

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-42-3726

RAQUEL MARTINEZ, Employee,)
)
Claimant/Petitioner,)

-vs.-)

AMENDED ORDER

SPARTANBURG COUNTY)
SHERIFF'S OFFICE, Employer,)
and SOUTH CAROLINA)
ASSOCIATION OF COUNTIES)
SELF INSURANCE FUND, Carrier,)

Defendants/Respondents.)

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SC Court of Appeals

This matter came to be heard before me at Spartanburg, South Carolina on March 12, 2018. Appearing were J. Kevin Holmes and David T. Pearlman, of the Steinberg Law Firm, L.L.P., Charleston, South Carolina and Chadwick D. Pye, of Chadwick D. Pye, L.L.C., Spartanburg South Carolina, attorneys for the Petitioner. Also appearing was Brenn L. Watson, of Wilson, Carter, Jones & Baxley, P.A., Greenville, South Carolina, attorney for the Respondents. The purpose of the hearing was to consider the Petition for Judicial Review filed on October 12, 2017.

The Petition alleges the Decision and Order of the Workers' Compensation Commission dated August 22, 2017 violates separation of powers as established by Article I, Section 8 of the South Carolina Constitution, deprives the Petitioner of her right to judicial review guaranteed by Article I, Section 22 of the South Carolina Constitution, exceeds the Commission's jurisdiction following remand by this Court,

was made upon an unlawful procedure, is arbitrary and capricious, and is affected by errors of law.

This Court begins by noting this the third time this workers' compensation claim has been before this Court for judicial review. By Order filed on February 25, 2009, nine years and 4 months ago, this Court reversed the Decision and Order of the Commission because it could not determine whether the proper legal standard for a mental-mental injury had been applied and because the Decision and the Order failed to consider the testimony of the only witnesses who testified about the relationship between the Petitioner and Officer Johnson whose infant child was tragically killed and about whether the conditions of the Petitioner's employment on the day in question were extraordinary and unusual, Captain Denton and the Petitioner. This Court quoted the omitted testimony and the proper legal standard to be applied on remand in its Order. This Court further reversed the Commission's finding the Petitioner failed to prove the crime scene investigation she performed on April 4, 2005 caused her mental injury and ruled causation was proven as a matter of law based on the unanimous opinions of all the medical experts, including the Respondent's medical expert. The claim was remanded to the Commission for further proceedings consistent this Court's Order. Thus began a protracted appellate odyssey.

The Respondents appealed to the Court of Appeals. The Court of Appeals reversed this Court on the grounds the Commission's finding the Petitioner failed to prove the claim was compensable was supported by substantial evidence and, therefore, ruled it was unnecessary for them to consider the causation issue. The

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Petitioner filed a Writ of Certiorari to the Supreme Court. The Supreme Court granted the writ and reversed the Court of Appeals because this court's Order was interlocutory and not immediately appealable under the holding in the case of *Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013). The Supreme Court remanded the claim to the Commission for further proceedings consistent with this Court's Order. After almost five years, the claim was finally back before the Commission for further proceedings consistent with this Court's Order. But that is not what happened.

The record reflects that the Respondents and the Commission's Appellate Panel believed they were not bound by this Court's Order on remand. This Court took notice of the Appellate Panel argument:

MR. KALE: Okay. May it please the panel. First, let me address Judge Hayes' order and what it requires or implies. And I would cite you to the very bottom sentence of page nine. He says, this court is left to speculate if the proper analysis was applied by the commission and whether the factual conclusions upon which the law was applied has a substantial base in the record. If he says that the record is not sufficient findings of fact that would allow him to do a judicial review, then how can we [accept] all of this other analysis as being a proper judicial review when he says he can't make it. And that's what I have a problem with, with Judge Hayes. Judge Hayes, I think, is clear from his order what he wanted to do in this case.

COMMISSIONER BARDEN: Right, right.

MR. KALE: And the fact is he's having his cake and eating it too.

COMMISSIONER BARDEN: By saying he has to speculate or he can only speculate, but then ---

MR. KALE: And then he tells us -- he's supposedly telling the commission where they went wrong. So I think it's very clear from his order that the remand is to get sufficient findings of fact that would support judicial review. And is not any kind of mandate that you have follow his -- anything else that's in his order. But let me also, if I may --

COMMISSIONER BARDEN: Do you think that we are bound by his – they're a couple of things in here I don't ---

MR. KALE: I do not think you're bound by anything he puts in the order, because he has already prefaced that he's remanding it because are insufficient findings of fact, and he would have to speculate as to what findings of the commission were and what the conclusions of the commissioner were. **So I don't think that you're bound by anything that is in his order.** (*Emphasis added*)

The Appellate Panel proceeded to disregard this Court's Order and issued a new forty-six page Decision and Order on December 15, 2014 which, under the guise of making new findings of fact to facilitate judicial review, reconsidered causation decided by the Court as a matter of law, reversed this Court's ruling on causation, again omitted the testimony of the only witnesses who testified, and found the Petitioner and Officer did not have a law enforcement relationship.

