

INITIAL BRIEF OF THE APPELLANT

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

In the Supreme Court

APPEAL from the SC Workers'
Compensation Commission

Appellate Court Judges

Case No. 2018001535

Christine Bradley, *Pro se* for Albert Bradley,

Appellant

V.

SC Workers' Compensation Commission,
Southern Industrial Constructors Inc.,
Zurich American Insurance Company %
Zurich North America, Victoria Lichtenberger,
Gaston County DHHS (Tereasa Osborne, Stephanie Stevenson),

Respondents

INITIAL BRIEF OF APPELLANT

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2. Family members were not present at any hearings or served notice of appointment of Guardian Ad Litem, guardians.
3. The claimant had benefits and beneficiaries through all employers. A full dependency investigation was not performed to determine whom benefits should be payable to.
4. Partial or temporary disability payments cannot be applied to the worker who has a brain injury and thus, is totally and permanently disabled.
5. Zurich American Insurance has a history and a pattern of denying and not fulfilling rightful benefits of claimants; and in this case, denied payment of claims, services, and benefits to Albert Bradley.
6. Albert Bradley, a permanent and totally disabled worker, and family members were denied due process of law.

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TABLE OF AUTHORITIES

CASES

Rhodes, et al. v. AIG Domestic Claims, Zurich, et al.....

Nunn vs. Noodles & Co, Zurich.....

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Floyd v. Zurich American Insurance, Co.....

STATUTES

SC Code of Laws, Title 42, Chapter 17, § 42-17-60

SC Code of Laws, Title 42, Chapter 9, § 42-9-10, (A)(B)(C)(D)

SC Code of Laws, Title 42, Chapter 9, § 42-9-220

SC Code of Laws, Title 42, Chapter 9, § 42-9-230

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SC Code of Laws, Title 42, Chapter 15, § 42-15-55

SC Code of Laws, Title 42, Chapter 15, § 42-15-80

SC Code of Laws, Title 42, Chapter 1, §42-1-560

SC Code of Laws, § 67-902

SC Code of Laws, § 67-903

SC Code of Laws, § 67-904

SC Code of Laws, § 67-216

SC Code of Laws, § 67-1301

STATEMENT OF THE ISSUES

1. SC Workers' Compensation Commission acted in bad faith and failed to protect incapacitated and injured worker Albert Bradley with the appointment of a Guardian Ad Litem. This Guardian Ad Litem failed to act on behalf of the injured worker and collaborated with Gaston County DSS when there were willing and able family members to provide total care and had provided total care without any compensation. The negligence of those appointed led to the death of injured worker Albert Bradley.
2. Family members were not present at any hearings or served notice of appointment of Guardian Ad Litem, guardians. This violates civil procedures for guardianship.
3. The claimant had benefits and beneficiaries through all employers. A full dependency investigation was not performed to determine whom benefits should be payable to.
4. Partial or temporary disability payments cannot be applied to the worker who has a brain injury and thus, is totally and permanently disabled.
5. Family members, namely Christine Bradley and Lavare Seltun, provided total care to the claimant. No compensation was provided for the care they provided.
6. Albert Bradley, a permanent and totally disabled worker, and family members were denied due process of law.

STATEMENT OF THE CASE

Albert Bradley suffered catastrophic injuries on May 16, 2011 while working for Southern Industrial Constructors, Inc. of Columbia, SC. Metal fragments from a chain link were impaled into his airway, causing severe facial and tongue lacerations, and leaving him with

anoxic and traumatic brain injuries. These injuries caused Albert Bradley to be totally disabled and completely reliant upon others for all his care needs. Albert Bradley was cared for in his home by his primary caregivers, Christine W. Bradley and Lavare Seltun until he was taken away from family members during a brief hospital visit at Caromont Regional Medical Center in Gastonia, NC on March 17, 2016. Christine Bradley and Lavare Seltun were banned from Caromont Regional Medical Center in Gastonia, NC on March 17, 2016. Albert Bradley was taken into custody by Zurich American Insurance/Zurich North America/Jason Lockhart and Gaston County Department of Health and Human Services in Gastonia, NC on March 17, 2016.

