

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1116698
Appellate Case No. 2018-001294

RECEIVED

OCT 04 2019

SC Court of Appeals

Ex Parte: Robert Horne, as Personal
Representative of the Estate of Gus A. King,
And Laura King Appellants,

In Re: Gus A. King, Claimant Appellant,

v.

Pierside Boatworks, Employer,
and PA Manufacturers Assn. Ins. Co., Carrier, Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

Whether the South Carolina Workers' Compensation Commission was correct in finding and concluding that it lacks the power and authority to enforce any agreement for prospective settlement before a formal Agreement and Release is signed by the parties and filed with the commission.

INTRODUCTION

In this appeal, Appellants seek enforcement of a proposed settlement reached at mediation ("Mediation Agreement") in settlement of future medical benefits owed to Gus A. King ("Claimant"), since deceased, for treatment of the injuries related to his work accident occurring on November 18, 2011. Specifically, the proposed settlement was to resolve remaining medical benefits owed to Claimant over his lifetime as a result of the work accident. All indemnity benefits had been previously paid to Claimant. However, Claimant died from unrelated causes before the proposed settlement was executed and filed with the Workers' Compensation Commission.

Appellants argue that principals of contract law should apply to enforce the agreement reached at mediation. However, nothing in the South Carolina Workers' Compensation Act grants the commission the authority to enforce contracts and the commission has no jurisdiction over contract issues. The Workers' Compensation Commission is a creature of statute and can only operate under the terms in which it was created and within the authority it was expressly given.

As to Appellants' contention about promoting certainty, it is without merit in this circumstance. The purpose of the mediation may have been to promote certainty with regard to what would be owed to Claimant for his future medical care. During the period between the mediation and the pending execution and filing of the prospective settlement Agreement, Respondents were and would have been responsible for providing Claimant with any medical

treatment needs. By participation in mediation and reaching an agreement as to terms of a prospective settlement, Claimant gave up no entitlement to medical benefits and Respondents reduced none of their liability until such time that the settlement was executed, funds were paid, and document filed with the commission. However, at the point of his death, Claimant's entitlement to future medical care ended and any uncertainty for either party about what Claimant would require in future treatment ended while Respondents were still liable for such care, i.e. prior to the execution and filing of the proposed settlement.

STATEMENT OF THE CASE

The facts in this case are essentially undisputed. The underlying claim involves an admitted injury to Claimant that occurred on November 18, 2011. (Our Form 51). Pursuant to an Award and Order issued May 20, 2014, Claimant was found to be permanently and totally disabled as a result of his injuries and entitled to lifetime future causally related medical care and treatment. (Clmt. APA 1, p.23, ¶6). Claimant was awarded a lump sum award of his permanent and total disability benefits, (Id. p.26, ¶13), and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014 showing that Respondents had paid Claimant all indemnity benefits to which he was entitled and the claim was closed. (Our Form 19). Respondents, thereafter, continued to provide Claimant with the causally related medical care to which he was entitled under the May 20, 2014 order.

A mediation between Claimant and Respondents was held on June 2, 2016, for the purpose of negotiating and settling out Claimant's future medical treatment. (5/1/18 Or.p.5, ¶3). At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference, hereinafter "Mediation Agreement", memorializing the general terms of the negotiated settlement. (Clmt. APA 2). The Mediation Agreement specifically provided: "The

employer/carrier will prepare an Agreement and Release, releasing all parties or entities from all claims by the claimant which will be signed by the claimant and claimant's attorney." (*Id.*). One week later, on or about June 9, 2016, Claimant died as the result of an unrelated motor vehicle accident. (5/1/18 Or.p.6, ¶5). No Agreement and Final Release (clincher) was ever signed by Claimant or filed with the commission. (*Id.*¶6). After learning of the death of Claimant, Respondents notified Claimant's attorney that they were placing the settlement on hold to determine how to proceed. (Clmt. APA 8). Respondents later withdrew from the settlement on the grounds that Claimant's claim, because the remaining claim was for future medical treatment only, abated at his death.

