

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2017-CP-26-07775

Kelاهر, Connell & Connor, P.C.,)
)
)

Plaintiff,)

vs.)

South Carolina Workers' Compensation)
Commission,)

Defendant.)

ORDER PARTIALLY GRANTING AND
PARTIALLY DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

RECEIVED
JUL 06 2018
SC Court of Appeals

Before the court is the plaintiff's Motion for Reconsideration of this court's order dated 4/9/2018 granting the defendant's Motion to Dismiss in this case. Pursuant to Rule 59(f), SCRCPP, this motion is decided on briefs without oral arguments.

Based upon the plaintiff's motion filed 4/16/2018, plaintiff's brief in support of its motion filed 6/8/2018, and defendant's brief filed 6/21/2018 in opposition to the motion, the plaintiff's Motion for Reconsideration is granted to the extent that the court granted the defendant's Motion to Dismiss on the grounds that the court lacked jurisdiction in this case. However, the court denies the plaintiff's motion to the extent that it seeks reconsideration of the court's dismissal of this action pursuant to the *South Carolina Tort Claims Act*.

The defendant's Motion to Dismiss was argued 3/1/2018 at the Horry County Judicial Center before the undersigned judge. Defendant was represented by Douglas Charles Baxter, Esquire and J. Keith Roberts, Esquire. Plaintiff was represented by Gene Connell, Esquire. Defendant moved for an Order granting its Motion to Dismiss pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*.

Plaintiff filed a negligence claim against the Defendant, South Carolina Workers' Compensation, alleging in the Complaint that Defendant was negligent in the following particulars: (a) failing to notify Plaintiff of a hearing; (b) failing to recognize and protect Plaintiff's lien; (c) mishandling documents including a Fee Petition which was in fact forwarded to the Commission on four occasions; (d) failing to follow generally accepted practices in notifying Plaintiff after he had been relieved; (e) failing to send written notice to the Plaintiff; (f) failing to handle notice to the Plaintiff of a potential hearing in a businesslike manner; and (g) failing to abide by its employees' emails and notes which indicated that if Plaintiff filed a Form 61 with an Order and cost sheet they would hold until the end of the case. Complaint ¶ 16.

In the case at hand, the defendant argues that the Plaintiff is disputing the payment of attorney's fees for legal work performed for a claimant in a South Carolina Workers' Compensation case (*Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Company*, WCC No. 0708860) and that such disputes are within the exclusive jurisdiction of the South Carolina Workers' Compensation Commission. To the contrary, the Plaintiff does not dispute its entitlement or the payment of attorney fees. Rather, it asserts and argues that employees of the South Carolina Workers' Compensation Commission were negligent in failing to protect Plaintiff's lien and in failing to notify Plaintiff of the hearing so that Plaintiff could assert a claim for attorney's fees. Plaintiff argued that failing to provide an opportunity for it to be heard was a violation of its constitutional rights.

All attorney's fees resulting from claims within the *South Carolina Workers' Compensation Act* are subject to the approval of the Commission as it has original jurisdiction over such claims. S.C. Code Ann. § 42-15-90. However, the plaintiff's claim in this lawsuit is not for attorney fees arising pursuant to a workers' compensation claim under the *South Carolina Workers'*

Compensation Act as contemplated by Code § 42-15-90. It is a negligence action against the Workers' Compensation Commission itself. Certainly the commission does not have exclusive jurisdiction to hear and determine actions against itself. Therefore, the plaintiff's Motion for Reconsideration should be granted to the extent that this court's order dated 4/9/2018 granted the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case and such jurisdiction is exclusively with the South Carolina Workers' Compensation Commission.

Notwithstanding this court's denial of the defendant's Motion to Dismiss on jurisdictional grounds, the Defendant is immune in this lawsuit based on the *South Carolina Tort Claims Act* ("SCTCA") which governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 584 S.E.2d 413, 416 (Ct. App. 2003) (emphasis added). "Governmental entity" is defined as the State and its political subdivisions, and includes its offices, agencies, authorities, departments, commissions, boards, divisions, and instrumentalities. S.C. Code Ann. § 15-78-30. The South Carolina Workers' Compensation Commission is a government entity as contemplated by the SCTCA.

A governmental entity is immune from liability in several enumerated instances. S.C. Code Ann. §15-78-60; see also Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004) (holding the exceptions found in §15-78-60 "significantly limit the tort liability of government entities"). S.C. Code Ann. §15-78-60 states: "the governmental entity is not liable for a loss resulting from (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature."

Here, the South Carolina Workers' Compensation Commission is a governmental entity, and therefore, any claims that Plaintiff has against the Commission are subject to the SCTCA. As

stated in S.C. Code Ann. §15-78-60, a governmental entity is not liable for any loss resulting from an administrative action or inaction of a legislative, judicial, or quasi-judicial nature. Here, the Commission, as set forth by the General Assembly, is a judicial and administrative department of the State (S.C. Code Ann. §42-3-10) and the allegations of negligence in the Complaint all involve administrative actions and/or inactions. As such, the Commission cannot be held liable for any alleged losses as set out in the Complaint. As to any alleged constitutional violations, the South Carolina Workers Compensation Commission has not waived its Eleventh Amendment immunity.

Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED, that the Plaintiff's Motion for Reconsideration is GRANTED to the extent that this court's order dated 4/9/2018 granted the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case and such jurisdiction is exclusively with the South Carolina Workers' Compensation Commission; it is further

ORDERED, ADJUDGED AND DECREED that, upon reconsideration, the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case is DENIED; it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Reconsideration is DENIED to the extent that it seeks reconsideration of this court's order dated 4/9/2018 granting the defendant's Motion to Dismiss on the grounds that the defendant is immune in this lawsuit pursuant to the *South Carolina Tort Claims Act*, said ruling as set forth in this court's order dated 4/9/2018 remaining as the order of this court.

AND IT IS SO ORDERED, ADJUDGED AND DECREED.



Horry Common Pleas

Case Caption: Kelaher Connell & Connor PC VS Workers Compensation
Commission South Carolina
Case Number: 2017CP2607775
Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148