Family members had no contact and no knowledge of Albert Bradley's whereabouts for approximately 30 days after separation. Family members received notification approximately 30 days later that Albert Bradley was in Mecklenburg County, NC at Carolinas Medical Center-Main in Charlotte, NC on life support. Family members had very limited access to Albert Bradley. They were often not allowed to touch him, even if they were permitted to visit for short periods of time. Christine Bradley was prohibited from visiting with her husband, Albert Bradley. She was not allowed to see him or touch him at all.

There is no documentation of a hearing for appointment of Guardian/Guardian Ad Litem, Victoria Lichtenberger. The defendants purport that there was a hearing, yet no family members, not even the claimant, were notified, served, or present at any such hearing. Albert Bradley

suffered immensely under the hands of Guardian/Guardian Ad Litem Victoria Lichtenberger. Presiding Commissioner was notified of the status via letters regarding the status of Albert Bradley's condition and photos were provided as evidence. After several hospital admissions for treatment of severe medical conditions under the direction of South Carolina's Workers' Compensation Commission appointed Guardian/Guardian Ad litem Victoria Lichtenberger and Gaston County DHHS, Albert Bradley subsequently died. Family members were notified after his death on February 5, 2017.

The defendants claim that Albert Bradley died of diffuse acute bronchopneumonia. Requests were made for autopsy report, toxicology report, expert witness testimony, and the medical records to support this claim. The family requested that all sealed medical records on this matter be opened for full review and these requests have yet to be granted.

APA submissions presented for testimony at hearings held by the defense have not been provided to the appellant for review and examination.

The defense argues that Victoria Lichtenberger has maintained an accounting for the claimant when in fact the claimant was also in the custody of the state of NC with the Gaston County Department of Health and Human Services (DHHS). Attorney Travis Page in Gastonia, NC was appointed to manage the accounting for the claimant for Gaston County DHHS.

Requests were made all financial records pertaining to the claimant, and these records have yet to be received.

The defense maintains that there was good faith in conducting a dependency investigation, yet they still fail to show documentation of all family members notified. They also failed to provide documentation from all employers to show benefits due to beneficiaries on behalf of the claimant. Chris Tuten initially contacted Christine Bradley by phone shortly after the death of Albert Bradley and stated that he was investigating Albert Bradley's death.

The defense highlights that no medical bills were brought before the commission for consideration for payment. Albert Bradley was in the custody of Victoria Lichtenberger and Gaston County DHHS. Albert Bradley was admitted to multiple facilities from March 17, 2016 until the time of his death.

The defense highlights that the South Carolina's Workers' Compensation Commission has full jurisdiction over the subject matter and parties pertaining to this case. However, this case was never brought before the commission for review, even with all the factors that occurred from March 17, 2016 until the time of his death.

STANDARD OF REVIEW

After extensive research and review of cases to highlight as they relate to this case, it can be noted that while each case presents its own uniqueness, there is a special uniqueness to this case with consideration to all the added layers of law it carries as a basis for what is "standard."

Albert Bradley was denied the right to fair and impartial hearings, denied the right to have fair representation through the appointment of third party individuals who represented Zurich American Insurance as opposed to his best interests, and denied the right to medical care and medical services deemed necessary for the level of his injury. However, the standard remains that this court should weigh the preponderance of evidence of the actual facts in this case. The case of Clemmons v. Lowe's argued for claimant receiving temporary benefits for a back injury that was originally denied by the Commission. This ruling was reversed by the Court of Appeals. Again, with this case, there was no issue with regards to total and permanent disability, there was no issue of guardianship, nor did it seem to be an issue with receiving medical care with this claimant. Yet, its ruling was reversed. Although not in SC, pertinent cases to highlight include Rhodes, et. al v. AIG, Zurich et al. which involved a motorist who was struck by a truck driver. She became paraplegic as a result of her injuries. The carriers involved in this case denied payments for the complex care required for Rhodes who suffered catastrophic injuries. After several years of litigation, the Court would rule in Rhodes favor and award substantial damages. Nunn v. Noodles & Co., the claimant argued there was an intentional obstruction of workers' compensation payments by misleading the employee about the intent of meetings held and false statements in claims, all in an effort to deny payment. Nunn was eventually awarded benefits after trial. In Floyd v. Zurich, Floyd was denied benefits because the argument was that Floyd had reached maximum medical improvement. The respondents argued that Floyd's injuries were not work-related. It was held that Floyd was entitled to temporary disability from the time payments were terminated. Another important argument in this case was that the views of the independent medical examiner were weighed more heavily than those of the treating physician.

