

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 30 2018

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2018-001234

Ex Parte: Preston F. McDaniel, Esquire, and John M. Milling, Esquire,Appellants.

IN RE:

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants.

**MOTION TO INTERVENE AND MOTION
FOR TEN (10) DAYS TO RESPOND TO
APPELLANTS' MOTION DATED JULY 26, 2018**

The South Carolina Workers' Compensation Commission respectfully moves to intervene in this appeal and to be categorized as the Respondent. Should the Commission's motion to intervene be granted, the Commission also asks for ten (10) days to respond to the Appellants' Motion dated July 26, 2018, which it is currently unable to respond to given that it is not a party.

BACKGROUND

The revised caption set forth in the Court's letter dated July 11, 2018, does not include the Commission as a party. Mr. McDaniel filed a Motion to Correct the Official Caption on July 26th. This case has a strange procedural posture. In the underlying matter, the Commission,

when asked to approve Mr. McDaniel and Mr. Milling's attorney's fees, reduced the amount to what it determined to be the maximum attorney fees available under law. This is the sole issue in this matter. Mr. Milling and Mr. McDaniel are challenging the Commission's reduction of the fee. The Commission was not a party to the dispute giving rise to the decision that is presently on appeal; it was merely the adjudicator. The Commission is the "Administrative Tribunal" as defined in Rule 202(b)(2), SCACR.

The carrier and the claimant, do not, as far as we know, challenge payment of the entire fee per the fee agreement. Mr. McDaniel and Mr. Milling brought a collateral attack of the fee reduction in Darlington County in 2018-CP-16-334. Ms. Kirkland and Mr. Hunter appeared in that case on behalf of the Commission to support the Commission's view that Mr. McDaniel's and Mr. Milling's proper action to challenge the fee reduction is a direct appeal of that Commission order to the South Carolina Court of Appeals. In our view, a collateral attack is not proper. Judge Burch issued a stay in that case.

ARGUMENT

Although the Appellate Court rules do not expressly provide for intervention, the Supreme Court has previously allowed intervention by parties on appeal¹, and in original jurisdiction cases.² Given Mr. McDaniel's challenge to the fee approved by the Commission pursuant to Section 42-15-90 that provides, in part, that "Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission," we

1 *Disabato v. S. Carolina Ass'n of Sch. Adm'rs*, 404 S.C. 433, 746 S.E.2d 329 (2013); *see also*, *Sossamon v. Greater Gaffney Metro. Utilities Area*, 236 S.C. 173, 177, 113 S.E.2d 534, 536 (1960); *Cannon v. Sligh*, 170 S.C. 45, 169 S.E. 712 (1933)

2 *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 489, 685 S.E.2d 600, 603 op. clarified, 386 S.C. 274, 688 S.E.2d 120 (2009); *Am. Petroleum Inst. v. S. Carolina Dept. of Revenue*, 382 S.C. 572, 575, 677 S.E.2d 16, 17 (2009) *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *Keyserling v. Beasley*, 322 S.C. 83, 470 S.E.2d 100 (1996).

believe it is important to defend the Commission's statutory right to review attorney's fees to protect the interests of the claimants since it has been put at issue in this matter. The Rules of Civil Procedure, of course, expressly provide for intervention.

When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.

Rule 24(b), SCRPC. Mr. McDaniel has asserted as grounds of his claim statutes administered by the Workers' Compensation Commission and orders and regulations issued by the Commission. Therefore, the Commission moves to be added as a party and allowed to appear to defend the order. Otherwise, this would be an appeal with just one party.

Additionally, Mr. McDaniel filed a:

NOTICE OF MOTION AND MOTION FOR AN ORDER OF A JUDGE OF THE COURT FOR A TEMPORARY STAY OF THE APPEAL AND TIME LIMITS PURSUANT TO RULE 240 (b) AND 240 (i), SCACR; THEN AFTER TIME TO FILE A RETURN FOR AN ORDER STAYING THE APPEAL PURSUANT TO RULE 205 AND 240, SCACR, AND REMANDING THE MATTER TO THE SC WORKERS' COMPENSATION COMMISSION FOR COMPLIANCE WITH THE LAW IN REFERENCE TO SERVICE OF ITS ORDER PURSUANT TO STATUTE, AND RE-CAPTIONING AND REVISING THE CONTENT OF ITS ORDER AND FOR A STAY OF FURTHER PROCEEDINGS PENDING A RESOLUTION OF THE DECLARATORY JUDGMENT ACTION; AND FURTHER PROCEEDINGS NOT INCONSISTENT WITH THE ORDER OF THE COURT.

As the Commission is not presently a party under the revised caption, the Commission asks that, should the Court grant the Commission's motion to intervene, that the Commission be granted ten (10) days from the date of that order to file a return to the preceding motion.

CONCLUSION

For the foregoing reasons, the South Carolina Workers' Compensation Commission respectfully requests that this Court issue an Order (1) that the Commission be allowed to

intervene as the Respondent, (2) that Ms. Kirkland and Mr. Hunter be shown as counsel for the Commission, and (3) that the Commission be given ten (10) days from the date of this Court's order, if so issued, to file a return to the remaining issues outlined in Mr. McDaniel's Motion filed on July 26th, 2018 or to file any other necessary motions.

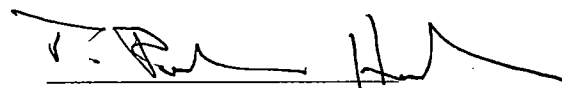
Respectfully submitted,

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T. Parkin Hunter
Assistant Attorney General

July 30, 2018
Columbia, SC

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Appellate Case No. 2018-001234

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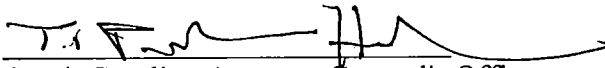
SC Judicial Department, Employer,
and State Accident Fund, Carrier, Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing memorandum in support of the Commission's motion to dismiss in the above matter, by placing a copy of said document in the United States mail, first class postage prepaid, and addressed to:

1. Preston F. McDaniel, Esq.
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
2. John M. Milling
Milling Law Office
P.O. Box 519
Darlington, SC 29540

By: 
South Carolina Attorney General's Office
Civil Division
Post Office Box 11549
Columbia, South Carolina 2921 1-1549

July 30, 2018
Columbia, South Carolina



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

July 30, 2018

Hand Delivered

Honorable V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Ex Parte: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants
Appellate Case no. 2018-001234

Dear Ms. Allen:

The purpose of this letter is to follow-up on our telephone conversation on Wednesday and to address certain administrative matters with regard to this appeal.

The South Carolina Appellate Case Management System has Attorney General Wilson and myself as attorneys for the SC Judicial Department and James Keith Roberts as attorney for the South Carolina Worker's Compensation Commission (the "Commission"). The Attorney General and I are not representing the SC Judicial Department in this workers' compensation matter. The SC Judicial Department is the employer. I have no knowledge as to the representation, if any, of the South Carolina Judicial Department in this matter. The claimant, Ms. Cartee, also is not anticipated to appear. Mr. Roberts is the General Counsel for the Commission but Harley Kirkland and myself are representing the Commission, and are filing a motion on behalf of the Commission to intervene.

Please let me know if I can be of any further assistance.

Sincerely yours,

T. Parkin Hunter
Senior Assistant Attorney General

CC: Preston F. McDaniel and John M. Milling