

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.- )

ORDER

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

**RECEIVED**

AUG 15 2019

SC Court of Appeals

Defendants/Respondents.)

This matter came to be heard before the Court in 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 that 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, Captain Denton and the Petitioner, both of whom were credible. 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 that the Petitioner failed to prove the crime scene investigation she performed on April 4, 2005, caused her mental injury and ruled that 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 that the Commission's finding that the Petitioner failed to prove the claim was compensable was supported by substantial evidence and, therefore, ruled that it was unnecessary for them to consider the causation issue. The 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 did not believe they were 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 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 ignoring the testimony of the witnesses who testified quoted by this Court, making the same flawed finding that Deputy Martinez had no law enforcement relationship with Officer Johnson which this Court found was clearly erroneous based on the substantial evidence in the whole record, and failing to make a ruling as to 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).<sup>1</sup>

This Court specifically ruled that the Commission was not to reconsider causation as decided by the Court as a matter of law based on the uncontested factual record. Disregarding this Court's ruling, the Commission reissued an almost identical Decision and Order, again reconsidering causation in what can only be

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<sup>1</sup> The Commission is advised that this Court was invited to examine what, if any, additional steps this Court could take to obtain the Commission's compliance with the directives set forth in this Court's prior Order. Even though this invitation was not opposed, this Court declined. As a courtesy to the members of the Commission considering this matter on remand, this Court's opinion is that, upon the Commission's failure to follow the law and comply with this Court's Order for a third time, this Court will be asked to consider the Commission's non-compliance as willful and intentional.

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 that 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 that the Commission's finding of fact that 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 that 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 disregard of the Court's previous Order the Commission failed to make the required ruling.



Given the burden placed upon the parties by not having this claim resolved, 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 doing so could lead to an Appellate Court finding that 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 that 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 do so. In workers' compensation cases, this court sits as a court of *review*, not of *first view*.<sup>2</sup>

The Court respectfully and earnestly 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 as to whether the tragic and horrific death of the two-year-old infant

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<sup>2</sup> Again, as a courtesy to the Commission, this Court anticipates, based upon presentations made to this Court, that, upon any further failure on the Commission's part to comply with this Court's present Order, the parties will possibly seek alternative means of obtaining the Commission's compliance, including, but not limited to, petitioning this Court to invoke its powers of contempt.

run over by her police officer father, with whom the Petitioner had a law enforcement relationship, was unusual and extraordinary would be constitutionally improper.<sup>3</sup>

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 that 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 that 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 that the Commission on remand shall delete any finding of fact that the Petitioner had no law enforcement relationship with Officer

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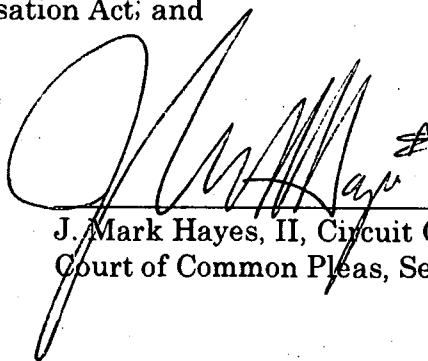
<sup>3</sup> Based on the argument already offered, this Court anticipates that it will be asked to view the Commission's failure to comply with this Court's Order as intentional and willful.

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** that 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** that, 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 to which she is entitled under the Workers' Compensation Act; and

**IT IS SO ORDERED.**<sup>4</sup>



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

<sup>4</sup> The Rule 501, Canon 3, Commentary provides that, "a judge should encourage and seek to facilitate settlement" of matters before it. Given the protracted procedural history of this case, this Court believes the interests of all parties would be well-served by a good-faith effort of employing an alternative means of dispute resolution. As a facilitator, this court offers its services of finding a mutually acceptable mediator.

This Court is further aware that the Rule 501, Canon 3, Commentary also provides that even though a court should seek settlement, "the parties shouldn't feel coerced into surrendering the right to have their controversy resolved by the courts." Therefore, at this time, this Court is not ordering this dispute to mediation.

Nevertheless, the Court refers the parties to ADR, Rule 3. While Rule 3(b)(3) exempts appeals from mandatory alternative dispute resolution, Rule 3(c) provides that upon the motion of any party or the court, a case can be ordered to mediation. If this Court can be of assistance in this regard, please advise it accordingly.

Spartanburg, South Carolina

\_\_\_ day of July, 2018.

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