The Petitioner was compelled to seek judicial review for a second time. By Order filed on December 3, 2015 this Court again reversed the Decision and Order of the Appellate Panel. To prevent any further claimed misunderstandings this Court's remand Order contained clear and specific instructions:

IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on causation are reversed and the claim is remanded to the Commission with the specific instruction that the Appellate Panel is not to reconsider the issue of causation and to enforce this Court's previous Order ruling that causation was established as a matter of law based on the unanimous opinions of the medical experts; and

IT IS HEREBY ORDERED that the Appellate Panel's new findings on compensability are reversed and the claim is remanded to the Commission with the specific instruction that ignoring the undisputed testimony quoted by this Court and the case law supporting compensability cited by this Court is not conducting further proceedings consistent with this Court's prior



Order and constitutes an arbitrary and capricious abuse of discretion under § 1-23-380(5)(f); and

IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on compensability that Deputy Martinez and Officer Johnson did not have a law enforcement relationship are reversed because they are not supported by the substantial evidence on the whole record under § 1-23-380(5)(e).

The Respondents again appealed to the Court of Appeals which dismissed the appeal as interlocutory. The Respondents filed a Petition for Writ of Certiorari to the Supreme Court but later withdrew the Petition dismissing the appeal on August 15, 2016. Another two and a half years had passed before the claim was back before the Commission for further proceedings consistent with this Court's Order.

Despite the Court's clear and specific instructions, the Appellate Panel disregarded this Court's Order a second time and reissued an almost identical Decision and Order including the same findings and ruling on causation, again ignored the testimony of the witnesses who testified quoted by this Court, made the same flawed finding Deputy Martinez had no law enforcement relationship with Officer Johnson this Court found was clearly erroneous based on the substantial evidence in the whole record, and failed to make a ruling whether the horrific death of the infant child run over by her law enforcement father with whom Deputy Martinez had a law enforcement relationship made the crime scene investigation extraordinary and unusual.

The Petitioner has now been compelled to file for judicial review for a third time. She has been denied due process of law, denied a final Decision and Order of the Commission that complies with the previous Orders of this Court for eight and

half years. The facts have not changed. No additional testimony has been taken. No new medical evidence has been received. The standard for judicial review generally and for compensability in mental-mental injury cases has not changed. The Court's recitation of the facts, medical evidence, the standard of review generally, and for compensability in mental-mental injury cases previously set forth in Orders in Case Nos.: 2007-CP-42-1966 and 2015-CP-42-1015 are incorporated.

This Court does, however, want to review and emphasize the limitations on the Commission's jurisdiction when a case is remanded following judicial review. Judicial review is guaranteed by Article 1, § 22 of the South Carolina Constitution as a check on the executive branch's adjudication of matters that implicate important rights. On remand, an administrative agency is granted only limited jurisdiction. "After a remittitur is sent down from an appellate court, the [agency] acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling." *Mullen v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993); *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated, even under the guise of a different form. 5 C.J.S., Appeal and Error, § 975(a) (1993). "It is the duty of the trial court to follow the decision of the appellate court." *Ackerman v. McMillian*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996). The members of Commission considering this matter on remand are admonished that failure of the Commission to follow the law and comply with this Court's Order for a third time will be considered willful and intentional.

This Court specifically ruled the Commission was not to reconsider causation decided by the Court as a matter of law based on the factual record, which is not



contested. Disregarding this Court's ruling, the Commission reissued an almost identical Decision and Order; again reconsidering causation in what can only be understood as an attempt to reverse this Court. The Commission's findings of fact and rulings of law on causation must again be reversed because the Commission exceeded its limited jurisdiction on remand.

This Court specifically ruled omitting the portions of the testimony from the only witnesses who testified constituted an arbitrary and capricious disregard of this Court's Order. Disregarding the Court's Order, the Commission reissued an almost identical Decision and Order, again omitting the quoted testimony. The Commission's findings on compensability must again be reversed as arbitrary and capricious.

