) 357 (Ct. App. 1985). Importantly, delay alone in assertion of a right does not, in and of itself, constitute laches. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). Rather, the delay in bringing a suit must have caused some injury, prejudice or disadvantage to the party claiming laches. Emery v. Smith, 361 S.C. 207, 603 S.E.2d 598 (Ct. App.

2004). If a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses, enter obligations, or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. Muir supra.

Material prejudice to the adverse party resulting from the delay is essential to the laches defense. Such prejudice may be either economic or evidentiary. A.C. Aukerman Co. v. R.L. Chaides Construction Co., 960 F.2d 1020, (1992). Evidentiary, or "defense" prejudice, may arise from a defendant's inability to present a full and fair defense on the merits due to the loss of records, the death of a witness, or the unreliability of memories of long past events, thereby undermining the court's ability to judge the facts. *Id.*

A. Spouse's delay in prosecuting her claim for 4 years was unreasonable

In the instant case, it is undisputed Spouse failed to prosecute her claim for death benefits for FOUR (4) years after the claim was administratively closed by the Commission on January 15, 2011. No reasonable explanation rooted in the Record has been posited by Spouse for the delay. Her assertions that the delay stemmed from mutual requests from the parties' counsel for protection and/or continuances may explain the delay in adjudication after the original Hearing date in May of 2009 and up until the claim was closed by the Commission in January of 2011. However, contrary to Spouse's contentions in her Brief, there is simply no evidence in the Record to suggest the claim was being actively litigated in the four years between January 2011 and January 2015. Again, the Commission's eCase Status report reflects that this matter was closed during that period.

Moreover, there is no evidence in the Record that counsel for either parties' continued service in the Legislature was the reason for the delay in failing to refile a claim for death benefits for four years after the case was administratively closed. Indeed, Ms. Helen McFadden, formerly a partner with Mr. Sabb's firm, refiled the claim in January 2015. Presumably she could have done so at any

time after January 2011 notwithstanding Mr. Sabb's legislative duties. As such, there is no reasonable explanation for Spouse's delay in refiling her claim between January 2011 and January 2015.

The normal statute of limitation period in a workers' compensation matter is two years from date of accident or death per S.C. Code § 42-15-40. Although Department is not asserting a statute of limitations defense here, since Spouse's claim was originally "filed" timely within the meaning of the Commission's regulations, the protections afforded by the limitation period are instructive when assessing the reasonableness of the alleged delay for a laches defense. *See Aukerman supra* at 960 F.2d 1020 p. 1034. Historically, a statute of limitations applied only to claims at law, not to a companion equitable claim. Laches was the only basis for time-barring an equitable claim. Russell v. Todd, 309 U.S. 280, 288 n. 1, 60 S.Ct. 527, 531 n. 1, 84 L.Ed. 754 (1940). However, where the reasons for repose of the claim were equally applicable to remedies at law and equity, the equity courts became inclined to "borrow" the time period from the statute of limitations and apply it presumptively against the equitable claim. *Id.* at 288, 60 S.Ct. at 531. This practice of creating rebuttable presumptions using a statute of limitations as a guide was extended to situations where the legal and equitable claims were not the same but analogous. D.B. Dobbs, *Handbook on the Law of Remedies* § 2.3, at 43-44 (1973).

In this case, if a two-year failure to file a claim is a complete bar, then a four-year delay in pursuing a claim further after the statute has been tolled is *per se* unreasonable, since the purpose for applying the statute of limitations and laches to a worker's compensation claim are ostensibly the same- to protect employers and their insurance carriers against long delayed demands. Chapman v. Foremost Dairies, Inc., 249 S.C. 438, 154 S.E.2d 845 (S.C. 1967). As such, the Full Commission correctly found that Spouse's four-year delay in prosecuting her claim was unreasonable and not otherwise justified.

B. Spouse's unreasonable delay in pursuing her claim prejudiced Department.

Spouse's unreasonable delay in pursuing this claim for four (4) years resulted in substantial "evidentiary prejudice" to the Department because a witness with knowledge of the accident became unavailable to testify at the Hearing. *See Aukerman supra*. Specifically, Deceased's direct supervisor, Karen Hudson, moved out of state at some point after the initial claim was filed and before it was prosecuted further. (R., p. 88, lines 11-21). It is elementary that a non-party witness residing out of state is not subject to subpoena in South Carolina, and for all practical intents and purposes, cannot be compelled to testify in a proceeding here. The materiality of this prejudice is underscored by the carrier's investigation notes' reference to Ms. Dozier stating that "Karen Hudson may know more." (R., p. 169). In addition, those investigative notes indicate Karen Hudson told the Investigator "there is no reason to doubt that he was on the job," a statement that while not legally dispositive on the merits, has been rendered virtually unchallengeable due to her unavailability as a witness. (R., p. 169) Certainly, the defense would have wanted the opportunity to potentially call Ms. Hudson as a witness to illuminate the merits further, an opportunity that was lost because of Spouse's delay in refiling her claim.