Counsel for Claimant filed a hearing request with the commission seeking enforcement of the agreement reached at mediation. (Clmt. 2/8/18 Form 50). The issue was heard by the single commissioner in March of 2018 and her order followed on May 1, 2018. (5/1/18 Or.p.1). In short, the single commissioner found that agreement reached at mediation was not enforceable by the commission. (*Id.*) Claimant and his estate appealed to the appellate panel of the full commission. (Clmt. Form 30, Estate Form 30). On appeal the appellate panel fully affirmed the order of the single commissioner and adopted the single commissioner's rationale in the entirety. (4/30/19 Or.p.12). The commission found that the Mediation Agreement did not satisfy the requirements of the South Carolina Workers' Compensation Act to constitute an Agreement and Final Release. (*Id.*p.6 ¶10, p.9 ¶20, p.11 ¶10). The commission further found that either party has the ability to rescind or "back out" of a settlement until such time that the settlement agreement is signed by the parties and filed with the commission. (*Id.*p.5 ¶7, p.9 ¶20). Thus, the commission found and concluded that it lacked the statutory authority

to enforce the Mediation Agreement. (p.6 ¶11, p. 8 ¶8, p9. ¶19, p.11 ¶11), p.12). This appeal followed.

STANDARD OF REVIEW

The standard of review is found in section 1-23-380(5) of the South Carolina Code. See also Lark v. Bi-Lo, 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) (commission is an “agency” and subject to the Administrative Procedures Act). Per the statute, the Court may not substitute its judgment for the commission’s as to the weight of the evidence but may reverse when the decision is affected by an error of law, clearly erroneous, or arbitrary.

This case presents pure questions of law. Those issues are reviewed do novo. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENT

Appellants argue that this Court should hold that the Mediation Agreement in this case is binding and enforceable. In fact, Appellants argue that all such agreements should be binding and enforceable despite the lack of a statutory or regulatory enforcement mechanisms and contrary to established practice within the commission. The commission correctly rejected this argument in holding that only an Agreement and Final Release, prepared in conformity with the commission’s regulations and filed with the commission, can be an enforceable agreement under the South Carolina Workers’ Compensation Act.

1. South Carolina law does not authorize enforcement of a settlement agreement by the commission.

This issue was directly decided by the South Carolina Court of Appeals in Mackey v. Kerr-McGee Chemical, Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). In that case, the defendants sought enforcement of a settlement agreement entered into with the claimant

immediately prior to a hearing on the claim. The parties, at the call of the case, announced to the hearing commissioner that the case had been settled and the hearing was cancelled. The claimant later rejected the settlement and refused to sign the written settlement agreement. At a subsequent hearing, the single commissioner held that, as a matter of law, the settlement was binding on the claimant. On appeal, a circuit court judge reversed the commission's decision and this Court affirmed. As stated in that case, "Certainly, an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing, and we see no reason why the employer and his insurer cannot do the same thing." Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (quoting with approval, Pepitone v. State Farm Mut. Ins. Co., 346 So. 2d 266 (La. Ct. App. 1977)) (emphasis added). Thus, this case firmly establishes the rights of parties to withdraw from a settlement agreement at any time prior to that agreement being filed with the commission.

Appellants contend that Mackey is no longer valid because it was decided prior to the 2007 amendments to the Act. Prior to 2007, the Act provided:

A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission if the employee is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with and approved by four members of the commission.

S.C. Code §42-9-390 (Supp. 2006) (emphasis added). With the 2007 amendments, this section was amended to provide:

The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

S.C. Code §42-9-390 (2015) (emphasis added). While the General Assembly removed the requirement for commission “approval” of settlement agreements, it did not remove the requirement for “filing” such agreements. Thus, the reasoning cited in Mackey remains consistent with the current iteration of the Act. See Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (“an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification *and filing . . .*”) (emphasis added); see also Haley v. Tire Kingdom, 2013 WL 8507874 (Ct. App. April 24, 2013) (“We found no evidence in the record that Haley executed the clincher agreement or that Tire Kingdom filed it with the commission. Without these formalities, the agreement cannot be enforced.”). As such, Mackey remains good law in South Carolina and expressly provides that a party may withdraw from a settlement at any time prior to execution of a compliant agreement and that agreement being *filed* with the commission. Since neither was done in this case, Defendants’ withdrawal from the settlement precludes any action to enforce the agreement reached at mediation.

