

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No.: 2019-001382

Raquel Martinez,

Respondent,

—v.—

Spartanburg County and SC Association
of Counties Self-Insurance Fund,

Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

The Petitioner filed a Notice of Intent in the Court of Appeals on August 12, 2019 and a Petition for a Writ of Certiorari to this Court on August 14, 2019. The Respondent was uncertain as to the nature of the Petition. Upon consultation, the Respondent confirmed the Petition seeks to have this Court accept the matter in its original jurisdiction under Rule 245(c), SCACR.¹ The Respondent opposes the Petition and requests it be denied.

- I. **Rule 245(c), SCACR, requires a party seeking to have the Supreme Court entertain an action in its original jurisdiction must file a complaint setting forth the claim for relief in the manner specified in**

¹ The Petition asserts jurisdiction under Article V, Section 5 of the South Carolina Constitution and *S.C. Code Anno.*, § 14-3-310 (1976) and contains a Rule 245(c), SCACR, notice advising the Respondent she has 20 days to respond. See also: Article V, Section 8 of the South Carolina Constitution.

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Rule 8, SCRCP. The Petition does not include a complaint complying with Rule 8 and should be denied.

The Respondent opposes the Petition because the Petition does not contain a complaint setting forth the claim for relief in the manner specified by Rule 8, SCRCP. Rule 8, SCRCP requires a short and plain statement of the grounds, including the facts and statutes upon the court's jurisdiction depends, showing the Petitioner is entitled to relief, and a prayer for judgment. While this information may be gleaned from the forty page Petition, they are neither set forth in short and plain statements nor presented in a manner to which the Respondent can respond or raise defenses to. The Petition does not comply with Rule 245(c), SCACR, and Rule 8, SCRCP, and should be dismissed.

- II. **Rule 245(a) provides the Supreme Court will not entertain an action in its original when the matter can be determined in a lower court. The Order challenged remanded the claim to the Commission for further proceedings consistent with the Circuit Court's Order. The Order interlocutory and the Petition should be denied.**

Judicial review of the decisions of administrative agencies is guaranteed by Article I, Section 22 of the South Carolina Constitution. The Respondent sought judicial review when the Commission denied her claim. As her claim arose prior to the amendment of the Workers' Compensation Act, her petition for judicial review was heard before the Circuit Court. *See*: S.C. Code Anno., § 42-17-60, as amended July 1, 2007. The Circuit Court reversed the Appellate Panel but the Petitioner appealed his decision. This Court ruled the Circuit Court's Order was interlocutory and remanded the matter to Appellate Panel. *See: Martinez v. Spartanburg County*, 406 S.C. 532,

753 S.E.2d 430 (2014) citing *Bone v. U.S. Food Service*, 404 S.C. 67 744 S.E.2d 552 (2013).

On remand the Commission had limited jurisdiction. “After a remittitur is sent down from an appellate court, the [agency] acquires jurisdiction to enforce the judgement 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. *Ackerman v. MacMillian*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996), 5 C.J.S., Appeal and Error, § 975(a) (1993). That is not what happened.

As found by the Circuit Court Judge, on remand, “[t]he 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 [Johnson] did not have law enforcement relationship.” Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 4, filed July 15, 2019. The Circuit Court again reversed and remanded the claim to the Appellate Panel with specific instructions. The Petitioner again appealed delaying the remand. The Court of Appeals dismissed the appeal as interlocutory. The Petitioner filed a Petition for Writ of Certiorari that was

withdrawn, further delaying the claim. Finally, the claim was finally back before the Appellate Panel.

As found by the Circuit Court Judge on remand the Appellate Panel again disregarded the Circuit Court's Order:

Despite the Circuit Court's clear and specific instructions, the Appellate Panel again disregarded this Court's Order for a second time and reissued an almost identical Decision and Order including the same findings 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 has a law enforcement relation made the crime scene investigation extraordinary and unusual.

Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 5, filed July 15, 2019.

The frustrated Circuit Court Judge protested, "[The Respondent] 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." Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, pp. 5 – 6, filed July 15, 2019. The Circuit Court Judge lamented:

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. University 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 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.

Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 8, filed July 15, 2019.

The Circuit Court cautioned the Appellate Panel:

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 contempt, to award costs including attorney's fees to the [Respondent], 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 complying with this Court's Order ... will not be tolerated, will be considered intentional and willful, and will be dealt with accordingly.

The Notice of Intent and this Petition for a Writ of Certiorari have again delayed a final decision and here we are over ten years later with no end in sight.

Rule 245, SCACR, provides, "The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance..." The matter the Petition asks this Court action in its original jurisdiction can still be decided by a lower court. The Order is interlocutory and the Petition should be denied.