Spouse argues in her Brief that Department has not been prejudiced by the inability to call Ms. Hudson because 1) the Department had access to discuss the case further with Ms. Hudson because she remained employed for them six years after the accident; 2) defense counsel never referenced the inability to call Ms. Hudson as a witness in arguments on the laches issue before the Hearing Commissioner; and 3) Ms. Hudson would have likely given testimony adverse to Department's position on the merits anyway. Department will address each of these contentions in turn.

First, the fact Ms. Hudson remained employed for the Department for six years following the accident is irrelevant to the discussion when Spouse did not even refile her claim until SEVEN years after the accident. Moreover, Department had no reason to address the issues further with

Ms. Hudson because the claim was closed with no active litigation pending for FOUR of those years. Second, the Full Commission, as the ultimate fact finder in worker's compensation matters, is free to reach its own conclusions and is not bound by the Hearing Commissioner's findings. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (Ct. App. 2007). Concomitantly, the parties can make new arguments on issues raised before the Hearing Commissioner and otherwise supported by the Record on appeal to the Full Commission. Finally, Spouse's argument that Ms. Hudson would have offered testimony adverse to Department's position on the merits is pure speculation, surmise, and conjecture. Perhaps that would have been the case, but the point is Department was deprived of the opportunity to present potentially favorable testimony on the merits due to Spouse's unreasonable delay in prosecuting her claim.

For these reasons, this Court should must affirm the Full Commission's dismissal of Spouses claims for death benefits.

II. THE COURT SHOULD AFFIRM THE FULL COMMISSION'S DENIAL OF SPOUSES CLAIM ON THE ADDITIONAL SUSTAINING GROUNDS THAT SUCH CLAIM IS STALE.

Rule 220 (c) SCACR allows the Court to affirm any ruling of the lower tribunal upon any grounds appearing in the Record. Moreover, Rule 208 (b)(2) SCACR permits a Respondent to raise an additional sustaining ground for affirming the lower court in its Brief. The Supreme Court in I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000) held that the prevailing party in an action below may raise on appeal any additional reasons the appellate court should affirm the lower court ruling, regardless of whether those reasons were presented to or ruled upon by the lower court. *Id* at 338 S.C. 406 p. 419.

A stale claim is “...one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied.” All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004) (quoting Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 59, 86 S.E.2d 740, 744 (1955)). Though a stale demand implies a greater lapse of time than laches, they both fall within the same general principles of equity and the distinctions are of little practical importance. King v. James, 388, S.C. 16, 28, 694 S.E.2d 35, 42 (2010). Additionally, South Carolina courts have considered the effect that lapse of time has on evidence and the justice system. Thomas v. MacNeil, 138 S.C. 856, 856, 135 S.E. 643, 645 (1926) (“There must be conscientious, good faith, and reasonable diligence, to call into action the powers of the court.... courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice when the original transactions have become obscured by time, and the evidence may be lost.”).

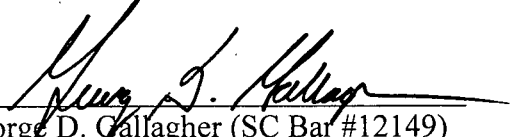
It is discernible from these authorities that the primary difference between the equitable doctrines of laches and stale claims centers on the element of prejudice. Laches clearly requires an affirmative showing of that element, while the doctrine of stale claims arguably does not because prejudice is essentially *presumed* from the length of the delay itself in prosecuting the action. In addition, fault or negligence of a party precipitating the delay seems to be inherent to the doctrine of laches, whereas a hallmark of staleness centers on the effects of thwarting the interests of justice, regardless of fault for the delay. In the instant case, not only is there an unreasonable four-year delay in prosecuting the claim after it was closed, it took EIGHT years to finally bring the claim

for an adjudication following the accident in question. Department submits that the delay in adjudicating this claim confounds all reasonable notions of fairness. Again, witness recollections fade over time, as does the parties' ability to otherwise investigate to discern the truth. For these reasons, the Court should affirm the Full Commission's denial of Spouses claim based on the equitable doctrine of stale claims.

CONCLUSION

For all the aforementioned reasons, the Full Commission's Order dated April 7, 2017 should be **AFFIRMED** in its entirety.

Respectfully Submitted



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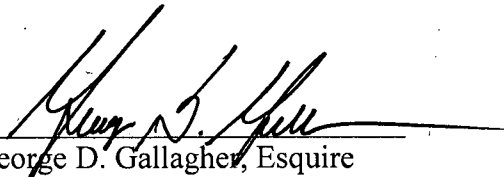
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule
211(b) SCACR.


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