This Court specifically ruled the Commission's finding of fact the Petitioner and Officer Johnson had no law enforcement relationship was not supported by substantial evidence on the whole record. Disregarding this Court's Order, the Commission reissued an almost identical Decision and Order containing the same flawed finding. The Commission's finding the Petitioner had no law enforcement relationship with Officer Johnson must again be reversed as unsupported by substantial evidence on the whole record.

This Court specifically required the Commission to decide whether the combination of the tragic and horrific death of the two year old infant run over by her police officer father with whom the Petitioner had a law enforcement



relationship was unusual and extraordinary. In willful disregard of the Court's previous Order the Commission failed to make the required ruling.

This Court is reluctant to remand this claim for a third time to the Commission which has disregarded its previous Orders. By the same token, this Court is reluctant to decide the contested issues because that could lead an Appellate Court finding this Court overstepped its jurisdiction. Precedent explains that whether an accident is compensable is a question of law when the facts are not in dispute. *Davaut v. Univ. of S.C.*, 418 S.C. 627, 632, 795 S.E.2d 678, 681 (2016). While the Court believes a court could decide, as a matter of law, whether it is unusual and extraordinary for a police officer to investigate the horrific death of a two year old infant run over by her police officer father with whom the investigator had a law enforcement relationship, the Commission has never attempted to answer this question and the Court believes it is appropriate for the Commission to answer this question. In workers' compensation cases, this court sits as a court of *review*, not of *first view*.

This should not be interpreted to suggest this Court is powerless to enforce compliance with its Order or will be reluctant to do so if the Commission again refuses to comply with its Order. Those powers include, but are not limited to, the power to punish for civil or criminal contempt, to award costs including attorney's fee to the Petitioner, and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning. The Court admonishes the Commission that further unnecessary delay in complying with this Court's Order, failing to delete findings on issues decided by this Court as a matter of law, failing to



include the testimony of the only witnesses who testified quoted by the Court, again finding the Petitioner had no law enforcement relationship with Officer Johnson, and failing to make a specific ruling of law whether the tragic and horrific death of the 2 year old infant run over by her police officer father with whom the Petitioner had a law enforcement relationship was unusual and extraordinary will not be tolerated, will be considered intentional and willful, and will be dealt with accordingly.

IT IS HEREBY ORDERED that the Decision and Order of the Commission dated August 22, 2017 is reversed as in violation of constitutional and statutory provisions, in excess of the authority of the Commission on remand, made upon an unlawful procedure, not supported by substantial evidence, arbitrary and capricious, and affected by other errors of law; and

IT IS HEREBY ORDERED the Commission on remand shall delete findings of fact numbers 30 to 90 and 99 and ruling of law number 3 and substitute a ruling the crime scene investigation performed by the Petitioner on April 4, 2005 caused the Petitioner's mental injury as a matter of law based on the unanimous opinions of the medical experts, including the Respondent's medical expert; and

IT IS HEREBY ORDERED the Commission on remand shall reissue a Decision and Order with the findings of fact made by the original hearing Commissioner, affirmed by Appellate Panel and never appealed, and add to those finding and consider the testimony of the Petitioner and Captain Denton, the only witnesses who testified quoted by this Court; and

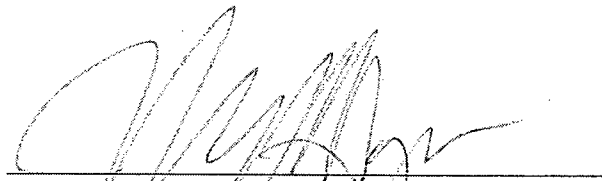


IT IS HEREBY ORDERED the Commission on remand shall delete any finding of fact that the Petitioner had no law enforcement relationship with Officer Johnson found to be unsupported by substantial evidence record and find that such a relationship existed based on the testimony of the only witnesses who testified; and

IT IS HEREBY ORDERED the Commission on remand shall decide whether the tragic and horrific death of the 2 year old infant run over by her police officer father with whom the Petitioner's had a law enforcement relationship made the crime scene investigation unusual and extraordinary; and

IT IS HEREBY ORDERED, on remand, if the Commission finds that the combination of the tragic and horrific death of the 2 year old infant run over by her police officer father with whom the Petitioner had a law enforcement relationship made the crime scene investigation unusual and extraordinary, the Commission shall award the Petitioner the indemnity and medical benefits she is entitled to under the Workers' Compensation Act; and

IT IS SO ORDERED.



J. Mark Hayes, II, Circuit Court Judge
Court of Common Pleas, Seventh Judicial Circuit

Spartanburg, South Carolina

11th day of May, 2019.