Albert Bradley was injured while working for Southern Industrial Constructors on May 16, 2011. From the time of his injury to the date of his death, Albert Bradley was denied basic human rights because of his incapacitation resulting from his injuries. The errors in the case of Albert Bradley are too numerous, but they must be restated. Albert Bradley and his family were denied due process for hearings, especially in the appointment of Guardian Ad Litem Victoria Lichtenberger and state-appointed Guardians in NC from Gaston County DSS. Albert Bradley was denied medical equipment and medical services to include access to specialists such as neurologists. Albert Bradley paid out-of-pocket for medications, supplies, and transportation and travel to hearings and medical appointments without any reimbursements provided. Albert Bradley received total care 24 hours a day and 7 days a week in his home primarily by his wife, Christine Bradley and his daughter, Lavare Seltun who were never compensated for their health care services to claimant.

The workers' compensation cases presented share a very common theme: denial of payment of benefits to the injured worker. The very same applies to the case of Albert Bradley, who is now deceased, who underwent a myriad of health events that ultimately led to his death because of that very same thing--denial of payment of benefits. Review of the preponderance of evidence of this case requires the evidence from all

FACTS

1. Albert Bradley sustained traumatic brain injury while working for Southern Industrial Constructors, Inc. of Columbia, SC on May 16, 2011. Because of his injuries, he was declared permanently and totally disabled by the South Carolina Workers' Compensation Commission.

2. Albert Bradley received total care in his home by his wife Christine Bradley and his daughter Lavare Seltun until the time he was taken away from his family on March 17, 2016.
3. Attorney Mike Farry with Horton Law Firm in Greenville, SC was appointed as Guardian for Albert Bradley.
4. There is no evidence to support the appointment of Victoria Lichtenberger as Guardian/Guardian Ad litem for the claimant Albert Bradley. No family members, not even the claimant, were notified, were served, or were present at any hearing.
5. Expert witness testimony, medical records, autopsy report, and toxicology report have been excluded for examination and review by the appellant to provide support to the claimant's cause of death.
6. Albert Bradley had multiple severe medical conditions during the timeframe he was under the care of Victoria Lichtenberger/Zurich and Gaston County Department of Health and Human Services to include the following: life support; severe dehydration and renal failure; widespread thrombosis; diabetic ketoacidosis; and fall with head injury resulting in laceration and stitches. He was also receiving life-ending medications.
7. Albert Bradley was taken into custody by Victoria Lichtenberger/Zurich Insurance/Jason Lockhart and Gaston County Department of Health and Human Services (DSS) after a brief hospital visit at Caromont Regional Medical Center on March 17, 2016.
8. Albert Bradley was also under the custody of Gaston County Department of Health and Human Services (DSS) in Gastonia, NC from March 17, 2016 until the time of his death February 5, 2017.
9. The family received notification after 30 days of no contact at all with the claimant that he was on life support in Mecklenburg County at Carolinas Medical Main in Charlotte, NC. Albert Bradley had numerous hospital visits with multiple hospitals for serious medical conditions from the time he was taken from March 17, 2016 until his death.
10. Chris Tuten did not provide documentation to show good faith in conducting a dependency investigation. All family members were not contacted. Documentation was not provided to the court to show beneficiaries of the claimant held through all employers.
11. APA submissions presented to the court for evidence by the defense was not provided to the appellant for review and examination.
12. Albert Bradley paid for transportation, medical care, and medical expenses out of his own monies.
13. Financial records have not been provided to show proof of full accounting of the claimant.
14. Victoria Lichtenberger, is a geriatric care manager and owner and operator of Eldersource Eldercare in Charlotte, NC, who places aging adults into adult homes and facilities.

