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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

South Carolina Workers' Compensation Commission Appellate

Panel Appellate Case No. 2016-002148

RECEIVED
JUN 27 2018
SC Court of Appeals

Jose Martinez, Respondent,

v.

Jose Efrain Henriquez Salgado; Farley Construction; Auto-Owners Insurance Company; and Builders Mutual Insurance Company,

Of whom Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company are the Appellants,

And

Farley Construction Co. and Builders Mutual Insurance Company are the Respondents.

PETITION FOR REHEARING

COMES now Appellants Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company, by and through their undersigned counsel, hereby moves this Honorable Court to rehear this matter, with oral argument, pursuant to Rule 221, SCACR. The grounds for said Petition are as follows:

1. Appellants respectfully contend that this honorable Court's Order of Affirmation dated June 13, 2018 does not comply with Rule 220(b), SCACR as there is no reasoning for the court's decisions, rather this honorable Court only cited case law.
2. Appellants respectfully contend the Court erred as a matter of fact and law as there

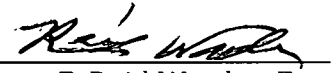
is not substantial evidence in the record to support the Court's affirmation that Jose Efrain Henriquez Salgado was the Claimant's Employer.

3. Appellants respectfully contend the Court erred in applying the four factor test if FARRAR to determine the existence of an Employer-Employee relationship.
4. Appellants respectfully contend the Court erred in finding a direct Employer-Employee relationship between Jose Efrain Henriquez Salgado and the Claimant.
5. Appellants respectfully contend the Court erred in finding a contractual relationship between Jose Efrain Henriquez Salgado and Farley Construction at the time the Claimant was injured.

WHEREFORE, Appellants respectfully request that the Court hold a Rehearing, preferably with oral argument, on this matter.

RESPECTFULLY SUBMITTED:
Warder Law Firm, LLC
P.O. Box 31057
Charleston, SC 29407

June 26, 2018


F. Reid Warder, Esq.
(843) 556-4400
Attorney for Appellants

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Jose Martinez, Respondent,

v.

Jose Efrain Henriquez Salgado; Farley Construction;
Auto-Owners Insurance Company; and Builders Mutual
Insurance Company,

Of whom Jose Efrain Henriquez Salgado and
Auto-Owners Insurance Company are the Appellants,

And

Farley Construction and Builders Mutual Insurance
Company are the Respondents.

Appellate Case No. 2016-002148

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-256
Submitted March 1, 2018 – Filed June 13, 2018

AFFIRMED

Frank Reid Warder, Jr., of Warder Law Firm, LLC, of
Charleston; and John Davis Stroud, of McAngus

Goudelock & Courie, LLC, of Mount Pleasant, for Appellants.

George Albert Taylor, of Callison Tighe & Robinson, LLC, of Columbia, for Respondents Farley Construction and Builders Mutual Insurance Company.

Joseph R. Baldwin, of Greer, for Respondent Jose Martinez.

PER CURIAM: Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company appeal an order of the Appellate Panel of the Workers' Compensation Commission finding Jose Martinez was Salgado's employee at the time of his injury. On appeal, Salgado argues the Appellate Panel erred in (1) applying the four-factor test used in *Farrar v. D.W. Daniel High School*, 309 S.C. 523, 424 S.E.2d 543 (Ct. App. 1992), to determine whether an employment relationship existed; (2) finding an employment relationship existed between Salgado and Martinez; and (3) finding a contractual relationship existed between Salgado and Farley Construction Company. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues 1 and 2: *Porter v. Labor Depot*, 372 S.C. 560, 566, 643 S.E.2d 96, 99 (Ct. App. 2007) ("Judicial review of a Workers' Compensation decision is governed by the substantial evidence rule of the Administrative Procedures Act. However, if the factual issue before the Commission involves a jurisdictional question, this court's review is governed by the preponderance of evidence standard." (citation omitted)); *id.* at 567, 643 S.E.2d at 100 ("The existence of the employer-employee relationship is a jurisdictional question."); *id.* at 572, 643 S.E.2d at 102 ("The fundamental test of the employment relationship is the right of the employer to control the details of the employee's work."); *id.* at 572, 643 S.E.2d at 102-03 ("There are four elements which determine the right of control: 1) direct evidence of the right or exercise of control; 2) furnishing of equipment; 3) right to fire; and 4) method of payment."); *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009) (holding the four factors "should be evaluated in an evenhanded manner"); *Ferguson v. New Hampshire Ins. Co.*, 412 S.C. 203, 211-13, 771 S.E.2d 851, 856-57 (Ct. App. 2015) (applying the four-factor test to determine whether a claimant qualifies as an employee for workers' compensation coverage).