2. Contract law has no application to proceedings under the Workers Compensation Act.

Appellant argue, without authority, that “basic contract principles” governs the enforcement issue in this case. This argument, however, was expressly rejected in Mackey and nothing in the 2007 amendments changes this. In Mackey, the employer argued the same position asserted by Appellants in this case. This Court, by adopting the decision of the Circuit Court, held:

Counsel for the employer/carrier argues that because the claimant was represented by competent counsel and there had been shown no fraud or mistake in the acceptance of the offer, claimant is bound by the agreement. In support of this proposition, he cites [citations omitted]. *This argument is without merit.* These cases did not involve a worker’s compensation claim, and more importantly, were decided on principles of general contract law. Contract law principles are inapplicable here because §42-1-310 provides that employee

claims for compensation are governed exclusively by the worker's compensation act.

Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (emphasis added); see also S.C. Code §42-1-540

(“The rights and remedies granted by this Title . . . shall exclude all other rights and remedies . .

. at common law or otherwise, on account of such injury, loss of service or death.”). As stated by

the South Carolina Supreme Court:

The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional. The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. These include the procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement.

Estate of Covington by Montgomery v. AT & T Nassau Metals Corp., 304 S.C. 436, 439, 405

S.E.2d 393, 394 (1991) (citations omitted, emphasis added). Neither the 2007 amendments to the

Act, nor any subsequent case law, have changed the fundamental principal that all rights and

benefits established by the Act are governed by the Act exclusively. Based on these authorities,

common law contract principles have no application to the issues in this appeal and afford

Appellants no support for their position that the commission or this Court can enforce a settlement

agreement reached at mediation but rescinded prior to the execution and filing of an Agreement

and Final Release.

3. The Commission cannot compel Defendants to execute and file a clincher.

In their brief, Appellants argue that the commission and this Court have the authority to

compel Respondents to prepare a clincher agreement so that it may be executed and filed in

accordance with the regulations. In making this argument, Appellants effectively concede that the

mediation agreement does not meet the requirements of the Act and cannot be filed with the

commission or enforced as is. See Appellants' Brief to Appellate Panel, p. 8 (“Appellants are

not asking to *file* the mediation agreement and have it approved as a clincher even though it does not meet the requirements of a clincher.”) (emphasis in original). Appellants’ position would require the commission to exercise authority not granted to it under the Act in order to compel Respondents to create and file a clincher to resolve a claim that has abated and comply with a settlement that has been rescinded. There is simply no statutory or case law authority for such an unprecedented order.

Under the Act, parties are free to enter into voluntary settlements. See S.C. Code §42-9-390. Notwithstanding the requirement that such agreements “must” be filed with the commission, the commission’s regulations specify what must be included in such agreements. The regulations authorize the parties to agree to settle a claim “by signing an Agreement and Final Release (clincher).” S.C. Code Regs. § 67-801(A). The regulations further specify the content of a clincher. See S.C. Code Regs. § 67-803. These regulations require the parties to “agree to the terms of a settlement by entering into an Agreement and Final Release” that includes: (1) the caption of the claim, (2) statement of the facts, (3) the date and nature of the injury; (4) the amount of the settlement and terms of payment; and (5) the signature of the claimant. It is undisputed that the mediation agreement at issue does not meet these requirements. Nevertheless, despite the fact that the commission’s regulations specify that these are the requirements for agreeing to the terms of a settlement, Appellants contend that the commission has the authority to compel the creation of a clincher after the settlement agreement has been rescinded and after the claimant has died. No such authority exists.