15. Albert Bradley, the claimant, has a living spouse, Christine Bradley, and three living children: Derwin Bradley, Lavare Seltun, and Christy James.

ARGUMENTS

Did the commissioner fail to consider important reasons for award for compensation? If so, what reasons?

Section 42-9-10(A)(B)(C)(D). Amount of compensation for total disability and what constitutes total disability. During proceedings and order, temporary compensation was applied to a permanent disability claim. Although Commissioner Beck stated that claimant Albert Bradley was declared permanently disabled, law was applied for temporary disability with attempt to settle the claim on that basis.

Section 42-15-60 (C)- Albert Bradley, now deceased claimant, who received total care and medical services in his home by family members 24/7 up until the year he was taken, were never compensated for the services they provided to the claimant even after care plan which was requested was presented to the court to show the care the claimant was receiving in the home. There was a court order which ordered monies which Albert Bradley paid out of his own monies to be reimbursed by the carrier for expenses such as medications and supplies dating back to 2013 which still have not been paid as of this date. Albert Bradley paid for his own transportation to court hearings, doctors' visits, medications, and nursing services, all which no reimbursement was received. Albert Bradley even had to purchase his own wheelchair accessible van for transportation out of his own money and was never reimbursed.

67-902-Dependency investigation. The argument here is that a thorough investigation of benefits on behalf of the claimant for all dependents through his employers should be brought before the court. Christine Bradley stated before the court in a prior hearing and made pleas to the Commission that she was due spousal benefits as she was the beneficiary listed for Albert Bradley through his employer Southern Industrial. Her request for further information and documentation pertaining to the above was not acknowledged.

Section 42-17-60. Christine Bradley, spouse of claimant, has been denied benefits. "In case of appeal from the decision of the commission on questions of law, the appeal does not operate as a

supersedeas, and, after that time the employer is required to make weekly payments of compensation.”

Sections 42-9-220, 42-9-230. Christine Bradley was separated from her husband on March 17, 2016, and all benefits that Albert Bradley had been receiving had stopped in December 2015.

Did the commissioner incorrectly decide the facts? If so, what facts?

Section 42-9-10(A)(B)(C)(D). Albert Bradley was declared permanently and totally disabled.

Section 42-15-80. It was ordered that Albert Bradley died of acute bronchopneumonia. No medical records including autopsy and toxicology results were submitted to support this diagnosis. No expert witness testified at the hearing to provide expert testimony to support this diagnosis.

Albert Bradley died in the custody of Gaston County DSS/Tereasa Osborne, Stephanie Stevenson and Victoria Lichtenberger, appointed Guardian/Guardian ad Litem through the SC Workers' Compensation Commission. Victoria Lichtenberger is owner of ElderSource, located at 1018 East Blvd., Suite 3, Charlotte, NC, a geriatric care management company that is responsible for the placement of geriatric patients into adult homes and facilities.

Albert Bradley suffered immensely under the hands of Guardian Ad Litem Victoria Lichtenberger and Gaston County DSS/Tereasa Osborne, Stephanie Stevenson. From the time of their acquisition of the claimant, there was a rapid decline in his health evidenced by multiple hospital visits and admissions that ultimately led to his death.

Section 42-15-60- The claimant has medical bills that have not been paid by the carrier. These bills have not been brought before the court to show proof of payment.

67-902, 67-903, 67-904. Tuten testified that he conducted the dependency investigation in good faith when in fact he failed to make contact with all of the claimant's family members and failed to provide documentation to support his findings.

APA submission presented by Attorney Jason Lockhart used as evidence was not provided to all parties prior to hearing or after the hearing and was used as facts for the case.

67-216, 42-15-55. Victoria Lichtenberger, Guardian ad Litem, said representative for the deceased claimant, was speaking on behalf of the insurance company instead of the claimant.