2. As to issue 3: *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached."); *Spivey v. D.G. Const. Co.*, 321 S.C. 19, 22, 467 S.E.2d 117, 119 (Ct. App. 1996) ("The employment relationship is contractual in character; however, no formality is required. The contract may be oral or written, and also may be implied from conduct of the parties.").

AFFIRMED.¹

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
South Carolina Workers' Compensation Commission
Full Appellate Panel

WCC File No. 1419236

RECEIVED
JUN 27 2018
SC Court of Appeals

Jose Martinez,

Respondent

vs.

Jose Efrain Henriquez Salgado and Auto-Owners Insurance Co.,

Appellant

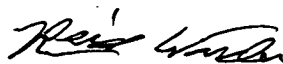
and Farley Construction Co. and Builders Mutual Ins. Co.

Respondents

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Jose Martinez, Farley Construction Company, Builders Mutual Insurance Company, and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on June 26, 2018, addressed to the following: Joseph R. Baldwin, Esq., 306 W. Poisett Street, Greer SC 29650; George A. Taylor, Esq., P.O. Box 1390, Columbia SC 29202-1390; John Davis Stroud, Esq., PO Box 650007, Mt. Pleasant SC 29465; and Ms. Amy Bracy, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202.

June 28, 2018



F. Reid Warder, Jr., Esq. (S.C. bar #70218)
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(843) 556 - 4400
Attorney for Appellant

WARDER

LAW FIRM LLC

F. REID WARDER, JR

JOHN D. STROUD

TEL 843.556.4400

FAX 843.556.4410

PO BOX 31057

CHARLESTON, SC 29417

3 OAK FOREST DRIVE

CHARLESTON, SC 29407

June 26, 2018

VIA FED-EX OVERNIGHT DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RECEIVED
JUN 27 2018
SC Court of Appeals

RE: Jose Martinez vs. Jose Efrain Henriquez Salgado; Farley Construction; Auto-Owners Insurance Company; and Builders Mutual Insurance Company; Appellate Case Number 2016-002148

Dear Clerk of Court:

Enclosed for filing in the above captioned matter please find a Petition for Rehearing. Also enclosed, please find the \$25.00 filing fee for the enclosed Petition.

Additionally, I have enclosed a certificate of service.

Thank you for your time and attention to this matter. If you have any questions or concerns, please do not hesitate to contact me. By copy of this letter, I am serving the same upon all counsel of record.

Sincerely,



F. Reid Warder, Esq.
Warder Law Firm, LLC
P.O. Box 31057
Charleston, SC 29417

cc: Joseph R. Baldwin, Esq.
George A. Taylor, Esq.
John D. Stroud, Esq.

ORIGIN ID:RBWA (843) 556-4400
SALLY CANNON

24 THOMAS ST APT D

CHARLESTON, SC 29403
UNITED STATES US

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TO **CLERK OF COURT, SC COURT OF AP**
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1220 SENATE ST

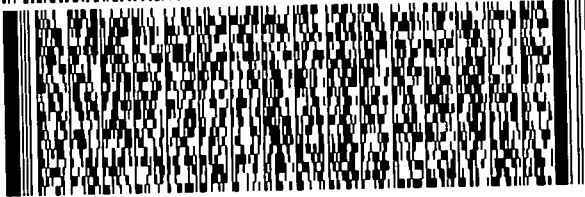
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