III. Asking the Supreme Court to take a matter into its original jurisdiction is an extraordinary writ. It is axiomatic such a writ should be sought by a party whose rights have been prejudiced. The Petition should be denied because the Petitioner benefitted from, participated in, and condoned the unwarranted conduct by the Appellate Panel.

The Respondent could not agree more with “justice delayed is justice denied,” especially when the delay is caused by those whose duty it is to enforce the law. The public interest involved in this matter, however, is not the public interest suggested by the Petitioner. Injured workers have the right to receive quick and efficient resolution of their work-related injury claims. *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 826 S.E.2d 863 (2019) *citing* *Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993). More importantly, there is a public interest in fundamental due process guaranteed by Article 1, Section 3, the separation of powers guaranteed by Article 1, Section 8, the right to a speedy remedy in the Courts guaranteed by Article 1, Section 9, and the right to judicial review guaranteed by Article 1, Section 22 of the South Carolina Constitution.

When the Respondent first prevailed on judicial review, over ten years ago, she sought judicial review. She prevailed and her claim was remanded to the Commission for further proceedings consistent with the Circuit Court’s Order. When the remand was heard before the Appellate Panel, the following colloquy took place between Commissioner Susan Barden and the Petitioner’s former attorney:

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*)

This Court taking a matters in its original jurisdiction is an extraordinary writ that should be granted only on the grounds of a special emergency. It seems axiomatic such a petition should be brought by a party whose rights have been prejudiced. The Petitioner's rights have been prejudiced. They have not been required to pay compensation or provide medical treatment. The Petitioner is not facing an emergency. It is the members of the Commission who have repeatedly disregarded the rulings of the Circuit Court who face being held in contempt if they persist with their unwarranted conduct.

After this Court ruled the Circuit Court's Order was interlocutory and remanded the claim to the Commission in *Martinez v. Spartanburg County, supra.*, the Petitioner again filed a meritless appeal to the Court of Appeals, that was dismissed as interlocutory, and a Petition for Certiorari to this Court, that was withdrawn further delaying a final decision. The Petition should be denied because

the Petitioner lacks standing to complain of unwarranted conduct they benefitted from, participated in, and condoned.

- IV. In a recent decision, this Court ruled unwarranted delay in making a final decision in a workers' compensation case requires immediate review to avoid the denial of an adequate remedy. The Commission's repeated refusal to conduct proceedings on remand consistent with the Circuit Court's Order has been unwarranted. In the alternative to remanding the claim to Commission for a fourth time, this Court should consider transferring jurisdiction of the appeal filed by the Petitioner in the Court of Appeals to itself to prevent further delay of an adequate remedy.

Heretofore, the Petitioner and the Circuit Court have felt constrained to seek a final decision from Commission because of *Bone v. U.S. Food Service, supra.* Since appearing before this Court five years ago, the Petitioner and the Circuit Court have repeatedly tried to get the Commission to comply with the constitution, the case law, and the Circuit Court's decision to no avail. In the recent case of *Russell v. Wal-Mart Stores, Inc., supra.*, however, this Court ruled, "We find the remand order is immediately appealable because the commission's unwarranted delay in making a final decision requires immediate review to avoid leaving the appellant with no adequate remedy on an appeal from a final decision." *Id.*, 426 S.C. at 283. The Court explained:

... this Court has struggled to foster quick and efficient resolutions of work-related injury claims by discouraging the commission from making repeated, unnecessary remands. In *Bone v. U.S. Food Service*, we cited "lingering confusion in this area [of immediate appealability] that has arisen after the passage of the Administrative Procedures Act" as a basis for granting certiorari to review the court of appeals' dismissal of an interlocutory appeal... Ultimately, we denied an immediate appeal and permitted a remand for a new hearing, ... but we highlighted the prejudice employers and employees may suffer from delaying

appeal of interlocutory orders until after final judgment... The dissent addressed the problem even more directly. Justice Hearn wrote, "Moreover, the interests of judicial economy demand a rejection of the majority's view. Taken to its logical conclusion, the majority's position could have cases trapped in a cycle of remands for years." (citations omitted).

Id., 426 S.C. at 286 In *Russell* the delay was almost 8 years. In the present case it has been 10 years with no end in sight. Like the Commission's action in *Russell*, the Commission's actions in the present case have demonstrated a willful and intentional disregard of the decisions of the Appellate Court. It is time for this Court to take action.