It is clear that the commission, as a creation of statute, is imbued with only those powers conveyed by statute. See e.g., Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (“An administrative agency has only such powers as have been conferred by law and must act

within the authority granted for that purpose.”). The commission correctly held that the filing of a clincher is an explicit statutory requirement under the Act. The commission further correctly held that no clincher was ever executed in this case and, therefore, there was nothing to file. The Commission was also correct in noting that the commission rules on mediations do not provide for any enforcement mechanism of settlements reached at mediation. Nowhere does the Act provide that the Commission has the authority to compel a party to formalize and execute a clincher that the party does not agree to. In fact, as noted above, South Carolina permits a party to rescind a settlement agreement at any time prior to the execution and filing of the clincher. See Mackey, 280 S.C. at 270, 312 S.E.2d. Appellants understandably have an interest in seeking to enforce this mediation agreement but the Act and the Commission regulations simply do not provide the authority to do so.

4. The majority rule in other jurisdictions is that settlement agreements lacking statutory compliance are not enforceable.

The South Carolina case law discussed above is consistent with the general rule that workers' compensation settlements must be followed to the letter before they are binding. See 13 Larson, Workmen's Compensation Law § 132.06 (“If the statute requires that a settlement have Commission approval, a settlement lacking such approval amounts to nothing more than a voluntary payment of compensation. Generally, the statutory requirements for obtaining approval must be followed to the letter.”) (emphasis added). This is consistent across other jurisdictions as well. For example, in Barncord v. State, Dep't of Transp., 4 Kan. App. 2d 368, 606 P.2d 501 (Kan Ct. App. 1980), aff'd sub nom. 228 Kan. 289, 613 P.2d 670 (1980), the Court of Appeals of Kansas held that settlement provisions were unenforceable because the agreement between the parties was not approved by the Director of the Workmen's Compensation Fund or otherwise in a form recognized under Kansas law. Barncord, at 373, 606 P.2d at 506 (“The

parties are not bound by an agreement as to compensation unless the agreement is properly approved in accordance with the statutory provisions.”); see also, Facchine v. W.C.A.B. (Pure Carbon Co. & PMA Grp.), 883 A.2d 720, 723 (Pa. Commw. Ct. 2005) (approving Worker's Compensation Judge's decision to deny settlement agreement as it did not comply with statutory requirements); Lebid ex rel. Lebid v. W.C.A.B. (Cty. of Chester), 771 A.2d 79 (Pa. Commw. Ct. 2001) (settlement not in compliance with state's workers' compensation act deemed null and void).

While many of the cases addressing this issue involve statutes that require Commission approval of settlement agreements, the principal consideration is compliance with statutory formality, not the significance of approval per se. In addition to failing to show that South Carolina's statutory and regulatory requirements support enforcement of the Mediation Agreement in this case, Appellants' cited authorities are factually distinguishable from this case and do not support their position. For example, in Schuck & Sons Const. v. Indus. Comm'n of Ariz., 963 P.2d 310, 311 (Ct. App. 1998), the agreement at issue was actually executed and filed with the Commission prior to the death of the claimant. In finding that the agreement was enforceable, the Arizona court noted that the validity and enforceability of settlement agreements “must be determined according to contract principles.” Schuck, 963 P.2d at 313. As discussed above, South Carolina has expressly rejected this rule of construction.

Similarly, in B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), the employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. In affirming the enforcement of the agreement, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement they have formally submitted for Commission approval in compliance with the Act. When they present a duly executed settlement agreement to the Commission, the parties thereby relinquish control

of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith.

Isaac, 636 A.2d at 1025 (emphasis added); see also Ferreira v. Arrow Mut. Liability Ins. Co., 447 N.E.2d 1258, 1259-60 (Mass. App. Ct. 1983) (“we believe that when an instrument with the finality of an agreement for redeeming liability has been executed and filed with the Division . . . the insurer may no longer unilaterally rescind the agreement.”) (emphasis added); Taylor v. Reliance Well Serv. Inc., 220 So.3d 260 (Miss. Ct. App. 2017) (“Reliance Well has not shown how Taylor’s death, after the settlement was already signed by the parties and submitted to the Commission, has any bearing on this issue.”); Rojo v. Loeper Landscaping, Inc., 759 P.2d 194 (N.M. 1988) (“[a]ll of the elements mandating approval and precluding disapproval were found to exist when the agreement was presented to the hearing officer . . .”).

