

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2018-001234

RECEIVED
NOV 26 2018
SC Court of Appeals

Pamela Cartee, Claimant,

v.

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

IN RE:

Preston F. McDaniel, Esquire, and John M. Milling,
Esquire,.....Appellants,

v.

South Carolina Workers' Compensation
Commission,.....Respondent.

**RETURN TO MOTION TO DISMISS APPEAL BASED ON
A LACK OF JURISDICTION OF THIS COURT**

The South Carolina Workers' Compensation Commission (the "WCC") files this Return to Motion to Dismiss Appeal based on a lack of jurisdiction of this Court in response to McDaniel and Milling's filing dated November 15, 2018.

Contrary to Mr. McDaniel's assertion, the order appealed from is a final order, as acknowledged by Mr. McDaniel in his notice of appeal. As discussed in detail in the other filings in this matter, the following are the critical dates and events:

February 12, 2018: The single commissioner held a hearing and reduced the attorney's fee award.

May 30, 2018: Decision and Order of the full WCC affirming the reduction of attorney's fees by the single commissioner.

June 26, 2018: Ms. Eugenia Hollmon, Docketing Director for the WCC sent a letter to Mr. McDaniel returning his Motion for Reconsideration noting that it was being returned as untimely. *See Exhibit A.*

Mr. McDaniel's motion for reconsideration of the full commission's order was untimely as set forth in Ms. Hollmon's order. The appeal is an appeal of a final order and is properly perfected. This court has also issued a briefing order. Any dismissal of this appeal cannot be because it was an attempt to appeal a non-final order.

SCACR.260(c) provides that an appeal may be dismissed on motion of the appellant upon such terms as may be fixed by the court. We ask that this appeal either not be dismissed or that any dismissal makes clear that this was a proper, perfected appeal of a final order which may no longer be appealed or collaterally attacked.¹

¹ The WCC would like to correct an error set forth in the Motion to Dismiss. In Paragraph 3, the Motion to Dismiss states that the June 27, 2018, Form 4 order issued by Judge Burch' stays actions by the WCC. The order is attached to the Motion to Dismiss as Exhibit A. The referenced order sates that "Matter is stayed for 60 days." That clearly refers to the Darlington County Matter. It does not direct anything towards to the WCC and its ability to proceed with matters before the WCC. They do not reference or attach Judge Burch's formal order (attached hereto as Exhibit B) filed July 19, 2018 which states in part:]

A Form 4 Order was entered thus confirming the Order of this Court with this Order constituting the Order of the Court in this matter staying all proceedings and actions in this matter for a period of 60 days. After the 30 day stay, this matter will be rescheduled for hearing on all motions and pleadings as amended and supplemented.

There is no doubt that Judge Burch did not stay the matter before the WCC.

Respectfully Submitted,

ALAN WILSON
ATTORNEY GENERAL

T. PARKIN HUNTER
SENIOR ASSISTANT ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211
803.734.6151
S.C. Bar No: 2827

HARLEY L. KIRKLAND
ASSISTANT ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211
803.734.0406
S.C. Bar No. 100382

By: Harley L. Kirkland

ATTORNEYS FOR THE COMMISSION

COLUMBIA, SOUTH CAROLINA
NOVEMBER 26, 2018

State of South Carolina



1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

EXHIBIT

A

Workers' Compensation Commission

June 26, 2018

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia, SC 29201

Carrier Code No. 00500

Carrier File No. 2013001614

Re: WCC File No. 1307922
Pamela Cartee v. SC JUDICIAL DEPT.
Date of Injury: 03/01/2013

The enclosed Motion is being returned for the following reason(s):

The attached motion is being returned to you because it has been received untimely. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served. S.C. Code Ann. Regs. 67-215(B) (2018 Supp.); S.C. Document Number 4735, effective February 23, 2018. The final Decision and Order of the Full Commission was served electronically on you May 30, 2018 making the due date for the Motion June 4, 2018.

Once the hard copy is received the Motion and the filing fee will be returned promptly. Please let me know if you have any additional questions or concerns.

Sincerely,

Eugenia C. Hollmon
Judicial Docketing Director
803-737-5737

c:
Pamela O Cartee
1825 Woodbine Dr
Hartsville, SC 29550

JOHN M MILLING, Esquire
ATTORNEY AT LAW
PO Box 519
DARLINGTON, SC 29532-3216

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Return to 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, Esq.
Milling Law Office
PO Box 519
Darlington, SC 29540

November 26, 2018

By: Harley L. Kirkland
Harley L. Kirkland
Assistant Attorney General
South Carolina Attorney General's Office
Civil Division
Post Office Box 11549
Columbia, SC 29211