As an alternative to this Court taking the matter in its original jurisdiction, this Court can take jurisdiction under Rule 204(b), SCACR, of the Notice of Intent filed in the Court of Appeals on August 12, 2019. This Court can decide the issues under *S. C. Code Anno*, § 1-23-380(5), the Administrative Procedures Act, without infringing on the Commission's fact finding duties:

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

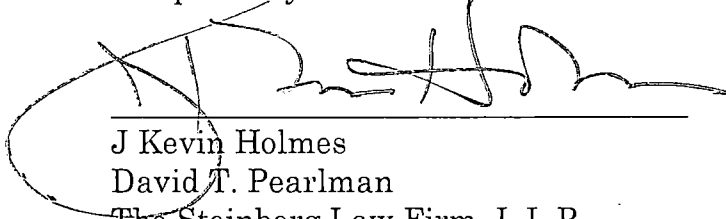
When the evidence gives rise to only one reasonable inference, the question becomes one for the court to decide. *Smith v. Union Bleachery/Cone Mills*, 276 S.C.454, 280

S.E.2d 52 (1981); *Lorrick v. S.C. Electric & Gas Co.* 245 S.C. 513, 141 S.E.2d 662 (1965). The Court can affirm the Circuit Court's ruling causation was established based upon the unanimous opinions of the medical experts, including the Respondent's medical expert, as a matter of law. The Court can strike the Commission's new findings of fact 30 to 90 and ruling of law 3 made on remand reversing the Circuit Court as having been made in violation of constitutional or statutory provision, in excess of the authority of the Commission, or upon an unlawful procedure. This Court can decide whether the Commission's refusal to consider the testimony of the only witnesses who testified as to the conditions of the Respondent's employment quoted by the Circuit Court on remand was arbitrary and capricious or constituted an abuse of discretion. This Court can decide whether the Commission's findings on remand the Respondent did not have a law enforcement relationship with the father of the crushed infant were supported by the substantial evidence on the whole record. This Court can decide whether the tragic and horrific death of a two year old infant smashed like a watermelon when run over by her police officer father with whom the Respondent had a law enforcement relationship made the crime scene investigation performed by the Respondent unusual and extraordinary as a matter of law.

The Commission has had five years to answer this question since the last time this case was before the Court. Their failure to comply with the Circuit Court's Order has forfeited they had to exclusively decide this issue. By assuming jurisdiction of the appeal filed in the Court of Appeals, this Court will have the opportunity to end these endless appeals and remands. If the Court finds the Respondent's injury was

compensable, it can remand the claim to the Commission to perform the ministerial task of awarding benefits under the Act. And, finally, assuming jurisdiction of the appeal will give the Court an opportunity to take whatever direct action it deems necessary and proper to prevent members of the Commission from willfully and intentionally refusing to follow the decisions of Appellate Courts in the future.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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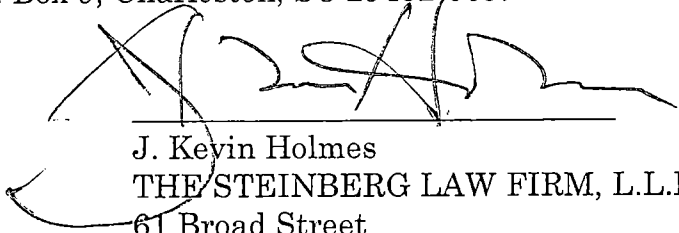
Spartanburg County and
S.C. Association of Counties
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PROOF OF SERVICE

I certify that I have served a copy of the respondent's Return for Petition for Certiorari by depositing it in the United States Mail, postage prepaid on August 23, 2019, addressed to attorneys of record L. Brenn Watson Esquire and Zachary M. Smith, Esquire, Wilson, Jones, Carter & Baxley, PA, 872 S. Pleasantburg Drive, Greenville, SC 29607; and on The Honorable Jenny Abbot Kitchings, Clerk of Court, SC Court of Appeals, P.O. Box 11629, Columbia, SC 29211; and on Chadwick D. Pye, Esquire, P.O. Box 6346, Spartanburg, SC 29304; and on David T. Pearlman, Esquire The Steinberg Law Firm, P.O. Box 9, Charleston, SC 29402-009.

August 23, 2019


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Friday, August 23, 2019

The Honorable Daniel E. Shearouse
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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SC Court of Appeals

Re: Raquel Martinez v. Spartanburg County, et al.
Appellate Case No. 2019-001382

Dear Judge Shearouse:

For filing enclosed please find six (6) copies of respondent's Return for Petition for Certiorari and a Certificate of service on all parties of records.

With kindest regards, I am

Very truly yours,



J. Kevin Holmes
Email: kholmes@steinberglawfirm.com
Direct Fax: (843) 722-1190

JKH/gmh
Enclosures

cc: L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
Jenny Abbott Kitchings, Clerk, Court of Appeals
Chadwick D. Pye, Esquire
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