In this case, South Carolina law expressly requires the execution and filing of a clincher, signed by the claimant and containing the regulatory prescribed information. Absent compliance with those statutory and regulatory requirements, the agreement is not final and the commission lacks the authority to enforce it.

5. The Single Commissioner correctly ruled that parties retain the right to rescind any agreement not entered into with the formalities of the Act and filed with the Commission.

Appellants contend that allowing parties to “back out” of an agreement reached at mediation would render such agreements “not really worth anything and the value of the mediation process is diminished.” It is Appellants’ contention that parties sign written settlement agreements at the conclusion of a successful mediation due to the “guarantee of enforcement.” As with the general discussion above on the enforceability of the mediation agreement, it is important to note that the Commission’s regulations on mediation do not provide for any

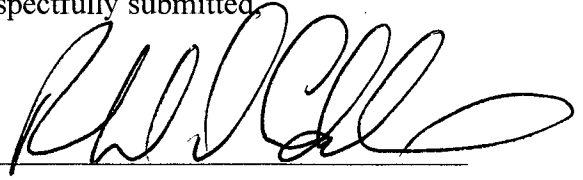
“guarantee of enforcement” of any settlement reached at mediation. In fact, the regulations do not make any requirement for memorializing a settlement agreement or filing of any document other than the Form 70, *Mediator Report*. In the absence of any authority in the regulations or statute, the Commission does not have the power to grant the relief requested by Appellants.

Appellants further argue that ruling the agreement unenforceable will create a situation that favors employers and carriers over claimants. Without regard to the relative futility in articulating the various ways in which parties may come to discover whether they have made a good bargain or not, enforcing this Mediation Agreement would create a substantial and unearned windfall to whomever would be the recipient of such funds. The settlement at issue here was a compromise of potential future medical benefits that Claimant was entitled to as a result of his injuries. This settlement did not involve any compensation or payments for disability. None of the funds at issue are recoverable by the Estate or any statutory dependents under the Act. In fact, these funds were intended by the parties to provide a fund from which Claimant could draw for his future medical needs, which were extensive, and would otherwise have never been paid directly to Claimant. At Claimant’s death his right to such benefits abated as a matter of law and would never have been a corpus paid to any dependent or heir. Setting aside the Commission’s statutory authority and regulatory requirements, an order to enforce this mediation agreement would not further the ends of the Act.

CONCLUSION

Based on the foregoing, Respondents respectfully request this Court affirm the Decision and Order of the commission in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Daniel Addison', written over a horizontal line.

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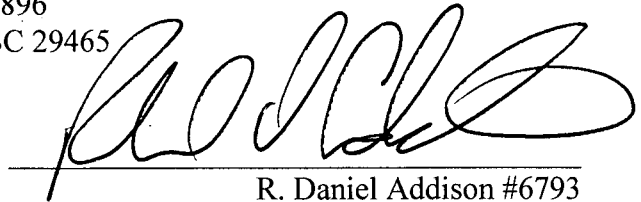
PROOF OF SERVICE

The undersign hereby certifies that on the date indicated below he served counsel for the Appellants with a copy of the *Initial Brief of the Respondents and Designation of Matter in the Record on Appeal* by mailing copies of the same by United States Mail with First Class postage prepaid to the following address:

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October 4, 2019

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SC Court of Appeals

Via Hand Delivery

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Gus A. King v. Pierside Boatworks
Appeallate Case No. 2018-001294

Dear Ms. Kitchings,

Please find enclosed for filing the original and one (1) copy of the Initial Brief of the Respondents and Designation of Matter to be included in the Record on Appeal in the reference to this matter. I have also enclosed Proof of Service upon counsel for the Appellants. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesistate to contact me.

Sincerely,


R. Daniel Addison

RDA/hrv
Enclosure(s)
Cc: Blake H. Hewitt, Esquire
J. Gary Christmas, Esquire
Paul Doolittle, Esquire