

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 07 2019

SC Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Case No. 2017-001135

Jacob Tisdale, Jr.,.....Appellant.

v.

Williamsburg County DSN, Employer, and State Accident Fund,
Carrier.....Respondents.

**RESPONDENTS' RETURN TO MOTION TO RECALL REMITTITUR AND
ACCEPT THEIR PETITION FOR REHEARING OUT OF TIME**

Without acknowledging or acquiescing to the Court's jurisdiction to even entertain Appellant's Motion in the above-referenced action, Respondents, by and through their undersigned legal counsel, are hereby filing their Return to Appellant's Motion to Recall Remittitur and/or Accept their Petition for Rehearing Out of Time ("Motion"). Although Appellant has also filed its actual Petition for Rehearing by the Court on the merits in conjunction with their Motion, Respondents are not filing a Return to such Petition pursuant to SCACR 240 (e) unless requested by the Court. Respondents oppose the relief requested in the Motion on the following grounds:

- 1) It is undisputed that Appellant did not file a Petition for Rehearing of the Court's Order filed April 24, 2019 within 15 days as required by SCACR 221 (a).

2) Since Appellant failed to file a Petition for Rehearing within 15 days, the Clerk forwarded the Remittitur to the South Carolina Worker's Compensation Commission ("Commission) via letter dated May 14, 2019 in accordance with SCACR 221 (b).

3) A Petition for Rehearing was never filed at all prior to the Remittitur to the Commission.

4) Although Appellant's Motion is styled as a motion to "Recall the Remittitur," the Rules provide no procedure for same under the circumstances presented in the instant case.

5) Upon sending the remittitur, the appellate court no longer has jurisdiction and cannot hear any further motions concerning the matter. JEAN HOEFER TOAL & AMELIA WARING WALKER, APPELLATE PRACTICE IN SOUTH CAROLINA CHAPTER 6: JURISDICTION (3D ED. 2016) *citing* Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 642 S.E.2d 551 (2007). The only exception to the rule is when the remittitur is sent down by mistake, error, or inadvertence of the appellate court. *Id.*

6) In this case, and with all due respect to Appellant's counsel, she essentially argues the remittitur should be recalled because the failure to perfect Appellant's ongoing appellate options was due to "excusable neglect." However, the remittitur cannot be recalled due to some excusable neglect on the part of the appellant in perfecting the appeal. JEAN HOEFER TOAL & AMELIA WARING WALKER, APPELLATE PRACTICE IN SOUTH CAROLINA CHAPTER 13: MOTIONS AND PETITIONS IN THE APPELLATE COURTS (3d ed. 2016); *See also* State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015). To justify the unusual power of recalling the remittitur a "very strong showing" is required that it was sent by mistake, error, or inadvertence of the court. *Id.* (emphasis added). Here, the mistake, error, or inadvertence is not the Court's, but the Appellant's.

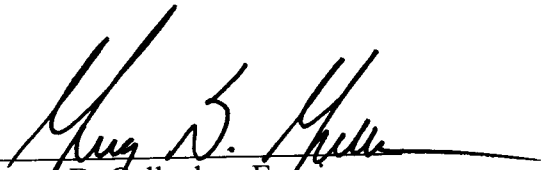
7) Appellant correctly asserts the Court may reinstatement an appeal that has been dismissed for "good cause shown" per SCACR 260. However, that good cause standard applies to situations where the Court still retains jurisdiction of the matter before the remittitur is sent- "[t]he clerk shall remit the

case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate has been actually received by the court within fifteen (15) days of filing of the order of dismissal.” (emphasis added). In this case, no Order of Dismissal was ever filed; therefore, this standard is not applicable.

8) Appellant cites no authority for the proposition that a remittitur can be recalled, or the appellate court can reclaim relinquished jurisdiction due to a party’s excusable neglect.

WHEREFORE, since the Court no longer has jurisdiction over this matter, Respondents submit that Appellant’s Motion must be summarily dismissed and/or denied.

Respectfully Submitted,



George D. Gallagher, Esquire
S.C. Bar # 12149
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PO Box 11669
Columbia, SC 29211
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June 5, 2019

Attorney for Respondents

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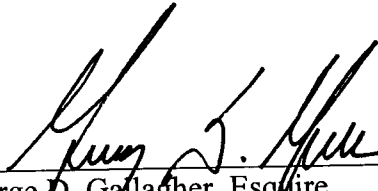
v.

Williamsburg County DSN, Employer, and State Accident Fund,
Carrier.....Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Return to Motion to Recall Remittitur and Accept Their Petition for Rehearing Out of Time on Kimberly Barr, Esquire by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 2019, addressed to Kimberly Barr, Esquire, Sabb Law Group, PO BOX 658, Lake City, SC 29560.

June 5, 2019


George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stublely, LLC
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Attorney for Respondents

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June 5, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street, Suite 200
Columbia, SC 29201

GEORGE D. GALLAGHER (SC), of counsel

Re: *Jacob Tisdale, Jr. v. Williamsburg County DSN*
Appellate Case No. 2017-001135
WCC File No: 0816090
Carrier File No.: 2008-4655
DOI: 10/17/2008
Our File No.: 1200-0093

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing please find the original and Six (6) copies of the Respondents' Return to Motion to Recall Remittitur and Accept Their Petition for Rehearing Out of Time and Proof of Service on behalf of Williamsburg County DSN, and the State Accident Fund Insurance Company in the above-referenced matter. Please return a clocked copy of this document to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving a copy of the Respondents' Return to Motion to Recall Remittitur and Accept Their Petition for Rehearing Out of Time upon all counsel of record.

Sincerely,


George D. Gallagher

GDG/ecs
Enclosures

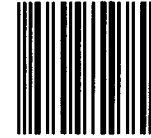
cc: Kimberly Barr, Esquire (w/encl)
Jennifer Barton-Van Meter (w/encl)

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