

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. File N: 1020984

Case No. 2012207908

Ravenel Gaskins (deceased), Employee, Respondent,

v.

Johnny Gaskins Trim, Employer- and -
Accident Insurance Company, Carrier Appellants.

FINAL BRIEF OF RESPONDENT

R. Walter Hundley, Esquire
R. WALTER HUNDLEY, ATTORNEY AT LAW
1517 Sam Rittenberg Blvd.
PO Box 31189
Charleston, SC 29417-1189
Phone : (843) 723-1995
Facsimile : (843) 723-1945

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- A. Was the South Carolina Workers' Compensation Commission correct in denying the Appellants' Motion to Compel exhumation and autopsy?

STATEMENT OF THE CASE

This is a workers' compensation matter. The Respondent received a denied workers' compensation injury that resulted in his death, while working for the Employer/Appellant, Johnny Gaskins Trim on December 2, 2010. There was an autopsy that was done on the Respondent and provided to the Employer/Appellant. The Employer/Appellant sought an Order to exhume the body of the deceased Respondent. but that request was denied pursuant to an Order issued on July 1, 2011.

In an Order filed July 1, 2011, the Single Commissioner denied the Appellant's application, finding that South Carolina Commission was not required to grant another autopsy. In a Decision and Order filed January 18, 2012, the Full Commission of the South Carolina Workers' Compensation Commission affirmed the Single Commissioner's Order by a two-to-one vote. Notice of Appeal to the South Carolina Court of Appeals was timely filed by the Appellant on February 14, 2012.

STATEMENT OF THE FACTS

In this case, the coroner has already issued a report noting what he believes is the cause of death, based on his personal investigation of the body and the medical evidence.

While South Carolina has not specifically addressed this issue, the North Carolina Supreme Court affirmed the denial of an exhumation and stated the following: "A court will not, however, order a body to be disinterred unless there is a strong showing that it is necessary and the interest of justice required it." Cabe v. Parker-Graham-Sexton, Inc., 162 S.E. 223(1932). As a general rule, since the South Carolina Workers' Compensation Act was modeled after the North Carolina Workers' Compensation Act, and the South Carolina courts often give deference to North Carolina decisions interpreting Workers' Compensation

statutes. The Cabe decision is consistent with South Carolina Supreme Court decisions which states that an order directing exhumation ought not to be made except upon the most serious considerations. In re Percival's Estate, 85 S.E. 247 (S.C. 1915).

ARGUMENTS

I.

In his Order, Commissioner Williams made his own decision based upon the facts and clear law of the case without the necessity of oral arguments. It was the position of the Claimant that this would be a gross injustice to the family inasmuch as the coroner has already ruled on the cause of death. Further, it is noted that the Defendants had denied the Claimants claim stating they denied the deceased injuries and resulting death occurred while the deceased Employee was performing services arising out of and the course of employment with Johnny Gaskins Trim: further, the Defendants denied that the deceased Employee elected to be included as an Employee under the workers' compensation coverage of Johnny Gaskins Trim. The Defendants are alleging that there is no jurisdiction over the Claimant as he was not an Employee. Until the threshold issues is answered, premature, and unnecessarily traumatic, for the family do have to undergo and exhumation that proposes to identify the cause of death, it is again noted the cause of death has already been established by the coroner's report.

II.

Section 42-15-80, 1976 Code of Laws of the State of South Carolina, as amended, states: "The Employer or the Commission *may* in any case of death require an autopsy at the expense of the person requesting it." Section 42-15-80 does not state the Commission *shall*

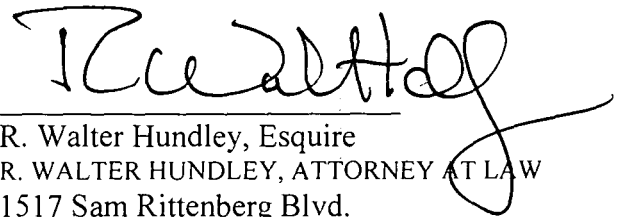
require an autopsy. Therefore, under the discretion given the Commission in this part of the statute, the Defendants' Motion for Exhumation and Autopsy is denied.

CONCLUSION

Based upon the foregoing, it is respectfully requested that this Court find that the Employer/Appellant's request is denied, thereby affirming the decisions of the lower courts.

Respectfully submitted.

BY:



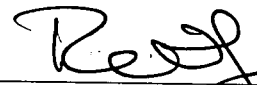
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Charleston, SC 29417-1189
Phone : (843) 723-1995
Facsimile : (843) 723-1945

ATTORNEY FOR RESPONDENT

21 day of August, 2012
Charleston, South Carolina.

CERTIFICATE OF COUNSEL

I certify that the Appellants' Final Brief complies with Rule 211(b).



R. Walter Hundley, Esquire
Attorney for Respondent

Charleston, South Carolina

August 22, 2012

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PROOF OF SERVICE

I, R. Walter Hundley, Attorney at Law, counsel for the Respondent, do hereby certify that, on **August 23, 2012**, I did serve a copy of **Respondent's Final Brief** in the above-captioned matter upon the Appellant in compliance with Rule 211(b), addressed to their Attorney of Record, by depositing a copy of same in the United States Mail, with sufficient first class postage thereon, addressed to the following:

Kathryn R. Fiehrer
Wood & Warder, LLC
P.O. Box 20550
Charleston, SC 29413

Denise Palmer

SC Court of Appeals
AUG 27 2012
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