Albert Bradley was in the custody of Victoria Lichtenberger, Guardian Ad Litem and Gaston County DSS/Tereasa Osborne/Stephanie Stevenson when he died. Victoria Lichtenberger, Guardian Ad Litem was also documented as dependent of the claimant. Proof of guardianship was never provided during court when requested. Family members, or the claimant himself, Albert Bradley, was not present at any hearing for the appointment of Guardian Ad Litem.

Family members had very limited contact with Albert Bradley during the last year of his life, and visits with him were supervised when they were allowed.

Do you think the Commissioner applied the wrong law? If so, what law?

Section 42-9-20. Temporary compensation, partial disability law cannot be applied to a claimant who has suffered physical brain damage. Albert Bradley sustained physical brain damage on May 16, 2011, and was permanently and totally disabled on the date of his accident.

Do you feel there are any other reasons why the Commissioner's judgment was wrong? If so, what?

42-9-20. Based on the findings and the laws, as highlighted above a temporary compensation and partial disability cannot be applied when an individual has suffered a permanent disability.

Family members were denied their rights to civil proceedings for guardianship for Albert Bradley. Albert Bradley has a living spouse Christine Bradley.

67-902. There was failure to conduct a thorough dependency investigation through the claimant's employer Southern Industrial.

Albert Bradley was in the custody of Victoria Lichtenberger, Guardian Ad Litem, and owner of ElderSource and Gaston County DSS/Tereasa Osborne, Agency Attorney/Stephanie Stevenson, guardianship supervisor. No proof of guardianship was ever provided.

67-1301. Expert physician testimony was not heard on the given diagnosis, acute bronchopneumonia, as to the cause of Albert Bradley's death.

Other documentation which were ordered by the Commissioner to include the complete financial record of the claimant held by the Guardian Ad Litem Victoria Lichtenberger as well as her final accounting, full medical records from the time that Albert Bradley was taken into custody from

3/17/2016 until the date of his death including autopsy and toxicology were not submitted as ordered for review and evidence.

Apply the laws accordingly, consider the facts in this case, and apply due process to be fair in his decision-making and execution of the laws. Every individual has the right to fair and equal representation.

CONCLUSION

Given the facts as discussed above, it can be concluded that the Commission's findings were not supported by actual facts, the evidence, and the appellant's evidence was not considered as a basis for rulings. Appellant moves the Court to reverse the judgement of the lower court and uphold that the laws which govern this case are adhered to for just awards.

A handwritten signature in cursive script that reads "Christine Bradley". The signature is written in black ink and is positioned on the right side of the page.

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Zurich North America, Victoria Lichtenberger,
Gaston County DHHS (Tereasa Osborne, Stephanie Stevenson)

Respondents

I certify that I have served the Initial Brief on the SC Workers' Compensation Commission on July 25, 2019, by depositing a copy of it in the United States Mail to P.O. Box 1715, Columbia, SC 29202-1715, or via hand-delivery 1333 Main St., Suite 500, Columbia, SC, 29202. I certify that I have served the same upon Southern Industrial Constructors and Zurich American Insurance Company on July 25, 2019 by depositing a copy of it in the United States Mail, to the attorney of record, Jason W. Lockhart at P.O. Box 12519, Columbia, SC 29201, and via hand

delivery to his office at 1320 Main St., Columbia, SC 29201. I certify that I have served a copy to Helen Hiser, by depositing a copy in the U.S. Mail to, 735 Johnnie Dodds Blvd. Suite 200, Mt. Pleasant, SC 29464. I certify that I have served a copy to the Gaston County DHHS, by depositing a copy of it in the United States Mail, to the attorney of record, Tereasa Osborne, at 330 Dr. Martin Luther King, Jr. Way, Gastonia, NC 28052. I certify that I have served a copy to Victoria Lichtenberger, Guardian, by depositing a copy of it in the United States Mail to 1018 East Blvd., Suite 3, Charlotte, NC 28203.

July 25, 2019

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